

1 come on up, sir.

2 **THE WITNESS:** Good morning.

3 **THE COURT:** And if you will walk
4 around on that side of the court reporter. And if
5 you will turn and face the jury and raise your right
6 hand, I will give you the oath.

7 **(Witness Duly Sworn)**

8 **THE COURT:** Thank you. Please have a
9 seat.

10 **JERRY MCCLURE,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **Q.** **(BY MS. BYRNE)** Please introduce yourself to
14 the jury.

15 **A.** Sergeant Jerry McClure, Harris County
16 Sheriff's office.

17 **Q.** How long have you been with the Harris
18 County Sheriff's Office?

19 **A.** It's been 27 and a half years.

20 **Q.** Are you a certified peace officer in the
21 state of Texas?

22 **A.** Yes.

23 **Q.** Currently what district are you assigned
24 to?

25 **A.** Currently I'm assigned to the financial

1 crimes unit of the Harris County Sheriff's Office.

2 Q. How long have you been in that division?

3 A. Approximately eight months.

4 Q. Prior to that where were you assigned?

5 A. The crimes against children unit.

6 Q. And how long were you in that division?

7 A. Approximately three years.

8 Q. In addition to the academy and getting

9 licensed in the state of Texas, what sort of

10 additional training or on-the-job experience do you

11 have that qualifies you to be in the crimes against

12 children division or an investigator?

13 A. Yes. Usually, on a monthly basis we're

14 training in the Children's Assessment Center.

15 Usually on a monthly basis, we're required to have 40

16 hours of training mandated every year.

17 Q. Okay. Now, while in the crimes against

18 children division, what all types of cases did you

19 investigate?

20 A. We investigate any types of abuse, neglect,

21 assaults against children under the age of 15.

22 Q. Do you -- physical assaults? Sexual?

23 A. Physical/sexual assaults, yes, ma'am.

24 Q. Okay. Were you assigned to that division

25 on February 8th of 2013?

1 A. Yes.

2 Q. Were you assigned a case involving a baby
3 named Josiah Fisher?

4 A. Yes.

5 Q. And when were you assigned to that case?

6 A. I was assigned to the case on February 8,
7 2013.

8 Q. What was the first thing that you did when
9 you were assigned to the case?

10 A. First thing I did, I was actually the
11 person on call. I was notified by our watch command
12 dispatch, spoke to the deputy on the scene; and I
13 immediately -- he advised me of the situation. I
14 went to Texas Children's Hospital.

15 Q. Is it routine for the on-call investigator
16 to go to the hospital?

17 A. No.

18 Q. Why did you attend the hospital in this
19 instance?

20 A. Due to the sustained injuries, which was
21 relayed to me by the reporting deputy and also EMS
22 advised him.

23 Q. Okay. So, in this particular case, it was
24 important to make it to the hospital immediately?

25 A. Yes.

1 Q. Okay. Now, while at the hospital, without
2 going into what anybody said, were you given
3 information from doctors and medical staff as to the
4 status of Josiah Fisher?

5 A. Yes.

6 Q. And how old was Josiah on that day?

7 A. I believe 15 weeks. 15 weeks old.

8 Q. Fifteen days, perhaps?

9 A. Sorry. 15 days. I apologize. Yes.

10 Q. Okay. When you have a case where you have
11 a 15-day-old baby or any child that is not -- that is
12 nonverbal or can't speak due to the injuries
13 sustained, what is one of the most immediate goals of
14 your investigation?

15 A. The most immediate goals are to establish
16 number one, the time line of the symptoms of the
17 injuries, also, the persons who had contact with the
18 child.

19 Q. Would it be fair to say that in many cases
20 there is more than one person that possibly has
21 contact with a child that needs to be investigated?

22 A. Yes.

23 Q. Okay. Now, in this case, how did you
24 start? What did you start with?

25 A. Basically, what I started with was I

1 obtained witness information which was provided by
2 the original report responding deputy. I obtained
3 statements from witnesses who saw the child.

4 Q. Okay. Now, when you were actually at the
5 hospital, were there individuals that you spoke with
6 and interviewed?

7 A. Yes.

8 Q. Okay. And who did you talk to at the
9 hospital?

10 A. It was one, the defendant.

11 Q. And when you say "the defendant," who are
12 you talking about?

13 A. About Timothy Fisher.

14 Q. Okay. Do you see Timothy Fisher in the
15 courtroom today?

16 A. Yes.

17 Q. Could you point to him and identify him by
18 an article of clothing?

19 A. Yes. That would be him in the blue shirt,
20 blue tie.

21 **MS. BYRNE:** May the witness reflect --
22 may the record reflect the witness has identified the
23 defendant?

24 **THE COURT:** Yes, ma'am.

25 **(Defendant Identified)**

1 **Q.** **(BY MS. BYRNE)** Did you talk to other staff
2 and members from Child Protective Services at the
3 hospital, as well?

4 **A.** Yes.

5 **Q.** And, again, without going into what all of
6 these individuals said, what was the purpose in
7 talking to them on that date?

8 **A.** The purpose was to see if the statements
9 given to them were consistent with what I obtained.

10 **Q.** In addition to speaking with the defendant,
11 did you also ask for consent to search his residence?

12 **A.** Yes.

13 **Q.** And did he voluntarily do that?

14 **A.** Yes.

15 **Q.** Okay. And he was cooperative?

16 **A.** Yes.

17 **Q.** Okay.

18 **MS. BYRNE:** Permission to approach the
19 witness?

20 **THE COURT:** Yes, ma'am.

21 **Q.** **(BY MS. BYRNE)** First, I'm going to show you
22 what's marked as State's Exhibit No. 57. Do you
23 recognize the person in State's 57?

24 **A.** Yes.

25 **Q.** And does State's 57 fairly and accurately

1 represent the defendant as he appeared on or about
2 February 8, 2013?

3 A. Yes.

4 Q. Okay. Second, I'm going to show you
5 State's Exhibit No. 58. Do you recognize this?

6 A. Yes.

7 Q. Okay. Is this the consent form you
8 provided to the defendant?

9 A. Yes, it is.

10 Q. And does it contain the residence that you
11 wished to search and his signature acknowledging that
12 he consented?

13 A. Yes, it does.

14 Q. Okay. I'm going to show you State's
15 Exhibit Nos. 59, 60, 61, and 62. Take a look; and
16 tell me if you recognize what's depicted in State's
17 59, 60, 61, and 62.

