

1 SHE SEEMED POSITIVE.

2 I SAID, "HOW DO YOU KNOW IT WAS HIM?"

3 AND SHE SAID, "WELL, I SAW HIM, AND I KNEW HIS  
4 VOICE." SO SHE WAS PRETTY SURE IT WAS HIM, OR POSITIVE IT  
5 WAS HIM.

6 AND THAT'S ALL I CAN THINK OF.

7 Q YOU HAVE TALKED TO A LOT OF CHILDREN DURING YOUR  
8 INVESTIGATIONS OF THESE TYPES OF CRIMES; HAVE YOU NOT?

9 A YES, I HAVE, VERY MANY.

10 Q DID YOU FEEL THAT WHAT SHE WAS TELLING YOU HAD  
11 ANY TAIN'T OF TRUTH TO IT, OR WOULD YOU SAY TRUSTWORTHY?

12 A YES. FROM MY QUESTIONING OF HER AND THE WAY SHE  
13 ANSWERED THE QUESTIONS, AND I FOUND IN MY OPINION SHE WAS  
14 VERY COMPETENT, AND SHE PROMISED THAT WHAT SHE WAS TELLING  
15 ME WAS THE TRUTH.

16 AND SHE TOLD ME, "IT'S GOOD TO TELL THE TRUTH."

17 Q YOU DID NOT DISBELIEVE HER STATEMENTS?

18 A NO, I DIDN'T.

19 MR. BENDER: YOUR HONOR, DO YOU HAVE ANY QUESTIONS?

20 THE COURT: THE DEFENSE MAY INQUIRE.

21 CROSS-EXAMINATION ON PROFFER

22 BY MR. EIDE:

23 Q HELLO, OFFICER.

24 A HI.

25 Q YOU STATED THAT ONE OF THE STATEMENTS THAT YOU

1 WOULD BE TESTIFYING TO WAS THAT YOU SAID ANGELA SAYS SHE  
2 SAW SCOTTY IN THE BEDROOM AND PUTTING HIS HAND OVER HER  
3 MOUTH, OVER MICHELLE'S MOUTH?

4 A YES.

5 Q I WAS UNABLE TO FIND THAT IN YOUR STATEMENT, JUST  
6 LOOKING AT IT RIGHT NOW. ANYWHERE WHERE YOU COULD POINT TO,  
7 WHERE SHE SAID THAT TO YOU IN HERE?

8 MR. EIDE: WOULD THE COURT HIM TO REFER TO HIS  
9 COPY OF THE TRANSCRIPT?

10 THE COURT: THE DEPOSITION?

11 MR. EIDE: THE TRANSCRIPTS THAT HE MADE OF THE  
12 AUDIO.

13 THE COURT: OH, YOU'RE ASKING HIM TO LOOK AT HIS  
14 COPY OF THE TRANSCRIPT?

15 MR. EIDE: YES, SIR.

16 THE COURT: THAT'S FINE. IT'S THE TRANSCRIPT OF  
17 HER TESTIMONY?

18 MR. EIDE: OF HER STATEMENT TO HIM THAT DAY.

19 THE COURT: WHAT'S HE TO BE LOOKING FOR?

20 MR. EIDE: HE STATED THAT HE WOULD TESTIFY THAT  
21 ANGELA SAID SHE SAW SCOTTY TOUCH MICHELLE'S MOUTH.

22 THE COURT: ARE YOU GOING TO PLAY THE TAPE?

23 MR. EIDE: NO, YOUR HONOR. HE'S JUST LOOKING AT  
24 THE TRANSCRIPT.

25 MR. BENDER: I THINK ON PAGE FOUR, AT THE TOP,

1 IS WHAT YOU'RE REFERRING TO? IS THAT CORRECT MR. ROACH?

2 THE WITNESS: WELL, PAGE FOUR, ABOUT THE SIXTH  
3 PARAGRAPH THERE. LET'S SEE.

4 MR. EIDE: WELL, I DON'T KNOW. I DIDN'T SEE IT  
5 AT ALL. IT MAY BE ELSEWHERE, BUT I DIDN'T SEE IT.

6 BASED UPON MY UNDERSTANDING THAT THESE ARE  
7 THE STATEMENTS THAT WOULD BE OFFERED, I WANTED TO MAKE  
8 SURE THAT THE STATEMENTS ARE IN THERE.

