

1 right hand, I will give you the oath.

2 *(Witness Duly Sworn)*

3 **THE COURT:** Thank you. Please have a
4 seat.

5 **GEETANJALI RATHORE,**
6 having been first duly sworn, testified as follows:

7 **DIRECT EXAMINATION**

8 **Q. (BY MS. BYRNE)** Dr. Rathore, could you
9 please introduce yourself to the jury?

10 A. My name is Dr. Geetanjali Rathore --

11 **Q.** Let me see if the microphone is working.
12 You can adjust it and pull it forward towards you.

13 Okay. Let's try that again. Could
14 you introduce yourself to the jury?

15 A. I'm Dr. Geetanjali Rathore, and I'm one of
16 the child neurology fellows at Texas Children's
17 Hospital. And I have about --

18 **MS. WILLIAMS:** Objection, Your Honor,
19 to the narrative and also nonresponsive.

20 **THE COURT:** Sustained. You may answer
21 in just a sentence or two, and then you have to wait
22 for the next question.

23 **THE WITNESS:** Okay.

24 **THE COURT:** You can't give a whole
25 paragraph.

1 **THE WITNESS:** I apologize. Thank you.

2 **Q.** **(BY MS. BYRNE)** Okay. Have you ever
3 testified before?

4 **A.** I have not.

5 **Q.** Now, where did you go to medical school?

6 **A.** In India.

7 **Q.** Okay. And how long have you been
8 practicing in the United States?

9 **A.** Five and a half years.

10 **Q.** Once you graduated medical school, where
11 did you go?

12 **A.** I went to Omaha, Nebraska.

13 **Q.** Was that for residency?

14 **A.** Yes.

15 **Q.** And what was that residency in?

16 **A.** Pediatrics.

17 **Q.** After your residency in Omaha, Nebraska,
18 where did you go?

19 **A.** I came to Houston.

20 **Q.** And was that to Texas Children's?

21 **A.** Yes, it was.

22 **Q.** How long have you been at Texas Children's?

23 **A.** For about two and a half years.

24 **Q.** And was that for your fellowship?

25 **A.** It was.

1 Q. And what was your fellowship in?

2 A. Child neurology.

3 Q. So, how long have you been working
4 exclusively in the area of child neurology?

5 A. One and a half years.

6 Q. In the course of that one and a half years
7 working in this specialty, have you seen and treated
8 a patient named Josiah Fisher?

9 A. I have.

10 Q. Okay. When did that treatment begin,
11 approximately?

12 A. In February of 2013.

13 Q. And when is the last time that you have
14 seen Josiah Fisher?

15 A. In clinic March 13th of this year.

16 Q. Now, without giving us an entire anatomy
17 and physiology lesson, generally speaking, when brain
18 cells die or when there is trauma that damages the
19 brain, is the brain able to regenerate?

20 A. Once a nerve cell dies, it does not
21 regenerate. So, it's permanent damage.

22 Q. The jury has already heard a lot of medical
23 testimony and seen scans about Josiah's injuries.
24 From the time you began to see Josiah in February of
25 2013 to most recently, March of this year, has there

1 been any -- I guess the parts of his brain that were
2 damaged and have atrophy, will they ever repair
3 themselves?

4 A. No.

5 Q. So, those areas of the brain that are now
6 fluid, will it ever grow back? Will he ever get that
7 brain back?

8 A. No, it won't.

9 Q. Okay. So, what remains in Josiah's brain?

10 A. So, there is a thin realm of what we call
11 cortex, kind of the surface of the brain and the
12 brainstem, which is the base of the brain which
13 connects the brain to the spinal cord; and it
14 controls the vital functions, like breathing, heart
15 rate, and kind of stimulus to the environment. So,
16 your vital functions.

17 Q. And would it be -- would you describe few
18 or many areas of Josiah's brain that were affected by
19 the trauma?

20 A. So, his back part of the brain, which we
21 call the occipital cortex, that's for vision, that
22 was affected. And then the part of the brain that
23 controls tone of the body or fine motor skills was
24 affected. And, in general, just there was diffused
25 loss of brain cells and the connections. So, kind of

1 how the different parts of the brain communicate with
2 each other was affected.

3 Q. Over the course of time as you have been
4 treating Josiah, would -- I guess I don't know the
5 exact medical term. Would you describe parts of his
6 head as, I guess, atropine?

7 A. You mean the brain?

8 Q. Yes, the brain.

9 A. Yes. There is brain atropine.

10 Q. What does that mean?

11 A. That means that those -- so, there is one
12 that's -- there is injury to some cells that just
13 die, first off; and then are the connecting cells.
14 If they are not getting stimulus, they die off, too.
15 So, there is just loss of more cells.