18 A. Yes.

19 Q. Okay. Do State's 59 through 62 fairly and
20 accurately depict what they purport to show?

21 A. Yes.

22 **MS. BYRNE:** At this time I would offer
23 State's Exhibits 57 through 62 into evidence and
24 tender to the Defense for inspection.

25 **MS. WILLIAMS:** No objection.

1 **THE COURT:** Admitted.

2 **Q.** **(BY MS. BYRNE)** I'm going to show you what's
3 been admitted as State's Exhibit No. 57. Do you
4 recognize the person in State's 57?

5 **A.** Yes.

6 **Q.** And is that the defendant's general
7 appearance as you saw him on February 8, 2013?

8 **A.** Yes.

9 **Q.** Okay. And what are we looking at in
10 State's 58?

11 **A.** The voluntary consent for search and
12 seizure.

13 **Q.** And when was that obtained?

14 **A.** February 8th. February 8, 2013.

15 **Q.** Okay. And how long were you at the
16 hospital before you went to the original location on
17 Five Forks?

18 **A.** I was there approximately -- it says 2100,
19 which is 9:00. So, I was there approximately two or
20 three hours.

21 **Q.** Did you go to the residence that night or
22 on a different day?

23 **A.** On a different date.

24 **Q.** Okay. And do you recall approximately when
25 this was?

1 A. That was on the following day, February the
2 9th.

3 Q. Okay. And where was the defendant's
4 residence located?

5 A. The residence was located at 7310, I
6 believe, Five Forks, Spring, Texas.

7 Q. Is that located in Harris County, Texas?

8 A. Yes.

9 Q. Just generally describe the outside of the
10 residence for us, showing you State's Exhibit No. 62.

11 A. The outside of the residence appeared to be
12 an -- either a singlewide or doublewide mobile --
13 mobile home located on actually some farm property.

14 Q. Do you recall whether or not the defendant
15 was present when you searched the residence?

16 A. He was not present.

17 Q. Okay. Showing you State's Exhibit No. 59,
18 what are we looking at here?

19 A. I believe that was the -- that was the bed.

20 Q. Okay.

21 A. I can't recall whether this was the
22 defendant's bed or the older child's bed.

23 Q. Okay. Well, do you see what's right down
24 here?

25 A. Yes.

1 Q. Okay. What are we looking at in State's
2 Exhibit 61?

3 A. That is, I guess, a bassinet or carrier.

4 Q. Okay. And based on your investigation, did
5 you determine whether or not that is where the baby
6 slept?

7 A. Yes.

8 Q. Or one of the locations where the baby
9 would have slept?

10 A. Yes.

11 Q. Now, if you can tell, you see this clothing
12 in the corner back here?

13 A. Yes.

14 Q. Does that appear to be baby clothing with
15 little dog bones and dogs on it?

16 A. Yes.

17 Q. And State's Exhibit No. 60, what are we
18 looking at here?

19 A. That is also a bed.

20 Q. Okay. And what kind of toys do you see on
21 the dresser near the bed?

22 A. Looks to be toddler toys.

23 Q. Okay.

24 A. Baby toys.

25 Q. Are you familiar with Sponge Bob Square

1 Pants?

2 A. Yes, Sponge Bob, some type of toy.

3 Q. Do you know whether or not this is a
4 6-year-old's bed?

5 A. No.

6 Q. Okay. Now, while searching the home, I
7 mean, you are there to investigate injury to a child,
8 correct?

9 A. Yes.

10 Q. Okay. Was there anything that you observed
11 that you --

12 **MS. BYRNE:** May we approach?

13 **THE COURT:** Okay.

14 **(At the Bench)**

15 **MS. BYRNE:** Before I started, I was
16 going to get into where he observed the synthetic
17 marijuana in the residence. And at the time -- at
18 the time we didn't file charges on that, as far as
19 the State is concerned, because we couldn't determine
20 whether any of the components in it were even
21 unlawful. So, it wouldn't be something that would
22 have been a crime necessarily.

23 **THE COURT:** It was analyzed?

24 **MS. BYRNE:** It wasn't analyzed, but he
25 recognized it from training and experience to be kush

1 or marijuana, which is consistent with one of the
2 witnesses who said she observed him to be high on the
3 date of bringing the baby.

4 **THE COURT:** Okay.

5 **MS. WILLIAMS:** Judge, without an
6 analysis, we don't know exactly what it is. We
7 can -- we can't conclude.

8 **THE COURT:** Stop just a moment. Can
9 you repeat to me what she said?

10 **MS. BYRNE:** What she is saying is that
11 without an analysis, we can't prove it. Like our
12 current argument would be at the time it wasn't an
13 illegal substance. It was something purchased in gas
14 stations, and that wasn't -- I wasn't allowed to run
15 it. It was something he would know based on training
16 and experience that would be in synthetic marijuana,
17 and case law would support an officer did testify to
18 that substance from training and --

19 **THE COURT:** Was it in a package that
20 says not to be consumed? Is this in a package?

21 **MS. BYRNE:** I would have to ask him
22 exactly how it was packaged.

23 **THE COURT:** Okay. He doesn't have it
24 here?

25 **MS. BYRNE:** He didn't tag it because

1 it wasn't an unlawful substance. I mean, he just
2 noticed it.

3 **THE COURT:** Well --

4 **MS. WILLIAMS:** Judge --

5 **THE COURT:** Yeah. It's a little --
6 it's a little misleading to call it marijuana if it
7 hasn't been analyzed; but he can say it's a synthetic
8 substance that is used to get high, that kind of
9 thing. What do you want --

10 **MS. WILLIAMS:** Judge, I --

11 **THE COURT:** Sorry.

12 **MS. WILLIAMS:** I think it's highly --
13 I don't think it's relevant. I think it's highly
14 prejudicial since we don't know what it is, and it
15 wasn't -- if it wasn't illegal, what purpose does the
16 State need it for except for prejudice?

17 **THE COURT:** Well, you will need to
18 clarify on the record that at that time it was not
19 illegal. Go into whether it's --

20 **MS. BYRNE:** Okay.

21 **THE COURT:** Really hard to keep up
22 with the synthetic substances because they change
23 constantly, but I just don't know what to call it. I
24 guess you have to establish it's called synthetic
25 marijuana on the street but not really marijuana.