9 THE WITNESS: WELL, IN THAT PARTICULAR PARAGRAPH,  
10 FIRST SHE SAYS: "HE WAS OVER AT MY SISTER'S SIDE OF  
11 THE BED, TELLING ME DON'T TELL NO ONE. BUT I'M HERE.  
12 DON'T TELL NO ONE WHAT HAPPENED, AND BE QUIET AND DON'T  
13 SAY ANYTHING."

14 I DO HAVE IN MY NOTES THAT SHE SAID TO ME --  
15 IT MAY HAVE NOT BEEN THIS INTERVIEW -- THAT SHE SAW HIS  
16 HAND ON MICHELLE'S FACE.

17 BY MR. EIDE:

18 Q IS IT ANYWHERE IN THIS INTERVIEW?

19 A NOT IN THAT PARTICULAR SPOT. I HAVEN'T GONE  
20 THROUGH THE WHOLE THING. BUT IT WOULD PROBABLY BE RIGHT  
21 AROUND PAGE FOUR, IF THAT PARTICULAR STATEMENT WAS MADE OF  
22 HER DURING THIS PARTICULAR INTERVIEW.

23 BUT, AS I SAID, I DO HAVE IT ON MY NOTES THAT AT  
24 ONE POINT THAT'S WHAT SHE TOLD ME.

25 Q WOULD YOU WANT TO GO THROUGH THOSE, IF IT'S IN

1 THAT STATEMENT, INSTEAD OF JUST SAYING IT'S NOT?

2 MR. BENDER: HE'S ALREADY STATED IT MAY NOT BE  
3 IN THIS CONVERSATION; IT MAY BE IN SOME NOTES PRIOR TO  
4 THE CONVERSATION.

5 MR. EIDE: YOUR HONOR, THAT SPECIFIC STATEMENT --  
6 THE WITNESS: I FOUND IT AT PAGE FIVE, SIX  
7 PARAGRAPHS UP FROM THE BOTTOM.

8 MR. EIDE: OKAY. YES, THERE IT IS. BUT IF YOU  
9 LOOK AT THE NEXT TWO LINES ABOVE THAT, DOESN'T IT SAY:  
10 "DID HE DO ANYTHING TO YOUR SISTER THAT YOU SAW?"

11 AND SHE RESPONDED: "NO"?

12 THE COURT: WHAT DOES IT SAY?

13 MR. EIDE: I'M SORRY, YOUR HONOR. I'VE ONLY GOT  
14 ONE COPY. I'VE MARKED IT WITH A BRACKET. HE IS STATING  
15 THIS PORTION HERE -- (INDICATING).

16 THE WITNESS: WELL, THEN THAT'S MARKED "QUESTION"  
17 BY THE PERSON WHO TRANSCRIBED THIS, BUT THAT SHOULD BE  
18 "ANSWER".

19 BY MR. EIDE:

20 Q BUT THERE WAS A QUESTION AND ANSWER ABOVE IT,  
21 PARAPHRASING.

22 THE COURT: "QUESTION: DID HE DO ANYTHING TO YOUR  
23 SISTER THAT YOU SAW?

24 "ANSWER: NO. ALLS I KNOW IS HE COVERED  
25 UP HER MOUTH, WHAT SHE SAID, AND WAS TELLING HER,

1 'DON'T TELL ANYONE.' HE WAS TELLING HER, 'BE QUIET,'  
2 AND HE WAS GOING, 'SHOOSE.'"