16 Q. Over the course of time, has there been a
17 continual loss of cells in Josiah's brain?

18 A. So, from the first scan to the most recent
19 in August of last year, yes.

20 Q. After that last scan, a brain shunt was
21 placed in his head, correct?

22 A. Uh-huh (affirmative.)

23 Q. And what is the basic purpose of the brain
24 shunt?

25 A. So, there was buildup of fluid in the

1 cavities, the ventricles; and the fluid was not
2 draining, due to loss of absorption of that fluid.
3 So, normally, fluid is made and then absorbed; but
4 that fluid was not being absorbed and was just
5 collecting in the brain and was increasing the
6 pressure.

7 And since the skull is a closed space,
8 there is only so much water and brain that you can
9 hold. And if the water is taking a lot of space,
10 then it presses on the brain and that will cause more
11 brain damage and that's why they have to put in a
12 shunt, to release some of the fluid and decrease the
13 pressure on the brain.

14 Q. In the course of your treatment of Josiah,
15 was he or was he not also diagnosed with
16 trauma-related cerebral palsy?

17 A. Yes, cerebral palsy.

18 Q. What basically does this diagnosis mean?

19 A. So, cerebral palsy is a clinical diagnosis;
20 and all it means is there is a nonprogressive injury
21 to the brain early in life where the brain is still
22 developing; and that leads to -- it's a spectrum of
23 severity where your motor function, your intellectual
24 function, and whichever part of the brain is injured
25 is affected.

1 Q. How much of Josiah's brain was affected?

2 A. So, it was -- I guess I don't know how to
3 put it -- severity, but there is extensive brain
4 matter loss.

5 Q. Throughout his entire brain?

6 A. It was diffused, yes. So, entire brain.

7 Q. Now, I know in the medical world you can --
8 I guess you can never say never or never make
9 100 percent guarantees of anything; is that fair?

10 A. Yes.

11 Q. Based on your training and experience and
12 what you have seen with Josiah and his scans and your
13 treatment of him, do you have an opinion as to
14 whether he will ever walk or talk or function at his
15 age level?

16 A. So, the areas in his brain that are
17 affected do control your motor functions, your arms
18 and legs, how they will move; and I don't think he
19 will ever regain enough function to walk
20 independently. And his language areas are also
21 affected, both --

22 **MS. WILLIAMS:** Objection, Your Honor,
23 nonresponsive.

24 **THE COURT:** Sustained.

25 Q. **(BY MS. BYRNE)** So, you have mentioned his

1 motor functions. What about his language function?

2 A. So, he -- I guess do you want me to tell
3 now?

4 Q. Well, has there been any progress in his
5 language function?

6 A. No. He does not comprehend, and he does
7 not have any words.

8 Q. What about his cognitive thinking? I guess
9 you would expect that a child, as they grow older,
10 would start to learn; and they would go through
11 school and things like that. What do you expect for
12 his cognitive thinking?

13 A. So, again, you need language comprehension
14 to learn, which I think will be very limited. So, I
15 don't think he will have enough functioning to be in
16 a regular school ever.

17 Q. What about -- if you know, if this is not
18 outside of your area of expertise, do you think that
19 he will ever have the function to use the restroom by
20 himself?

21 A. I don't think he will be toilet trained.

22 Q. Do you think he will ever have the
23 cognitive function to -- I guess there is basic
24 emotion, but what about falling in love or things
25 like that?

1 **MS. WILLIAMS:** Objection, Your Honor.

2 This is all very speculative.

3 **THE COURT:** Overruled.

4 **Q.** **(BY MS. BYRNE)** If you have an opinion based
5 on what you have seen in your training and
6 experience?

7 **A.** So, I can tell about basic emotions. At
8 this time he only responds to kind of physical
9 stimulus and sounds. He really does not have any way
10 of expressing his own needs. So, I mean, like I
11 said, it would be hard to tell; but I would say
12 unlikely. But hard to tell.

13 **Q.** Now, Josiah has a feeding tube. Based on
14 everything that you have seen and your treatment of
15 Josiah, do you have -- do you see him being able to
16 feed and provide nourishment for himself?

17 **A.** So, the side that controls the muscles that
18 controls swallowing have been affected. So, when he
19 tries to swallow, it goes in his lungs rather than
20 his stomach. So, I don't think he will regain
21 function and will be able to eat by mouth.

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

23 **THE COURT:** Thank you.

24 **MS. WILLIAMS:** Can I have just a
25 second?

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

2 **(Brief pause)**

3 **CROSS-EXAMINATION**

4 **Q.** **(BY MS. WILLIAMS)** How old is Josiah now?

5 A. He was 13 months when I saw him.

6 **Q.** How old was he when you saw him?