1 **MS. BYRNE:** Okay.

2 **THE COURT:** And at that time, it was
3 not. So, your objection is sustained as to that
4 point. You need to clarify it was not illegal at
5 that time.

6 **MS. BYRNE:** That's fine.

7 **THE COURT:** It's probably mitigating
8 for your client if he is convicted because it offers
9 some mitigation, perhaps.

10 **MS. WILLIAMS:** So, it's -- it's
11 sustained to calling it --

12 **THE COURT:** You may say on the street
13 it's called synthetic marijuana, but --

14 **MS. BYRNE:** It's called kush, which is
15 a synthetic substance.

16 **THE COURT:** Then let's stay away from
17 synthetic marijuana or marijuana. I will permit her
18 to lead and say: Is this called kush on the street?
19 At that time was it illegal. So, don't use
20 "synthetic marijuana."

21 **MS. BYRNE:** Okay. May I whisper that
22 to the defendant [sic] to make sure he doesn't use
23 the word?

24 **THE COURT:** Sorry.

25 **MS. BYRNE:** May I tell the

1 defendant -- the witness quickly not to use that
2 word?

3 **THE COURT:** No, because I will --

4 **MS. BYRNE:** Lead through it?

5 **THE COURT:** I will permit her to lead.
6 So, your objection to synthetic marijuana is
7 sustained, as long as you call it kush.

8 **MS. WILLIAMS:** But my objection is
9 more global. It's the introduction of that into the
10 trial. It's not relevant. It's highly prejudicial.

11 **THE COURT:** I got that.

12 **MS. WILLIAMS:** It's --

13 **THE COURT:** But -- what did she say?
14 Prejudicial?

15 **MS. WILLIAMS:** Her objection is more
16 global, and she feels it's highly prejudicial.

17 **THE COURT:** Since it wasn't -- it was
18 not illegal at the time, it's not that it's
19 prejudicial. And I find that it's highly probative
20 since there is some indication he may have been
21 intoxicated. So, your objection is overruled. I
22 find that the probative value outweighs the
23 prejudicial value. Thank you.

24 **(End of Bench Discussion)**

25 **Q. (BY MS. BYRNE)** Sergeant McClure --

1 **MS. WILLIAMS:** Judge?

2 **THE COURT:** Yes, ma'am.

3 **MS. WILLIAMS:** One other matter, can I
4 have a running objection to this line --

5 **THE COURT:** Yes, ma'am. That's
6 granted.

7 **MS. WILLIAMS:** Thank you.

8 **Q.** **(BY MS. BYRNE)** While in the defendant's
9 residence, did you observe a substance known to you
10 based on your training and experience to be called
11 kush, or the street name kush, that is a synthetic
12 substance that can be used as an intoxicant?

13 A. Yes.

14 **Q.** And where did you observe that substance?

15 A. I believe that was on a kitchen or dining
16 table inside the residence.

17 **Q.** And at the time on February 8, 2013, that
18 would not be something that you as a law enforcement
19 officer would have filed criminal charges on because
20 that -- the substances weren't necessary illegal.
21 Would that be correct?

22 A. That's correct.

23 **Q.** Okay. It was just something that you noted
24 based on witness statements?

25 A. Yes.

1 Q. All right. Now, on the same date that you
2 searched the defendant's residence, did you also
3 interview Graciela Dickerson and Sherrill Jenkins?

4 A. Yes.

5 Q. Okay. And you stated you had already
6 interviewed the defendant. Did you also interview a
7 William Dickerson on February 8th?

8 A. Yes.

9 Q. Okay. And did you interview people from
10 the school?

11 A. Not on that day.

12 Q. Okay. But through the course of your
13 investigation, did you interview people from the
14 school that you thought might have valuable
15 information to the case?

16 A. Yes.

17 Q. Okay. Did you talk to Angela Hansen?

18 A. Yes.

19 Q. And approximately when was that?

20 A. That was approximately a few days after --

21 Q. Okay.

22 A. -- the 8th.

23 Q. And then approximately a month later, did
24 you ever speak to Kathy Otte?

25 A. Yes.

1 Q. Okay. And in addition to your initial
2 interviews, did you set up any follow-up interviews
3 with the defendant and the Dickersons?

4 A. Yes.

5 Q. Okay. Now, I want to -- I want to create a
6 time line based on your investigation as to where
7 baby Josiah was and where he was seen on the relevant
8 dates. What days are you really looking at as far as
9 setting up a time line for your investigation?

10 A. Days I was looking at was February 8th,
11 which was the day I made the scene -- well, made the
12 location at the hospital; and, also, a few days
13 before that, which may include February 5th, 6th, and
14 7th.

15 Q. Okay. Now, again, without going into
16 everything the witnesses said, did you determine when
17 Josiah was born, his date of birth?

18 A. Yes.

19 Q. Okay. When was Josiah born?

20 A. If I can review my report, I can give you
21 the exact date.

22 Q. Sure. Let me point it to you, right here.
23 January 24, 2013?

24 A. Sorry. I don't have my glasses. Yes.

25 Q. Okay. Do you know where the mother was

1 when the baby was born?

2 A. Yes.

3 Q. Where was she?

4 A. She was in jail.

5 Q. Okay. So, who had legal custody of the
6 baby once released from the hospital?

7 A. Timothy Fisher.

8 Q. Now, in speaking with the witnesses,
9 including Mr. Dixon, did you learn whether or not
10 there was a day at the beginning of the week of
11 February 4th in which the Dickersons saw and had
12 access to that baby?

13 A. Yes.

14 Q. Okay. And do you know that approximate
15 date?

16 A. That was approximately maybe the 4th or
17 5th.

18 Q. Okay. Now, when you interviewed
19 Mr. Dickerson, without going into what he said, did
20 he use the exact date that he saw the baby; or did he
21 reference a particular specific event that allowed
22 him to know which date he saw the baby?

23 A. He just referenced the event.

24 Q. Okay. So, there was something in his mind
25 that stood out and he knew?

1 **MS. WILLIAMS:** Objection as to
2 speculation.

3 **THE COURT:** Sustained.

4 **Q.** **(BY MS. BYRNE)** Do you know when the
5 Dickersons -- approximately when the Dickersons took
6 the baby on that day?