3 MR. BENDER: YOUR HONOR, I THINK WHAT HAPPENED  
4 IS, THAT'S RIGHT; THAT SHOULD BE AN ANSWER. AND I THINK  
5 IT'S A CONTINUATION OF "NO," AND THEN SHE SAYS, "ALL I  
6 KNOW IS," AND I THINK THAT'S ALL ONE ANSWER.

7 BUT, I MEAN, THAT'S HIS RECOLLECTION OF IT.

8 THE WITNESS: IF YOU NEED THE TAPE, I HAVE THE TAPE.

9 MR. EIDE: IS IT ANYWHERE ELSE IN THE TRANSCRIPT,  
10 BESIDES THAT ONE STATEMENT THAT YOU WOULD BE USING?  
11 IS THAT THE ONE PORTION THAT YOU WERE REFERRING TO?

12 THE WITNESS: YEAH, THAT WOULD PROBABLY BE WHAT  
13 I WAS REFERRING TO.

14 MR. BENDER: WELL, DO YOU KNOW OF IT BEING ANYWHERE  
15 ELSE IN THE STATEMENT?

16 THE WITNESS: NO, I DON'T.

17 MR. EIDE: YOUR HONOR, I WOULD OBJECT TO THAT  
18 STATEMENT.

19 THE COURT: WHAT STATEMENT?

20 MR. EIDE: THE STATEMENT, ANY TESTIMONY BY  
21 INVESTIGATOR ROACH THAT WOULD SAY SOMETHING LIKE,  
22 "ANGELA TOLD ME THAT SHE SAW SCOTTY PUT HIS HAND ON  
23 HER MOUTH, OR IT WILL BE --

24 THE COURT: -- "COVERING UP HER MOUTH"?

25 MR. EIDE: RIGHT; TWO REASONS. NUMBER ONE, THE

1 TESTIMONY REGARDING HER, AND SHE DENIED SEEING ANYTHING.

2 THE SECOND THING, AS PAGE FIVE SHOWS, THE  
3 SPECIFIC QUESTION WAS: "DID HE DO ANYTHING TO YOUR  
4 SISTER THAT YOU SAW?"

5 SHE STATES: "NO."

6 THE COURT: WELL, DO YOU AGREE THAT SHE SAID THAT;  
7 THAT THAT'S AN ERROR BY THE COURT REPORTER?

8 MR. EIDE: WHETHER THAT SAYS "ANSWER" OR "QUESTION,"  
9 I'M SURE THAT IS AN ANSWER NOT A QUESTION.

10 BUT WHAT I'M SAYING -- BECAUSE THERE ARE  
11 TWO QUESTIONS IN A ROW. BUT WHAT I'M SAYING, "ALLS I  
12 KNOW, HE COVERED UP HER MOUTH," COMING AFTER AN EMPHATIC  
13 SAYING, "NO, I SAW NOTHING," AND GIVEN HER TESTIMONY  
14 TODAY THAT SHE'S SAYING, "THAT'S WHAT MY SISTER TOLD  
15 ME, AND THAT'S ALL I KNOW. ALL I KNOW, HE COVERED UP  
16 HER MOUTH, AND WHAT SHE SAID, 'ALLS I KNOW IS.'"

17 THE COURT: THE OFFICER CAN TESTIFY TO WHAT SHE  
18 TOLD HIM. AND WHAT SHE TOLD HIM WAS: ALLS SHE KNOWS  
19 HE COVERED UP HER MOUTH AND TOLD HER TO BE QUIET, OR  
20 WHATEVER THE STATEMENT IS. I DON'T HAVE IT IN FRONT  
21 OF ME.