7 A. Thirteen months.

8 **Q.** And, altogether, would you give the jury
9 and the Court an idea of how much time you have spent
10 with Josiah?

11 A. So, I have been seeing him every six
12 months. The first visit was an hour, and I see him
13 about 40 minutes on his follow-up visit.

14 **Q.** So, would it be correct to say that you
15 spent less than three hours or four hours?

16 A. Yes.

17 **Q.** And at 13 months, you wouldn't expect an
18 infant to be able to have an extensive vocabulary,
19 would you, Doctor?

20 A. We expect them to have about two or three
21 words.

22 **Q.** Two or three words?

23 A. Yes.

24 **Q.** And as yet, when you saw him, he did not
25 have two or three words; is that correct?

1 A. He did not even babble.

2 Q. Okay. Would it be correct that in the
3 field of the brain, that -- and the nerves and all
4 the contents of the brain, that we're in an age of
5 discovering much, much more than we have ever before
6 about the brain and how it works?

7 A. Yes. We continue to learn, yes.

8 Q. And -- but this is pretty much -- this
9 period of time now has been sort of expansive in our
10 learning about the brain. Would you agree with that
11 or not?

12 A. Yes. Like I said, we are learning every
13 day. We learn new things, yes.

14 Q. And you're aware of experiments with live
15 tissue being implanted into different parts of the
16 body --

17 A. Yes.

18 Q. -- to generate regrowth?

19 A. In different parts of the body, but not the
20 brain.

21 Q. Do you -- do you know if there have been --
22 does that mean that there have not been any
23 experiments doing this with brain tissue as yet?

24 A. I know there are studies for stem cells,
25 but there is no successful studies.

1 Q. But it is underway at this point in time?

2 A. Yes.

3 Q. Okay. And many of these things that you
4 were asked, they are sort of your best guess, aren't
5 they? Like falling in love, how much he will ever
6 understand right now? You're aware that he responds
7 to sounds and physical touch?

8 A. Yes.

9 Q. And that he shows some preferences in those
10 areas. Can you --

11 A. Preferences in what?

12 Q. He doesn't like loud sounds, does he?

13 A. He doesn't have vision, and we see that.
14 Sometimes they can -- if they can't see, they get
15 startled more often to unfamiliar sounds. So --

16 Q. And he likes certain kinds of sounds. Are
17 you aware of that?

18 A. Yes.

19 Q. And like any developing child, there is --
20 there is a lot of -- there are a lot of question
21 marks about his development, but there is no question
22 that his brain has been severely impaired?

23 A. Yes. That's correct.

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

25 **THE COURT:** Thank you.

1 **MS. BYRNE:** No further questions.

2 **THE COURT:** Thank you.

3 May this witness be excused?

4 **MS. BYRNE:** No objection.

5 **MS. WILLIAMS:** No objection.

6 **THE COURT:** Thank you so much.

7 *(Witness released)*

8 **MS. BYRNE:** The State calls Justen
9 Rogers.

10 **THE COURT:** Thank you.

11 **THE BAILIFF:** Your Honor, this witness
12 will need to be sworn in.

13 **THE COURT:** Thank you.

14 And you can come up this way. And if
15 you will turn and face the jury, I will give you the
16 oath. Raise your right hand, please.

17 *(Witness Duly Sworn)*

18 **THE COURT:** Thank you. You may have a
19 seat.

20 **JUSTEN ROGERS,**
21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 **Q.** **(BY MS. BYRNE)** Mr. Rogers, could you
24 introduce yourself to the jury?

25 **A.** My name is Justin Rogers. I'm Timothy

1 Fisher's cousin.

2 Q. And you can adjust that microphone towards
3 you if you need to.

4 Okay. You mentioned that you're
5 Timothy Fisher's cousin. How old are you?

6 A. I'm 30.

7 Q. Okay. You're a little older than Timothy?

8 A. Yes.

9 Q. And what area of town -- or what area of
10 the state did you and Timothy grow up in?

11 A. South side of Houston.

12 Q. Okay. Now, is -- I guess it's fair to say
13 you have known Timothy his entire life?

14 A. Yes.

15 Q. And would you say that you saw him --

16 **MS. WILLIAMS:** Objection to leading.

17 **MS. BYRNE:** I haven't finished the
18 question.

19 **THE COURT:** Sorry. Don't lead, of
20 course. Thank you.

21 Q. **(BY MS. BYRNE)** Would it be fair to say that
22 you saw him on few or many occasions growing up?

23 A. Yes.

24 Q. Which one, few or many?

25 A. Many.

1 Q. Okay. How well would you say you know
2 Timothy?

3 A. Pretty well. Pretty well.

4 Q. Okay. Now, how are you related to Timothy?

5 A. He is my cousin. He is my aunt's son.

6 Q. Okay. And do you have grandparents in
7 common?

8 A. Yes.

9 Q. Okay. And who is that?

10 A. That would be our grandmother, Francis
11 Mattox.

12 Q. Over the course of the time that you have
13 known Timothy, were you aware of any time that he was
14 incarcerated?