7 **A.** Yes.

8 **Q.** Okay. When was that?

9 **A.** That was approximately on the 6th.

10 **Q.** On that beginning of the week, would that
11 be around 11:30 in the morning?

12 **A.** Approximately.

13 **MS. WILLIAMS:** Objection to the
14 leading.

15 **THE COURT:** I'm sorry?

16 **MS. WILLIAMS:** Objection to the
17 leading questions.

18 **THE COURT:** Sustained.

19 **Q.** **(BY MS. BYRNE)** Do you know approximately
20 how long they visited with the child on that first
21 encounter?

22 **A.** From what I remember, it was a few hours --

23 **Q.** Okay.

24 **A.** -- on the first encounter.

25 **Q.** And did your investigation -- through your

1 investigation, did you learn who took the child from
2 their house after that initial visit?

3 A. Yes.

4 Q. Who was that?

5 A. Mr. Fisher.

6 Q. Okay. Now, in interviewing the Dickersons,
7 did you learn of a second date in which they had
8 care, custody, and control of baby Josiah?

9 A. Yes.

10 Q. Okay. And when was that?

11 A. That was on the Wednesday, which I believe
12 was February 6th.

13 Q. Okay. Were you able to determine
14 approximately when the baby went to the Dickersons'
15 home?

16 A. Yes. That was approximately in the a.m.
17 hours.

18 Q. Okay.

19 A. 11:00. 11:00, approximately.

20 Q. Okay.

21 A. 10:00, 11:00.

22 Q. So, we will put 11:00-ish; is that fair?

23 A. Yes.

24 Q. Okay. Now, did the child go home that day;
25 or did he spend the night?

1 A. He -- he stayed that night.

2 Q. Okay. So, on 2/7 of 2013, approximately
3 when did you learn the baby would have left the
4 Dickersons' home?

5 A. Approximately 8:30, 9:00 p.m. that night.

6 Q. Okay. So, if we're being generous, we can
7 say 9:30 to 9:45, anywhere in there?

8 A. Approximately, yes.

9 Q. Okay. Now, between the Dickersons, who
10 primarily cared for the baby throughout that time
11 period?

12 A. It was mainly Graciela.

13 Q. Okay. Now, did your investigation --
14 through your investigation did you determine who took
15 custody of the child on the night of February 7,
16 2013?

17 A. Yes.

18 Q. Okay. And who was that?

19 A. Timothy Fisher.

20 Q. Okay. The following day, what is the first
21 indication that you have of when that baby was seen
22 or whether any calls or reports were made? Was the
23 9-1-1 call made the following day?

24 A. Yes.

25 Q. Okay. And where was that call generated

1 from?

2 A. I believe it was generated from the
3 elementary school.

4 Q. Okay. And approximately what time was that
5 call made?

6 A. I believe it was approximately 10:00,
7 10:30-ish, somewhere around there.

8 Q. Do you have the call slip of when this
9 originated?

10 A. Yes. Yes, it looks like it was 10:27.

11 Q. Okay.

12 A. Approximately, yeah.

13 Q. And that was at the school?

14 A. That's correct.

15 Q. And what school is that?

16 A. Ehrhardt Elementary.

17 Q. And is that also in Harris County, Texas?

18 A. Yes.

19 Q. All right. Now, based on your
20 investigation, who had the baby at the time
21 surrounding 10:27 a.m. on the 8th?

22 **MS. WILLIAMS:** Objection as to
23 hearsay.

24 **THE COURT:** Sustained.

25 Q. **(BY MS. BYRNE)** As an investigator for the

1 Harris County Sheriff's Office, are there records
2 retained that would be assessable to you that would
3 determine when calls are made, when officers are
4 dispatched, when they are sent out to scenes?

5 A. Yes.

6 Q. And did you maintain such a record in this
7 case?

8 A. Yes.

9 Q. Okay. And what record -- what incident
10 does that pertain to?

11 A. It pertains to the -- to the call made from
12 the school, a call slip reference to the first
13 original call that was made.

14 Q. Okay. And was it --

15 **THE COURT:** Yes, ma'am?

16 **MS. WILLIAMS:** Objection, again, as to
17 hearsay.

18 **THE COURT:** Overruled at this time.

19 Q. **(BY MS. BYRNE)** From the records that you
20 used to complete your investigation, do you know when
21 Deputy Lerma went to the school?

22 A. Yes.

23 **MS. WILLIAMS:** Hearsay.

24 **THE COURT:** I will need to hear more
25 of a predicate about the records.

1 Q. (BY MS. BYRNE) What is the record that
2 you're looking at?

3 A. It's the detailed history for the police
4 call he assigned to that case.

5 Q. Okay. And as an employee of the Harris
6 County Sheriff's Office, are you also considered a
7 custodian of the records?

8 A. Yes.

9 Q. Okay. And this particular record, was it
10 made at or near the time of the events that it
11 details?

12 A. Yes.

13 Q. And was this record -- were the entries
14 made by somebody with personal knowledge of the
15 events?

16 A. Yes.

17 Q. And is this something that is kept in the
18 ordinary course of business with the Harris County
19 Sheriff's Office?

20 A. Yes.

21 Q. Okay. And where are the original records
22 kept?

23 A. The original records are kept basically by
24 the Harris County Sheriff's Office communications
25 division.

1 **MS. BYRNE:** I offer State's Exhibit
2 No. 73 into evidence and tender to Defense for
3 inspection.

4 **THE REPORTER:** Did you say 73?

5 **MS. BYRNE:** Yes, ma'am.

6 **MS. WILLIAMS:** Your Honor, may we
7 approach?

8 **THE COURT:** Yes, ma'am.

9 **(At the Bench)**

10 **MS. WILLIAMS:** This is the document --
11 it has --

12 **THE COURT:** Give me just a minute to
13 look at it.

14 **MS. WILLIAMS:** Okay.

15 **(Sidebar discussion outside hearing of
16 the Court Reporter)**

17 **THE REPORTER:** Are you on the record?

18 **MS. WILLIAMS:** No.

19 **MS. BYRNE:** No.

20 **THE COURT:** So, this involves other
21 cases, as well? It talks about a sex offense in
22 here?

23 **MS. BYRNE:** Well --

24 **MS. WILLIAMS:** I offered to withdraw
25 my objection. So --

1 **THE COURT:** Are there just certain
2 things dealing with this case?