22 THE WITNESS: YES, SIR.

23 THE COURT: THE OFFICER CAN REFER TO THE STATEMENT  
24 DURING THE COURSE OF HIS TESTIMONY.

25 MR. EIDE: BUT THE OFFICER CAN TESTIFY AS TO THE

1 HEARSAY STATEMENT OF ANGELA [REDACTED] HE COULD NOT TESTIFY  
2 TO A STATEMENT MADE BY ANGELA [REDACTED], WHICH IN AND OF  
3 ITSELF WAS A HEARSAY STATEMENT. I BELIEVE THIS IS A  
4 HEARSAY STATEMENT OF WHAT HE HEARD FROM MICHELLE AND,  
5 THEREFORE, WOULD NOT BE WITHIN THE EXTENT OF IT.

6 THE COURT: NO.

7 MR. EIDE: IF THE COURT DENIES THAT, THEN I THINK  
8 THE COURT SHOULD ALLOW THE DEFENSE GOING INTO THE  
9 SITUATION THAT SHE HAD MADE THE QUESTION AND ANSWER  
10 ABOVE. WOULD WE BE ABLE TO DO THAT?

11 THE COURT: WHAT QUESTION.

12 MR. EIDE: "DID HE DO ANYTHING TO YOUR SISTER  
13 THAT YOU SAW?"

14 ANSWER: "NO."

15 THAT WE WOULD BE ALLOWED LATITUDE TO GO  
16 INTO THAT.

17 THE COURT: TO GO INTO WHAT?

18 MR. EIDE: TO BRING THAT QUESTION OUT. WE THINK  
19 IF YOU BRING OUT NOTHING BUT, "ALLS I KNOW IS HE COVERED  
20 UP HER MOUTH," THAT'S EXTREMELY UNFAIR.

21 BECAUSE I THINK YOU HAVE TO TAKE IT IN THE  
22 CONTEXT OF THE FULL ANSWER WHERE SHE FIRST ANSWERED IT,  
23 "NO," AND THEN WENT ON FROM THAT.

24 MR. BENDER: I THINK MR. EIDE IS FAILING TO REFLECT  
25 ON THE MIND OF A NINE-YEAR-OLD. WHEN SOMEONE THAT AGE

1 IS ASKED: "DID HE DO ANYTHING TO YOUR SISTER," THAT'S  
2 A PRETTY WIDE QUESTION.

3 THE COURT: WELL, WE DON'T NEED TO SPECULATE ON  
4 IT. BUT THE STATEMENT IS THE BEST EVIDENCE. WHY DON'T  
5 WE JUST PLAY THE STATEMENT BACK TO THE JURY?

6 MR. BENDER: I REALLY WAS NOT WANTING TO PLAY THE  
7 ENTIRE STATEMENT OF ANGELA [REDACTED]. I DIDN'T SEE A NEED  
8 TO DO THAT.

9 MR. EIDE: I HAVE NO QUALM WITH USING THIS  
10 TESTIMONY. I DON'T OBJECT TO IT.

11 THE COURT: IT WOULD SEEM TO ME THE STATEMENT  
12 TAKEN THE DAY AFTER IT OCCURRED OR THE DAY IT OCCURRED  
13 WOULD HAVE A MORE COMPELLING NATURE, AS FAR AS THE  
14 TESTIMONY, THEN THE OFFICER TESTIFYING AS TO WHAT  
15 SHE TOLD HIM.

16 IF IT'S A HEARSAY STATEMENT EXCEPTION, THEN  
17 IT SEEMS LIKE IT WOULD BE ADMISSIBLE. AND IT'S ACTUALLY  
18 HER STATEMENT. SO IT'S NOT HEARSAY IF SHE'S MAKING THE  
19 STATEMENT. THE OFFICER IS JUST RECORDING IT.

20 MR. EIDE: BUT WE DO NOT KNOW NOR DID WE ASK HER  
21 AT THAT TIME: WAS THAT WHAT SHE SAID, OR WHAT SHE SAID  
22 HER SISTER SAID HAPPENED TO HER.