15 **MS. WILLIAMS:** Objection, Your Honor,
16 to the general -- to the general nature of the
17 statement and as an extraneous offense.

18 **THE COURT:** Overruled.

19 Q. **(BY MS. BYRNE)** Were you aware of a time
20 when the defendant was in the Texas Youth Commission?

21 A. There were several times.

22 Q. Okay. You are aware he has been convicted
23 of aggravated robbery before, correct?

24 A. Yes. Early 2000s.

25 Q. Somewhere in the 2000s?

1 **MS. WILLIAMS:** Objection,
2 nonresponsive.

3 **THE COURT:** Sustained. Listen
4 carefully to the question asked, and answer just that
5 question. Thank you.

6 **Q. (BY MS. BYRNE)** Over the time that you have
7 known Timothy, what is it that he does on a daily
8 basis? What does he --

9 **MS. BYRNE:** Yes?

10 **MS. WILLIAMS:** Your Honor --

11 **THE COURT:** You have an objection?

12 **MS. WILLIAMS:** Yes, I have an
13 objection. It would be pure speculation if he were
14 to answer this question: What does he do on a daily
15 basis? Can you establish how he would know that?

16 **MS. BYRNE:** In regards to drugs is
17 what I'm getting at. What he would know as to
18 personal observations.

19 **THE COURT:** We will take this up
20 outside the jury's presence. Thank you.

21 *(Jury released)*

22 **THE COURT:** Sir, you may step out for
23 just a moment; and we will call you back in.

24 **THE WITNESS:** Okay.

25 *(Witness released)*

1 going into synthetic marijuana?

2 **MS. BYRNE:** Just going into what he
3 knows him to smoke, which is the synthetic marijuana.

4 **THE COURT:** Okay.

5 **MS. BYRNE:** I think the convictions
6 for real marijuana speak for themselves.

7 **THE COURT:** Okay.

8 **MS. WILLIAMS:** Judge, I'm not sure
9 synthetic marijuana was even around.

10 **THE COURT:** And this is during what
11 period of time?

12 **MS. BYRNE:** This is in recent years,
13 including up and through while he was on bond for
14 this offense.

15 **THE COURT:** Thank you.

16 **MS. WILLIAMS:** And the other thing,
17 these two people did not see each other that often.

18 **THE COURT:** Okay. Well, he says he
19 lived with him.

20 **MS. WILLIAMS:** Way back --

21 **THE COURT:** Are you contesting that?

22 **MS. WILLIAMS:** When was that?

23 **THE DEFENDANT:** I lived with Justen
24 before me and Tegan got in a serious relationship.

25 **THE COURT:** You need to talk to your

1 lawyer, not to us. So, she can argue.

2 So, what --

3 **MS. WILLIAMS:** He says he lived with
4 him prior to his relationship with Tegan Shows.

5 **THE COURT:** Okay. So, it really --
6 those are subjects for cross-examination. It doesn't
7 really mean he can't testify. He is allowed to
8 testify as to bad acts on punishment. So, whether
9 it's legal or not, with regard to the synthetic
10 marijuana, that would be admissible. Of course, the
11 character evidence is admissible.

12 What specifically are you objecting
13 to, Ms. Williams?

14 **MS. WILLIAMS:** Well, I'm objecting to
15 the testimony about his impression of his -- of his
16 use of marijuana -- any kind of drugs or synthetic
17 marijuana or marijuana when this man has not had that
18 much time around Mr. Fisher in the last six or seven
19 years.

20 **THE COURT:** And so, would you be
21 familiar with him during -- it doesn't matter what
22 period. It's admissible. The only issue is: Did
23 synthetic marijuana exist at that time? And you may
24 ask about that on cross. So, that objection is
25 overruled.

1 loose cannon.

2 **MS. WILLIAMS:** I don't mean in that
3 sense. I mean in volunteering -- like the several
4 times -- implied that he has been in the Youth
5 Commission several times.

6 **THE COURT:** Well, I will give you a
7 minute to clear that up with him.

8 **MS. BYRNE:** I will clarify it.

9 **THE COURT:** So that no false
10 impression is left with the jury. Okay.

11 **MS. WILLIAMS:** Judge, further, I would
12 ask that for some kind of instruction with this
13 witness to carefully listen to the question and
14 answer -- answer it truthfully and accurately.

15 **THE COURT:** Well, I don't instruct any
16 witness to be truthful. That's what the oath was
17 about. That was the instruction on that. But what
18 else do you want?