3 **MS. BYRNE:** Well, yes, Judge. And
4 what Ms. Williams has just said is she is willing to
5 withdraw her objection if I don't introduce it and
6 allow me to elicit the testimony. And I have
7 explained to her I'm not trying to offer this
8 testimony for proof of the truth of the matter
9 asserted but to show that through his investigation,
10 he had to set up a time line in order to investigate
11 the case and determine what to do with it.

12 **THE COURT:** Not for the truth of the
13 matter asserted isn't working for me. Truth of the
14 matter asserted. I think what I will do is just
15 explain to the jury that by agreement of the parties,
16 the admissible information will be used for
17 testimony; but since the dispatch record contains
18 information about other cases, that it would not be
19 admitted.

20 **MS. BYRNE:** That's fine.

21 **THE COURT:** Is that all right?

22 **MS. WILLIAMS:** I couldn't -- I didn't
23 understand.

24 **THE COURT:** I can't hear you.

25 **MS. WILLIAMS:** I didn't understand or

1 hear what you said.

2 **THE COURT:** I said I think I will tell
3 the jury that by agreement of the parties --

4 **MS. WILLIAMS:** Oh.

5 **THE COURT:** -- it will not be
6 admitted, but it may be used for questioning and
7 answers. And it will not be admitted because it
8 contains information about other cases.

9 **MS. BYRNE:** Okay.

10 **THE COURT:** Is that all right with
11 everybody?

12 **MS. BYRNE:** Yes, Judge.

13 **THE COURT:** Thank you.

14 **(End of Bench Discussion)**

15 **THE COURT:** Members of the jury,
16 State's Exhibit 73 contains information about other
17 cases that were going on at the same time. And so,
18 therefore, by agreement of the parties, this will not
19 be admitted; but it may be used for questioning and
20 for answers in terms of testimony as if it were
21 admitted. So, I will note here "Do not send to jury"
22 on it, okay, since it's not admitted.

23 **MS. BYRNE:** Thank you, Judge.

24 **Q. (BY MS. BYRNE)** All right. Just going to
25 ask you some specific questions about what was

1 offered as State's 73. You mentioned the 10:27 a.m.
2 call from the school. Is there an indication on
3 State's 73 of when Deputy Lerma would have responded
4 to a residence on Five Forks?

5 A. Yes.

6 Q. Okay. And when was that?

7 A. 12:01 p.m.

8 Q. Is that when he was en route or when he
9 arrived?

10 A. That's when he was en route. He arrived at
11 the 7310 Five Forks location at 12:30 p.m.

12 Q. 12:30 exactly or 12:23 -- okay.

13 A. I'm sorry. On scene at 12:34. He changed
14 locations and went to Five Forks location.

15 Q. Okay. And who, at that time, was in
16 custody of that baby?

17 A. Timothy Fisher.

18 Q. Okay. Now, in the course of your
19 investigation, did you also interview a Sherrill
20 Jenkins?

21 A. Yes.

22 Q. Okay. And did you determine whether a trip
23 to Walgreen's would have been important in your
24 investigation?

25 A. Yes.

1 Q. All right. I'm going to show you what's
2 already been introduced as State's Exhibit No. 19.
3 Looking at State's Exhibit No. 19, can you tell when
4 this transaction was made?

5 A. Yes.

6 Q. Okay. When was that?

7 A. February 8, 2013.

8 Q. Okay.

9 A. At 3:14 p.m.

10 Q. Okay. Now, if Ms. Jenkins made a
11 transaction at 3:14 p.m., approximately how soon
12 before would she have come into contact with this
13 baby?

14 A. Approximately --

15 **MS. WILLIAMS:** Objection.

16 **THE COURT:** And your objection is?

17 **MS. WILLIAMS:** The objection is
18 hearsay.

19 **THE COURT:** Sustained.

20 Q. **(BY MS. BYRNE)** Okay. So, at 3:14 p.m. we
21 know she went to Walgreen's?

22 A. Yes.

23 Q. And that is helpful to your investigation,
24 correct?

25 A. Yes.

1 Q. All right. Now, through the course of your
2 investigation, did you also review emergency medical
3 services records?

4 A. Yes.

5 Q. Okay. I'm going to show you what's already
6 been introduced into evidence as State's Exhibit
7 No. 20. When was a call received by EMS?

8 A. The call was received at 3:54 p.m., 1554
9 military time, which is indicated on here, 3:54 p.m.

10 Q. Does it say how quickly they got out to the
11 scene?

12 A. Yes.

13 Q. When was that?

14 A. They are dispatched at 1555 and on scene at
15 1559, four minutes later.

16 Q. Okay. And at that time who was in care,
17 custody, and control of the baby?

18 A. Mr. Fisher.

19 Q. And does it say when the ambulance actually
20 arrived at Texas Children's Hospital?

21 A. Yes.

22 Q. And when was that?

23 A. Looks like it was 5:06 p.m.

24 Q. Once you were able to put together a time
25 line for this case, what was important to do next?

1 A. Once the time line was established, it was
2 important to interview witnesses who were in contact
3 or observed the child.

4 Q. Okay. In the course of your investigation,
5 did you and other officers speak to numerous
6 witnesses, just see if she had any contact with the
7 baby at all?

8 A. Yes.

9 Q. Were you able to rule out people?

10 A. Yes.

11 Q. Okay. Now, once you had completed all of
12 your witness interviews and all of your follow-up
13 witness interviews -- well, let me ask you this: Did
14 you actually go to the Dickersons' home when you
15 conducted some of your interviewing?

16 A. Yes.

17 Q. All right. And what was the Dickersons'
18 demeanor when you went to the home?

19 A. Cooperative.

20 Q. Did you go inside the residence?

21 A. Yes.

22 Q. All right. And when you interviewed
23 Graciela Dickerson --

24 A. Yes.

25 Q. -- primarily what language did she speak?

1 A. Primarily she was speaking English to me.

2 Q. Okay.

3 A. At the time, yeah.

4 Q. What is her first language?

5 A. Spanish.

6 Q. Did you speak to her in some Spanish, as
7 well?

8 A. Yes.

9 Q. Are you fluent in Spanish?

10 A. No.

11 Q. Okay. In the course of your initial
12 interview with Graciela Dickerson on February 9th,
13 did she provide you with photographs?