23 THE COURT: I DON'T NEED TO GET OFF ON THAT.  
24 I DON'T BUY THAT ARGUMENT. BUT IF YOU ALL DON'T WANT  
25 TO USE THE TAPE, THAT'S FINE. THE OFFICER CAN TESTIFY



1 AS TO WHAT HER STATEMENT WAS TO HIM.

2 BUT THE DANGER IS IN JUST THIS SORT OF THING.  
3 THE TAPE ITSELF, I WOULD THINK, IS THE BEST EVIDENCE  
4 OF WHAT SHE TOLD THE OFFICER. IF YOU WANT THE OFFICER  
5 TO TESTIFY ABOUT WHAT SHE TOLD HER, THEN THE STATE AND  
6 DEFENSE WOULD OBVIOUSLY HAVE A RIGHT TO CROSS-EXAMINE  
7 THE OFFICER.

8 MR. BENDER: EVEN IF WE PLAY THE TAPE, YOUR HONOR,  
9 THE QUESTION MR. EIDE BRINGS UP IS: DID YOU SEE HIM  
10 DO ANYTHING TO YOUR SISTER?

11 THE COURT: THAT'S ARGUMENT'.

12 MR. BENDER: I REALIZE THAT. I DON'T SEE THE NEED  
13 TO PLAY THE ENTIRE TAPE.

14 THE COURT: I'M JUST SUGGESTING TO YOU THAT THAT  
15 WOULD SEEM THE MOST ACCURATE WAY TO PROJECT TO THE JURY  
16 WHAT SHE TOLD THE POLICE OFFICER.

17 MR. BENDER: THE MAIN PROBLEM I HAVE IS I DON'T  
18 HAVE A TAPE PLAYER.

19 THE WITNESS: I BROUGHT ONE WITH ME.

20 MR. EIDE: YOUR HONOR, I JUST WANT THE ENTIRE  
21 QUESTION AND ANSWER READ IN, IF IT'S GOING TO BE  
22 PRESENTED.

23 THE COURT: NO, IT'S NOT GOING TO BE READ IN.

24 THE OFFICER IS NOT GOING TO READ FROM THE  
25 STATEMENT, I ASSUME.

1 MR. BENDER: NO.

2 THE COURT: SO IF YOU WANT TO QUESTION IT ON  
3 CROSS-EXAMINATION, YOU CAN RAISE THAT ISSUE.

4 MR. EIDE: OKAY. THANK YOU, YOUR HONOR.

5 THE COURT: BUT, AGAIN, WE'RE TALKING ABOUT THE  
6 STATEMENTS OF ANGELA, OR STATEMENT OF ANGELA, TO THE  
7 POLICE OFFICER.

8 IS THERE ANY OTHER ARGUMENT, MR. EIDE, YOU  
9 WANT TO MAKE CONCERNING HER STATEMENTS TO THE OFFICER?

10 AND THIS IS ON THE SAME DAY THAT THE OFFENSE  
11 ALLEGEDLY TOOK PLACE?

12 MR. BENDER: ABOUT NINE, TEN HOURS LATER.

13 THE COURT: THIS IS WHAT TIME?

14 THE WITNESS: IT WAS APPROXIMATELY A QUARTER TO  
15 THREE, THREE O'CLOCK IN THE AFTERNOON; WHEN THE ACT  
16 OCCURRED, APPROXIMATELY, TWO IN THE MORNING.

17 THE COURT: ABOUT 12 OR 13 HOURS AFTER?

18 THE WITNESS: YES, SIR.

19 MR. EIDE: I HAVE A COUPLE OF OTHER QUESTIONS.

20 BY MR. EIDE:

21 Q INVESTIGATOR ROACH, YOU'VE NEVER MET ANGELA ██████  
22 BEFORE?

23 A NO, I HAVEN'T.

24 Q YOU'VE NEVER CONVERSED OR TALKED WITH HER BEFORE?

25 A NO.

1 Q AND YOU HAVE NO BASIS FOR WHETHER SHE WAS TELLING  
2 THE TRUTH OR NOT; EXCEPT, FOR YOUR FEELING, BASED UPON YOUR  
3 30 MINUTES TO AN HOUR CONTACT WITH HER AT THAT TIME?