19 **MS. WILLIAMS:** Well --

20 **THE COURT:** To listen to the question
21 asked? Sure, I can do that if you want.

22 **MS. WILLIAMS:** Please.

23 **THE COURT:** I don't have a problem
24 with that. Okay. So, I will give you just a minute
25 to talk to the witness; and then we will start back

1 up.

2 *(Brief pause)*

3 **MS. BYRNE:** Judge, I have explained
4 how we are going to clarify that in front of the
5 jury; and he is prepared.

6 **THE COURT:** Okay. And on the record.
7 Listen carefully to the question asked; and answer
8 just that question, please.

9 **THE WITNESS:** Okay.

10 **THE COURT:** Okay. You're not going
11 into regular marijuana use, are you?

12 **MS. BYRNE:** My understanding is the
13 witness would only testify as to synthetic marijuana.

14 **THE COURT:** Okay. Is that correct?

15 **THE WITNESS:** Yes.

16 **THE COURT:** Not the other marijuana?

17 **THE WITNESS:** No.

18 **THE COURT:** Okay. So, since there
19 haven't been any lab tests and things like that, it
20 tends to get messy --

21 **MS. BYRNE:** I understand.

22 **THE COURT:** It may or may not be
23 admissible. So, before you go into regular
24 marijuana --

25 **MS. BYRNE:** We're not, Judge. Just

1 stick to synthetic.

2 **MS. WILLIAMS:** And, Judge, can I have
3 a running objection to the -- to the drug synthetic
4 marijuana?

5 **THE COURT:** Yes. But, you know, if it
6 begins to get afield, you need to object again.

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

8 **THE COURT:** All right. Thank you.
9 Ready for the jury.

10 So, listen carefully to the question
11 asked; and answer just that question. Okay. Thank
12 you.

13 **(Jury enters the courtroom)**

14 **THE COURT:** Thank you. Please be
15 seated.

16 **Q. (BY MS. BYRNE)** In recent years, how often
17 would you say you would come into contact with the
18 defendant?

19 **A.** Say two or three times a month.

20 **Q.** After this case began, how often would you
21 say you came into contact with the defendant?

22 **A.** About twice a week.

23 **Q.** Once this case began that he is here on
24 trial for today, where did the defendant live?

25 **A.** He was staying with my grandmother.

1 Q. Would that be why you had more frequent
2 contact with him?

3 A. Yes.

4 Q. In those two to three times a month and
5 then, more particularly, the two or three times a
6 week once this case started, when you would come into
7 contact with the defendant, did you make any
8 observations about any substances he was using?

9 A. The kush, synthetic marijuana that they
10 sell at tobacco shops.

11 **THE COURT:** Excuse me. Keep your
12 voice up. Speak -- can you speak just little louder
13 for us?

14 **THE WITNESS:** Yes.

15 **THE COURT:** Thank you.

16 Q. **(BY MS. BYRNE)** When you say "kush" or
17 "synthetic marijuana," what about that did you
18 observe with the defendant?

19 A. Him -- he would smoke it almost on a daily
20 basis, from what I understand. And every time I was
21 there, he was always under the influence.

22 **THE COURT:** Excuse me. When one of
23 the lawyers stand up, that's like a timeout. So, you
24 have to wait and let me rule before you answer.

25 **MS. WILLIAMS:** Objection to the

1 hearsay.

2 **THE COURT:** Sustained. Don't go into
3 anything anyone told you. It's only what you
4 observed that you can testify to.

5 **Q. (BY MS. BYRNE)** In the times that you
6 observed the defendant, what did you see?

7 A. He would either be smoking it or be just
8 done smoking it.

9 **Q.** And how would he be when he was just done
10 smoking it?

11 A. Kind of zoned out, off in another world, I
12 guess.

13 **Q.** And was that after this case was pending?

14 A. What do you mean?

15 **Q.** As well as before? Was that before and
16 after this case was pending?

17 A. Yes.

18 **Q.** Okay. And after this case was pending, who
19 was with him at your grandmother's house?

20 A. Tegan. Tegan Shows, I believe her last
21 name was.

22 **Q.** Would she have been with him as this was
23 going on when you saw it?

24 A. Yes.

25 **Q.** Now, given the length of time that you have

1 known the defendant -- let me ask you this: Was
2 there ever a time where the defendant lived with you?

3 A. Yes.

4 Q. Okay. And when was that, approximately?

5 A. Approximately three, four years ago.

6 Q. And why did you allow the defendant to live
7 with you?

8 A. Because at the time he wasn't going to be
9 staying with my grandmother. They were having some
10 issues. So, I allowed him to stay with me.