14 A. Yes.

15 Q. And who brought up the photographs?

16 A. She did.

17 Q. And where did she have the photographs?

18 A. She had them on her phone.

19 Q. Now, did you access her phone; or did she
20 access the phone?

21 A. She did.

22 Q. Okay. And did she just -- how many
23 photographs did she pick out to give you?

24 A. She gave me two, two photographs.

25 Q. Did she --

1 A. She showed me two photographs.

2 Q. Did she mention that she had more than two
3 photographs?

4 A. Not at the time, no.

5 Q. Okay. Which particular dates were you
6 interested in in regards to the photographs?

7 A. Wednesday and Thursday.

8 Q. And was she able to provide you with a
9 photograph from each date?

10 A. Yes.

11 Q. Did you keep a copy of those photographs in
12 the case file?

13 A. Yes. Yes.

14 Q. Okay. I will show you what's already been
15 admitted as State's Exhibit 13. Would that be the
16 copy of the photograph from Wednesday, February 6th?

17 A. Yes.

18 Q. Okay. And State's Exhibit No. 11, would
19 that be the copy of the photograph from Thursday,
20 February 8th?

21 A. Yes.

22 Q. So the jury can see what we're talking
23 about, State's Exhibit 13, would that be the photo
24 from Wednesday that Graciela Dickerson gave you?

25 A. Yes.

1 Q. Okay. And State's Exhibit No. 11, would
2 that be the photograph from Thursday?

3 A. Yes.

4 Q. Okay. And could that possibly be Thursday,
5 February 7th?

6 A. Yes.

7 Q. Okay. Now, at a certain point in March,
8 you had developed a time line. Do you feel you had a
9 pretty solid time line? Did you feel you had talked
10 to all witnesses you needed to talk to to get a time
11 line?

12 A. Yes.

13 Q. Now, you're not a medical doctor?

14 A. That's correct.

15 Q. Do you have any specialized medical
16 training in order to make a diagnosis of child abuse?

17 A. No.

18 Q. When you have a case like this and you have
19 a time line and you have an injured child, what do
20 you need to do with this information in order to make
21 a case or to even determine if you have a case?

22 A. Well, this information has to all be
23 collected. A meeting has to be convened with the
24 district attorney, assigned to crimes against
25 children and also medical doctors and also CPS

1 supervisors.

2 Q. Now, if you recall, how often are these
3 meetings held?

4 A. Approximately once a month at Texas
5 Children's Hospital.

6 Q. And do you remember what the meetings are
7 called?

8 A. I believe it's multidisciplinary CAS team
9 or assessment team or something similar, some kind of
10 acronym.

11 Q. Would it be common or uncommon for an
12 investigator to bring a case to these meetings just
13 to see what they even have?

14 A. Yes.

15 Q. Okay. Have you done that on other
16 occasions?

17 A. Yes.

18 Q. In participating in these meetings, is
19 there -- I guess is there always the same outcome or
20 charges always filed?

21 A. No.

22 Q. Okay. Why not?

23 A. Well, depends on --

24 **MS. WILLIAMS:** Objection as to other
25 cases.

1 **THE COURT:** Sustained.

2 **Q.** **(BY MS. BYRNE)** In this case, how many
3 meetings did you attend?

4 **A.** In this case I attended -- I believe it was
5 two meetings on this case.

6 **Q.** And what is your role at these meetings?

7 **A.** I'm sorry. Repeat.

8 **Q.** What is your role at the meetings?

9 **A.** My role is to present the facts, present a
10 time line to the injuries when they were -- when they
11 first appeared; and go over it with the doctors, with
12 CPS; and make sure that, you know, all the statements
13 are consistent.

14 **Q.** And, of course, the time line that you come
15 up with in this case was based on all of your
16 interviews and things like that?

17 **A.** That's correct.

18 **Q.** Okay. In this particular case, after
19 completing your investigation and interviewing
20 witnesses and consulting with doctors on more than
21 one occasion, what did you feel you were able to do
22 at that time?

23 **A.** I feel that I had enough information,
24 evidence to file criminal charges.

25 **Q.** And who did you file the criminal charge

1 against?

2 A. Against Timothy Fisher.

3 **MS. BYRNE:** I pass the witness.

4 **THE COURT:** Thank you.

5 Ms. Williams?

6 **MS. WILLIAMS:** Thank you.

7 **CROSS-EXAMINATION**

8 **Q. (BY MS. WILLIAMS)** Detective McClure -- I'm
9 sorry. Sergeant McClure.

10 A. That's okay.

11 **Q.** Good morning.

12 A. Good morning.

13 **Q.** We met the other day.

14 A. Yes, ma'am.

15 **Q.** I introduced myself. Are you having
16 trouble hearing me?

17 A. No, ma'am.

18 **Q.** Okay. Basically, you got -- you got your
19 first call for this case through the 9-1-1 call or
20 the EMS call?

21 A. Yes, ma'am. Our command watch center was
22 notified, and they contacted me because I was the
23 person on call.

24 **Q.** I'm assuming this was the first time on --
25 did you actually -- excuse me.

1 Did you actually see Mr. and
2 Ms. Dickerson February the 8th of 2000 --

3 A. No. No, ma'am.

4 Q. -- '13?

5 A. No, ma'am.

6 Q. It was the next day that you saw Mr. and
7 Ms. Dickerson and Ms. Sherrill Jenkins?

8 A. Yes.

9 Q. Did you also talk to Mr. Bob Jenkins?

10 A. Yes, I did speak with him.

11 Q. And you were -- you're aware that there
12 were three different caretakers who had had Josiah
13 within that 72-hour period from the 6th -- well, the
14 5th through the 8th?

15 A. Yes.

16 Q. And the only person of those three who had
17 a complaint against them regarding Josiah was the
18 father from the school?

19 A. Yes, ma'am.

20 Q. And, of course, you spoke to the father at
21 the Texas Children's Hospital on the 8th and
22 subsequently at least two or three different times?