4 A WELL, YEAH. INITIALLY, I ASKED SOME QUESTIONS  
5 TO JUST SORT OF TRY TO ESTABLISH SOME SORT OF CREDIBILITY;  
6 NAMES, AGE, CAN YOU RECITE YOUR ABC'S?

7 I ALSO ASK THEM: "DO YOU KNOW WHAT THE TRUTH IS?"  
8 TO ESTABLISH THAT THEY'RE COMPETENT ENOUGH, THAT THEY HAVE  
9 TO TELL THE TRUTH ABOUT THIS.

10 Q YOU HAVE NO BASIS, BESIDES THE FEELING THAT YOU  
11 HAD, THOUGH, IN WHICH TO FORM YOUR OPINION THAT SHE WAS  
12 TELLING THE TRUTH?

13 A NO.

14 THE COURT: THAT'S THROUGH THE EXPERIENCES OF THE  
15 DETECTIVE, RIGHT?

16 HOW MANY YEARS HAVE YOU BEEN DOING THIS?

17 THE WITNESS: I'VE BEEN A DETECTIVE FOR FOUR YEARS,  
18 AND I'VE BEEN A POLICE OFFICER FOR OVER TEN.

19 THE COURT: HOW MANY CHILDREN HAVE YOU INTERVIEWED?

20 THE WITNESS: I WORK IN THE YOUTH SECTION, SO IT'S  
21 PROBABLY BEEN HUNDREDS.

22 THE COURT: ALL RIGHT. MR. EIDE, ANY OTHER ARGUMENT  
23 OTHER THAN THAT PREVIOUSLY NOTED?

24 MR. EIDE: THE ONLY ARGUMENT I WOULD HAVE IS, IF  
25 THE COURT LOOKS AT THE ENTIRE STATEMENT AS A WHOLE,

1 THEN I CAN PROVIDE MY COPY TO THE COURT.

2 AND ALSO THE FACT, AS I HAVE MENTIONED A  
3 NUMBER OF TIMES BEFORE, THE FACT OF ALL THE WITNESSES  
4 THERE; AND, THE ENFORCEMENT OF HER FAMILY ASKING HER  
5 THESE QUESTIONS.

6 THE COURT: THERE WASN'T ANYBODY ELSE THERE.

7 MR. EIDE: BEFOREHAND, BEFORE IT HAPPENED.

8 AND THAT THE QUESTIONS WERE ASKED WITH NO  
9 ONE PRESENT BUT AN OFFICER, WHOSE JOB IS IN THE JUVENILE  
10 UNIT, TO MAKE ARRESTS UPON SEXUAL BATTERIES.

11 AND THE FACT THAT HE HAD NEVER MET HER  
12 BEFORE, I QUESTION THAT FIRST OF ALL. AND ALSO THE  
13 TESTIMONY GIVEN TODAY, I QUESTION THE TRUSTWORTHINESS  
14 OF THE STATEMENTS MADE AT THE TIME. THAT WOULD BE ALL.

15 THE COURT: YOU QUESTION THE TRUSTWORTHINESS OF  
16 THE CHILD'S STATEMENTS, OR THE STATEMENTS OF THE  
17 OFFICER ABOUT WHAT THE CHILD TOLD HIM?

18 MR. EIDE: I HAVE NO QUESTIONS ABOUT WHAT THE  
19 OFFICER WAS TESTIFYING TO AS TO WHAT WAS TOLD TO HIM.  
20 I QUESTION THE TRUSTWORTHINESS OF THE STATEMENTS,  
21 THEMSELVES.

22 THE COURT: ALL RIGHT. YOU'RE NOT OFFERING THE  
23 SISTER'S STATEMENT?

24 MR. BENDER: NO. WE NEED TO EXPLAIN THAT TO  
25 MR. ROACH.