11 Q. Did you make him pay rent?

12 A. No.

13 Q. Did you ask him to pay bills or utilities?

14 A. No.

15 Q. What was the whole purpose for you to have
16 him live with you?

17 A. I had him move in with me so he could try
18 to put some money out of the checks he was getting
19 from his job so he could get his own place.

20 Q. Now, in addition to having him live with
21 you, there has been some mention that at one point
22 the defendant was homeless. Do you know where he was
23 living?

24 A. It would just be hearsay.

25 Q. Okay. So, you don't know exactly where he

1 was?

2 A. No.

3 Q. Were there family members, to your
4 knowledge, willing to allow the defendant to stay
5 with them?

6 A. Yes.

7 Q. So, it would be by choice that he wouldn't
8 stay at your grandmother's?

9 A. Yes.

10 Q. In the years that you have known the
11 defendant, do you have an opinion as to his character
12 for truthfulness? Yes or no, do you have an opinion?

13 A. No.

14 Q. You don't have an opinion as to whether he
15 is truthful or not?

16 A. Not really.

17 Q. Okay. Do you have an opinion as to his
18 character for being patient with children?

19 A. I would say he would be, yes.

20 Q. Okay. What about as to providing a safe
21 and nurturing environment for children?

22 A. He would try his best, I guess you could
23 say.

24 Q. Okay. So, would that be a yes; or he would
25 just try?

1 A. He would just try.

2 Q. Do you believe that synthetic marijuana and
3 things like that would provide a safe and nurturing
4 environment for children?

5 A. No.

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

7 **THE COURT:** Thank you.

8 **CROSS-EXAMINATION**

9 Q. **(BY MS. WILLIAMS)** Mr. Rogers, the time
10 frame that you say that you saw Mr. Fisher using
11 synthetic marijuana was when he was living with --
12 after he had been charged with the injury to Josiah
13 and living with his grandmother?

14 A. Yes.

15 Q. And during the time frame that he lived
16 with her?

17 A. Yes.

18 Q. And that was a few months?

19 A. Yes.

20 Q. Would it be correct to say you don't have
21 any ideas of exactly when he moved in and exactly
22 when he left his grandmother's?

23 A. Exactly, no.

24 Q. And his grandmother is your grandmother,
25 and she is now deceased?

1 A. Yes.

2 Q. And when -- when you say you saw Mr. Fisher
3 and Ms. Shows, where were -- if you know, where was
4 Lexicon Acosta?

5 A. I believe he was already in CPS care.

6 Q. And when you -- when you're claiming you
7 saw this, where was Josiah Fisher?

8 A. He was already injured and in the hospital.

9 Q. Do you have an 8:00-to-5:00 job?

10 **MS. BYRNE:** Objection to relevance.

11 **THE COURT:** Overruled. You may
12 answer.

13 A. It's actually 7:00 to 5:00, yes.

14 Q. **(BY MS. WILLIAMS)** 7:00 to 5:00?

15 A. Yes.

16 Q. Weekdays?

17 A. Monday through Thursday, and on Friday we
18 work 7:00 to 3:30.

19 Q. And could you be over at your now deceased
20 grandmother's on the days that you worked?

21 A. Yes. I lived less than a mile from where
22 her house is.

23 Q. During -- during the time that -- excuse
24 me. During the time that you were working?

25 A. Yes.

1 Q. So, you could be drawing a paycheck and
2 over at your grandmother's at the same time?

3 A. I would still go over to visit her, yes.

4 Q. During the time that you were actually on
5 the job?

6 A. Oh, no. Not from 7:00 to 5:00, no.

7 Q. Okay. So, if at all, you could only see
8 your -- go over there, it would probably be on
9 weekends?

10 A. Friday through Sunday, yes.

11 Q. Okay. And -- you didn't like to go over to
12 your grandmother's; isn't that true?

13 A. Not that often.

14 Q. And that was because of the animals in her
15 home?

16 A. It would be because of her son that was
17 living with her.

18 Q. Have you ever told anyone in your family or
19 outside your family that you hated to go over there
20 because the animals, the cat and the dogs, used the
21 restroom on the floor?

22 A. I never said I hated to go over there.

23 Q. Well, okay.

24 A. I just told them I disliked going inside.

25 Q. Inside the house?

1 A. Yes.

2 Q. Because of the problem with the dogs and
3 the cats?

4 A. That was the secondary issue. The main
5 issue was because of my uncle.

6 Q. Okay. Now, there has been sort of a little
7 feud with -- with Mr. Fisher and Ms. Shows because of
8 Chris Rogers' interest in Ms. Shows; is that correct?

9 A. None that I know of.

10 Q. Well, would it be correct to say that your
11 mother, Helen Mattox, wanted Tegan Shows and your
12 brother Christopher Rogers together?