23 A. Yes, ma'am.

24 Q. And he was cooperative just like the
25 Dickersons were?

1 A. Yes.

2 Q. And did you ever see the Dickersons at the
3 Texas Children's Hospital?

4 A. No, ma'am.

5 Q. And you came to learn during your
6 investigation that there was a skull fracture?

7 A. Yes.

8 Q. And that that had to happen with some kind
9 of force?

10 A. Yes.

11 Q. Wouldn't -- wouldn't be what we would call
12 normal force?

13 A. Blunt trauma force is -- yes.

14 Q. Okay. CPS authorized a release -- were you
15 aware that CPS authorized the release of Josiah
16 Fisher to his father after the child was born and had
17 to stay in the hospital until the 1st of February?

18 **MS. BYRNE:** I object to hearsay.

19 **THE COURT:** Sustained. And I don't
20 think that would have been Texas Children's, would
21 it?

22 **MS. WILLIAMS:** No, it wouldn't. I
23 misspoke. I misspoke, Your Honor.

24 **THE COURT:** Okay. Thank you.

25 Q. **(BY MS. WILLIAMS)** As part of your

1 investigation, did you personally secure -- or did
2 anybody secure the records from Conroe Regional
3 Medical Center --

4 A. No, ma'am.

5 Q. -- on Josiah Fisher?

6 A. No, ma'am.

7 Q. Or on Tegan Shows?

8 A. No, ma'am.

9 Q. And you -- you based your investigation on
10 what each person told you --

11 A. Yes, ma'am.

12 Q. -- of the witnesses or the people?

13 There was no eyewitness to any injury
14 that came forward?

15 A. That's -- that's correct. I was
16 establishing a time line with the witnesses.

17 Q. And Mr. Fisher denied committing any kind
18 of injury to his child?

19 **MS. BYRNE:** Objection, calls for
20 hearsay.

21 **MS. WILLIAMS:** It's --

22 **MS. BYRNE:** It's not a -- by a party
23 opponent.

24 **THE COURT:** Sorry. You're asking if
25 your client committed any injury to the child?

1 **MS. WILLIAMS:** No. I'm saying
2 Mr. Fisher denied any injuries to -- denied
3 committing any injuries to Josiah Fisher.

4 **THE COURT:** Sustained.

5 **Q.** **(By Ms. Williams)** Now, when you spoke to
6 Graciela Dickerson, did she appear to understand your
7 English?

8 **A.** Yes, ma'am.

9 **Q.** And did she print off the pictures from the
10 telephone?

11 **A.** No, ma'am.

12 **Q.** Can you -- do you know who printed off the
13 pictures from the phone?

14 **A.** The printed pictures were done by the D.A.

15 **Q.** By the D.A.?

16 **A.** Yes, ma'am.

17 I did. I printed the pictures. I'm
18 sorry.

19 **Q.** You did?

20 **A.** I did myself, also.

21 **Q.** Okay. And there wasn't any kind of time
22 stamp on those pictures?

23 **A.** No, ma'am, not that I recall.

24 **Q.** So, based on firsthand knowledge, you're
25 not -- you have no personal knowledge of when they

1 were actually printed -- I mean, excuse me -- taken?

2 A. Just what she told me.

3 Q. And --

4 **MS. WILLIAMS:** Do you have State's 15?

5 **THE REPORTER:** The D.A. has all the
6 exhibits.

7 Q. **(BY MS. WILLIAMS)** I'm tendering to you
8 State's 15. Exhibit 15. Did Graciela give you that
9 picture?

10 A. No, ma'am.

11 Q. Would that have shown more of an injury
12 than the picture she gave you?

13 A. Yes.

14 Q. On this -- in State's Exhibit 15 -- it's
15 already admitted. This -- would you agree with me
16 that -- this looks like a more serious situation than
17 in State's 11 and State's 13?

18 A. It appears to be some type of mark
19 underneath the eye.

20 Q. The February 6th picture shows mostly
21 redness?

22 A. It's difficult to tell by the coloring.

23 Q. And State's Exhibit 11 that Ms. Dickerson
24 told you was on February the -- was taken on February
25 the 7th, 2013, you really can't tell anything about

1 the -- about Josiah's face?

2 A. No, ma'am, not really, due to the shadow.

3 Q. Right. Now, at any time during your
4 investigation, were you told that the baby -- that
5 Josiah rolled off the bed?

6 A. No, ma'am. I don't recall that.

7 Q. And, Sergeant McClure, do you have notes of
8 the meetings that you had with the medical
9 authorities?

10 A. I do -- no, ma'am. I don't have any rough
11 notes, just the medical records.

12 Q. Okay. Generally, as part of your meetings,
13 are there notes?

14 A. Sometimes there is, yes, ma'am.

15 Q. And who would make those notes?

16 A. My notes are usually the supplements in the
17 report.

18 Q. Okay. And you're here today not saying
19 that you know what happened to this -- what happened
20 to Josiah, but giving the results of your
21 investigation from talking to all the people that you
22 felt were necessary to talk to; is that correct?

23 A. Yes.

24 Q. And, basically, that's why the -- there are
25 four different allegations about how the injury

1 happened?

2 A. Yes.

3 Q. Sergeant McClure, who was at the meeting
4 where you accepted some timing of the injuries from
5 the doctors? Who all was at that meeting?

6 **MS. BYRNE:** I object to relevance.

7 **THE COURT:** Overruled. Who was --
8 sorry. Could you repeat the question?

9 Q. **(BY MS. WILLIAMS)** Who was at the meeting
10 where a medical time line was decided on?

11 A. From what I recall, it was myself, district
12 attorney --

13 Q. The --

14 A. Yes.

15 Q. Ms. Byrne?

16 A. Ms. Byrne, Dr. Donaruma, usually either a
17 CPS case worker or her supervisor is usually there,
18 and I believe a couple of other CPS workers are
19 usually there.

20 Q. I'm sorry.

21 A. Yes, ma'am. Usually a couple of other CPS
22 employees are there.

23 Q. All right. Do you remember Ms. Amber
24 Dewalt?

25 A. Yes.

1 Q. She was there?

2 A. From what I recall, yes, ma'am.

3 Q. And Ms. Acasha Kerr? Do you recall
4 Ms. Acasha Kerr?

5 A. I don't remember, no, ma'am.

6 Q. And for the most part, would it be correct
7 to say that you concluded your investigation on March
8 the 22nd of 2013?