13 A. Not at all. My brother is actually
14 currently married.

15 Q. Since Mr. Fisher has been with Ms. Shows,
16 haven't you, your mother, and your brother, Chris
17 Rogers, been distant and feuding at times with
18 Mr. Fisher and Ms. Shows?

19 A. Not both. Mainly just Ms. Shows.

20 Q. And your mother has some emotional
21 problems, doesn't she?

22 **MS. BYRNE:** Object to relevance.

23 **THE COURT:** Sustained.

24 Q. **(BY MS. WILLIAMS)** Doesn't your mother have
25 a habit of calling up people and making false

1 accusations?

2 **MS. BYRNE:** Your Honor, I object to
3 her trying to impeach his mother's character through
4 this witness.

5 **THE COURT:** Sustained.

6 **Q. (BY MS. WILLIAMS)** Have you ever written a
7 letter saying that --

8 **MS. BYRNE:** Object to counsel
9 testifying from a document not in evidence.

10 **THE COURT:** Thank you. Sustained.

11 **MS. WILLIAMS:** I think this is 3,
12 Cynthia.

13 **Q. (BY MS. WILLIAMS)** Is this basically a
14 letter that you wrote regarding Mr. Fisher?

15 **A.** Yes. Can I comment on it?

16 **Q.** I will ask you --

17 **THE COURT:** Just answer the questions
18 asked, sir.

19 **MS. BYRNE:** Are you offering it?

20 **MS. WILLIAMS:** Yes.

21 **MS. BYRNE:** Okay. I would object to
22 the relevancy of the letter that he wrote at a
23 different time.

24 **THE COURT:** Well, is that your only
25 objection then? Relevance?

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

2 **THE COURT:** Okay. If that's --

3 **MS. BYRNE:** And hearsay.

4 **THE COURT:** And hearsay. Sustained.

5 **MS. WILLIAMS:** Okay.

6 **Q.** **(BY MS. WILLIAMS)** And this was written in
7 reference to these proceedings today on behalf of
8 Mr. Fisher? Defendant's Exhibit 3?

9 **A.** Yes.

10 **MS. WILLIAMS:** Tender it to the Court
11 and ask that it be admitted.

12 **THE COURT:** Under what exceptions to
13 the hearsay?

14 **MS. WILLIAMS:** Impeachment.

15 **THE COURT:** Well --

16 **MS. WILLIAMS:** And present sense
17 impression.

18 **THE COURT:** Let me look at it just a
19 second.

20 **(Brief pause)**

21 **THE COURT:** You may ask him questions
22 about it, but it's still hearsay. So, you will need
23 to -- need to go through the usual means. You -- you
24 may ask him about it, but it's not admissible at this
25 time.

1 Q. (BY MS. WILLIAMS) Is your signature on the
2 letter that I showed you?

3 A. Yes.

4 Q. And in the letter, was the content about
5 Mr. Fisher?

6 A. Yes.

7 Q. And did you write it, or did you type it?

8 A. I typed it.

9 Q. And -- and it amounts to a prior statement
10 regarding Mr. Fisher that you made in the letter; is
11 that correct?

12 A. What do you mean?

13 Q. Well, this was made before you testified
14 today; is that correct?

15 A. Yes. It was made several months ago.

16 Q. Several months ago, before these
17 proceedings. And did you -- to the best of your
18 knowledge, has anything in your letter been changed
19 or altered?

20 A. As in my point of view or the actual letter
21 itself?

22 Q. No. The letter itself, has it been changed
23 or altered in any way?

24 A. Not to my knowledge.

25 **MS. WILLIAMS:** Judge, at this time I

1 would ask that it be entered into evidence as an
2 exception to the hearsay under bias and prior
3 statement out of court.

4 **THE COURT:** Any objection?

5 **MS. BYRNE:** Yes, Judge. I have the
6 same objections.

7 **THE COURT:** Sustained.

8 **MS. WILLIAMS:** Okay.

9 **THE COURT:** Ms. Williams, he hasn't
10 denied anything about the letter.

11 **MS. WILLIAMS:** Okay.

12 **Q. (BY MS. WILLIAMS)** Okay. I don't know if I
13 asked you earlier, but the -- to the best of your
14 knowledge, did you -- did you -- did you claim in
15 your direct testimony that Mr. Fisher smoked kush
16 around Lexicon?

17 **A.** What do you mean in my direct testimony?
18 Are you talking about the letter?

19 **Q.** Well, when you answered the prosecutor's
20 questions?

21 **A.** Did he smoke it in front of Lex? No. They
22 were already in CPS care. And the child was already
23 in the hospital.

24 **Q.** Okay.

25 **A.** So, it was just him and Tegan Shows at my

1 grandmother's house.

2 Q. Okay. And was there anything in your
3 letter about kush?

4 A. No.

5 Q. Was there anything negative in your letter
6 about Mr. Fisher?

7 A. No.

8 Q. In fact, would it be correct to say
9 everything you wrote in that letter was positive
10 about Mr. Fisher as a father?

11 A. Yes, it would have been.

12 Q. It was; is that correct?

13 A. Yes.

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

15 **REDIRECT EXAMINATION**

16 Q. **(BY MS. BYRNE)** Just to clarify, earlier we
17 had talked about the defendant going to the Texas
18 Youth Commission; and I just want to make sure that
19 it is clear to the jury when we talked about your
20 knowledge that the defendant had gone to Texas Youth
21 Commission, that was one time, correct?

22 A. Yes.

23 Q. Okay. And why has your opinion changed?
24 What has changed your opinion from the time that you
25 wrote this letter about the defendant?

1 A. I have heard more details about the case.

2 Q. So, it's not from your own personal
3 knowledge. It's just what you learned about the
4 child?

5 A. Yes.

6 Q. Okay.

7 **MS. BYRNE:** No further questions.

8 **RECROSS-EXAMINATION**

9 Q. (**BY MS. WILLIAMS**) And would that be from
10 the prosecutor?

11 A. No. It would be from Timothy and Tegan
12 themselves telling me what the condition of the child
13 was and my personal opinion about how it could have
14 happened.

15 Q. Well, now, were -- were you in the presence
16 of Timothy and Josiah on February the 4th, 5th, 6th,
17 7th, and 8th of last year?

18 A. No. I have never seen the child.

19 Q. But you want to put your opinion in here in
20 this court in this trial; isn't that correct?

21 A. Yes. I was asked.

22 Q. Based on what other people -- what you
23 heard from other people?

24 A. Yes.

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

1 **MS. BYRNE:** Nothing further.

2 **THE COURT:** Thank you.

3 Is this witness excused?

4 **MS. BYRNE:** No objection.

5 **MS. WILLIAMS:** Not at this time, Your
6 Honor.

7 **THE COURT:** Thank you.

8 So, you will have to wait outside the
9 courtroom; and when we take the lunch recess, you can
10 have lunch, but otherwise you have to wait outside
11 because you could still be called to the witness
12 stand again.

13 **THE WITNESS:** Okay.

14 **THE COURT:** Thank you very much.

15 **(Witness released)**

16 **THE COURT:** I think probably this
17 would be a good stopping point for lunch. So, I hope
18 you have a nice lunch; and it's still a beautiful day
19 out there.

20 All rise, please, for the jury.

21 **(Jury released)**

22 **THE COURT:** Thank you. This matter
23 stands in recess until 1:15.

24 **(Recess taken)**

25 **(AFTERNOON SESSION)**

1 **THE COURT:** Do you have another
2 witness?

3 **MS. BYRNE:** I do, Judge.

4 **THE COURT:** Okay. We're ready for the
5 witness to come to the witness stand.

6 **MS. BYRNE:** I was going to recall this
7 witness briefly.

8 **THE COURT:** You're recalling him?

9 **MS. BYRNE:** Yes.

10 **THE COURT:** Thank you. Come on up,
11 sir. You may have a seat on the witness stand.

12 This is Mr. Keiter -- sorry,
13 Mr. Carter, right?

14 **THE WITNESS:** Rogers.

15 **THE COURT:** Give me the first name
16 again.

17 **THE WITNESS:** Justen.

18 **THE COURT:** Justen. Thank you.

19 **THE WITNESS:** It's J-U-S-T-E-N.

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

21 *(Jury enters the courtroom)*

22 **THE COURT:** Thank you. Please be
23 seated.

24 Members of the jury, Mr. Rogers has
25 been recalled as a witness.

1 And you're still under oath, sir.

2 **THE WITNESS:** Okay.

3 **THE COURT:** Thank you.

4 **FURTHER REDIRECT EXAMINATION**

5 **Q.** (BY MS. BYRNE) Mr. Rogers, I just wanted to
6 address a few things from your previous testimony.
7 Have you ever testified in court before?

8 **A.** No.

9 **Q.** Okay. Did you have any confusion as to
10 some of the questions I asked you?

11 **A.** Yes.

12 **Q.** Okay. Now that you know the way that I
13 have to ask the questions, are you more prepared to
14 answer?

15 **A.** Yes.

16 **Q.** Okay. I want to address one specific
17 question. Do you have an opinion as to the
18 defendant's character for patience with children?

19 **A.** Yes.

20 **Q.** And what is that opinion?

21 **A.** Very limited.

22 **Q.** Okay. What do you mean by that?

23 **A.** It doesn't take much for him to get angry.

24 **Q.** Okay. Now, the letter that Ms. Williams
25 asked you about, who asked you to write that letter?