9 A. If I can reflect back to my report, I can
10 answer that.

11 Q. Yes, sir.

12 A. Okay. What was the date again, ma'am?

13 Q. I think March the 22nd, 2013.

14 A. Yes, ma'am. Approximately, yes, ma'am.

15 Q. Approximately.

16 A. Yes.

17 Q. Except for talking additional times to
18 Assistant District Attorney Byrne?

19 A. Yes, ma'am.

20 Q. Now, what was -- was Mr. Fisher not
21 permitted to see Josiah on February the 8th after a
22 certain time at Texas Children's Hospital?

23 A. That's -- I believe that's what I remember,
24 yes, ma'am.

25 Q. And were William Dickerson and Graciela

1 Dickerson also not -- not permitted to visit Josiah
2 at the time at the Texas Children's Hospital?

3 A. I was not aware of that, no, ma'am.

4 Q. Now, that -- that call is either -- would
5 that be made by the CPS workers --

6 A. Yes, ma'am.

7 Q. -- that are on the team?

8 A. Yes, ma'am.

9 **MS. WILLIAMS:** Thank you. Pass the
10 witness.

11 **THE COURT:** Thank you.

12 Any redirect?

13 **MS. BYRNE:** Briefly, Judge. Thank
14 you.

15 **REDIRECT EXAMINATION**

16 Q. **(BY MS. BYRNE)** At these meetings, is it
17 just one case; or are there multiple cases with
18 multiple doctors and multiple people giving input?

19 **MS. WILLIAMS:** Objection as to other
20 cases.

21 **THE COURT:** Overruled on that
22 particular question.

23 Q. **(BY MS. BYRNE)** You may answer.

24 A. Okay. There are other cases involving
25 other agencies that are also present.

1 Q. What -- is it kind of a round table
2 discussion? How do these things go?

3 A. Yes. With other agencies, yes.

4 Q. Now, before you file charges on a person,
5 you have to have some sort of a belief in a case,
6 correct?

7 A. Yes.

8 Q. Okay. And let me briefly show you these
9 pictures. Do you have your glasses on?

10 A. Yes, ma'am.

11 Q. Okay. State's Exhibit No. 15, where we see
12 the mark?

13 A. Yes.

14 Q. Okay. Let me show you State's Exhibit
15 No. 13, which is one of the pictures that Graciela
16 Dickerson gave to you. What do you see right there
17 in the corner of the baby's eye?

18 A. Appears to be a mark.

19 Q. Does it appear to have healed somewhat?

20 A. Yes.

21 Q. Okay. And she willingly provided that
22 picture to you?

23 A. Yes.

24 Q. Okay.

25 **MS. BYRNE:** I have nothing further.

1 **THE COURT:** Any recross?

2 **MS. WILLIAMS:** Yes, Your Honor.

3 **REXCROSS-EXAMINATION**

4 **Q.** **(BY MS. WILLIAMS)** Again, you weren't
5 present during the time any photographs were taken.
6 You weren't given any dates from the actual -- from
7 the telephone that took the photographs; is that
8 correct?

9 **A.** That's correct.

10 **Q.** And at the round table discussions in your
11 meetings, there are no defense attorneys, are there,
12 present?

13 **A.** Not that I -- no, ma'am.

14 **MS. WILLIAMS:** Thank you, sir. Pass
15 the witness.

16 **MS. BYRNE:** Two questions, Judge.

17 **FURTHER REDIRECT EXAMINATION**

18 **Q.** **(BY MS. BYRNE)** I forgot to ask you earlier.
19 In your recorded conversation with Kathy Otte, would
20 it be fair to say that your recorder malfunctioned
21 and it didn't start working until the middle of the
22 conversation?

23 **A.** Yes, apparently so.

24 **Q.** Okay. So, there is not a full recording of
25 everything that she stated due to an accidental

1 cause?

2 A. Yes.

3 Q. Okay. And at these round table meeting
4 discussions, does every case result in criminal
5 charges being filed?

6 A. No.

7 Q. Does every case result in a determination
8 of child abuse?

9 A. No.

10 **MS. BYRNE:** Nothing further.

11 **THE COURT:** Thank you.

12 **FURTHER RECROSS-EXAMINATION**

13 Q. **(BY MS. WILLIAMS)** Sergeant McClure, is it
14 correct that you recorded two statements of
15 Mr. Fisher?

16 A. Yes, ma'am.

17 Q. And was one just sound that you recorded?

18 A. Sorry. Repeat the question.

19 Q. One was just a sound recording without any
20 video?

21 A. Yes. Audio only, the first one, yes,
22 ma'am.

23 Q. And then you recorded him with -- with
24 audio and sound?

25 A. Yes, ma'am. That was at my office, yes,

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1 ma'am.

2 Q. Okay. And he answered all of your
3 questions?

4 A. Yes.

5 **MS. WILLIAMS:** Pass the witness.

6 **MS. BYRNE:** Nothing further, Judge.

7 **THE COURT:** Thank you.

8 Is Sergeant McClure excused for all
9 purposes or on call?

10 **MS. BYRNE:** No objection from the
11 State.

12 **MS. WILLIAMS:** On -- on call.

13 **THE COURT:** Okay. You're free to go
14 today, subject to recall.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Thank you so much,
17 Sergeant.

18 **THE WITNESS:** Thank you.

19 **(Witness released)**

20 **THE COURT:** Do you have another
21 witness?

22 **MS. BYRNE:** I do, Judge. The State
23 would call Amanda King.

24 **THE COURT:** Amanda King.

25 **THE BAILIFF:** Judge, the witness has

1 not been sworn in.

2 **THE COURT:** Thank you.

3 Come on up, please. Thank you. If
4 you want to put your purse down, and I will give you
5 the oath. Okay. And if you will turn and face the
6 jury and raise your right hand.

7 **(Witness Duly Sworn)**

8 **THE COURT:** Thank you. You may have a
9 seat there.

10 **AMANDA KING,**
11 having been first duly sworn, testified as follows:

12 **DIRECT EXAMINATION**

13 **Q.** **(BY MS. BYRNE)** Ms. King, could you
14 introduce yourself to the jury?

15 **A.** Hi. I'm Amanda King, physical therapist.

16 **Q.** How long have you been a physical
17 therapist?

18 **A.** I have been a physical therapist for almost
19 eight years. It will be eight years in May. Excuse
20 me.

21 **Q.** What sort of educational training and
22 background do you have that qualifies you to be a
23 physical therapist?

24 **A.** I went through four years of undergraduate
25 and got a Bachelor's degree -- I apologize for my