

1 THAT WHEN SOMEONE SAYS, I CAN TAKE "X" AMOUNT OF
2 BEERS BEFORE I CAN GET DRUNK, THAT'S NOT ALWAYS AN
3 ACCURATE STATEMENT.

4 THE COURT: BUT YOU'VE NEVER RAISED THIS AS A
5 DEFENSE.

6 MR. EIDE: YOUR HONOR, WE HAVE NOT RAISED AS AN
7 AFFIRMATIVE DEFENSE, IN OTHER WORDS, MR. MERSON SAYING,
8 "I WAS DRUNK." BUT HE DID TESTIFY THAT HE HAD BEEN
9 DRINKING BEERS, AND THE STATE'S WITNESSES TESTIFIED
10 THAT HE HAD BEEN DRINKING.

11 AND THAT COULD BE SOMETHING THAT WOULD
12 LESSEN HIS INTENT OR FIRE PASSIONS, IF THE JURY BELIEVED
13 THAT HE WAS THERE. SO WE WOULD REQUEST THAT INSTRUCTION,
14 STILL.

15 THE COURT: THE REQUEST FOR THE INSTRUCTION WILL
16 BE DENIED.

17 ANYTHING ELSE WE NEED TO TAKE UP?

18 MR. EIDE: NOTHING ELSE, YOUR HONOR.

19 THE COURT: RETURN THE JURY.

20 (THEREUPON, THE JURY ENTERED THE COURTROOM, AFTER
21 WHICH THE FOLLOWING PROCEEDINGS TRANSPIRED:)

22 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
23 NEEDLESS TO SAY, WE'VE GOT SOME AIR-CONDITIONING
24 PROBLEMS. FEEL FREE TO REMOVE YOUR JACKETS, IF YOU
25 WISH, AND THAT APPLIES TO EVERYONE ELSE. IF THEY WISH

1 TO REMOVE THEIR JACKETS, THEY ARE WELCOME TO DO SO.

2 THEY'VE TOLD US THEY ARE WORKING ON THE
3 AIR-CONDITIONING AND IT WOULD BE DONE BY LUNCH TIME.
4 BUT IT DOESN'T APPEAR TO BE DONE BY LUNCH TIME HERE
5 SO FAR. HOPEFULLY, IT WILL BE WORKING HERE SOON.

6 BOTH THE STATE AND THE DEFENSE HAVE NOW
7 RESTED THEIR CASES. THE ATTORNEYS WILL NOW PRESENT
8 THEIR FINAL ARGUMENTS.

9 PLEASE, REMEMBER THAT WHAT THE ATTORNEYS
10 SAY IS NOT EVIDENCE. HOWEVER, DO LISTEN CLOSELY TO
11 THEIR ARGUMENTS. THEY ARE INTENDED TO AID YOU IN
12 UNDERSTANDING THE CASE.

13 EACH SIDE WILL HAVE EQUAL TIME. BUT THE
14 STATE IS ENTITLED TO DIVIDE THIS TIME BETWEEN AN
15 OPENING ARGUMENT AND A REBUTTAL ARGUMENT AFTER THE
16 DEFENSE HAS SPOKEN.

17 THE STATE MAY PROCEED.

18 MR. BENDER: THANK YOU YOUR HONOR.

19 CLOSING ARGUMENT

20 MR. BENDER: LADIES AND GENTLEMEN, I WOULD LIKE
21 TO THANK YOU VERY MUCH FOR THE TIME AND CONSIDERATION
22 THAT YOU HAVE GIVEN DURING THIS TRIAL.

23 AS YOU RECALL, WHEN WE WERE ASKING YOU
24 QUESTIONS ON TUESDAY DURING JURY SELECTION, WE WENT
25 OVER A NUMBER OF ELEMENTS, A NUMBER OF THEORIES,

1 UP A STORY OF SEXUAL ABUSE, TO BE AWAKENED IN THE
2 PRIVACY OF HER OWN BEDROOM LATE IN THE MORNING, WHEN
3 SHE HAS BEEN ASLEEP, AND FIND AN INTRUDER HOVERING
4 OVER HER AND THEN COMMIT ONE OF THE MOST DASTARDLY
5 ACTS THAT WE CAN DO IN OUR SOCIETY; COMMIT ORAL SEX,
6 COMMIT A SEXUAL BATTERY UPON THE GIRL?

7 I WILL BE THE FIRST TO ADMIT TO YOU THAT
8 CHILDREN DO LIE. YOU KNOW WHAT, CHILDREN LIE FOR THE
9 SAME REASONS THAT ADULTS LIE. CHILDREN LIE TO GET OUT
10 OF TROUBLE, NOT TO GET INTO TROUBLE.

11 "WHO LEFT THE TRIKE IN THE DRIVEWAY WHEN
12 I CAME HOME FROM WORK?"

13 "NOT ME, DAD."

14 "WHO ATE THIS LAST PIECE OF CAKE WHEN I
15 TOLD THEM NOT TO?"

16 "NOT ME, MOM."

17 CHILDREN LIE FOR THE SAME REASONS AS ADULTS
18 LIE, TO GET OUT OF TROUBLE. CHILDREN DO NOT LIE TO
19 GET INTO TROUBLE.

20 AND YOU HEARD ANGELA AND MICHELLE [REDACTED]
21 TESTIFY YESTERDAY, AND YOU HEARD THEM TELL YOU THAT
22 THEY KNEW THE DIFFERENCE BETWEEN TELLING THE TRUTH
23 AND TELLING A LIE.

24 YOU HEARD ANGELA [REDACTED] TELL YOU THAT SHE
25 KNEW WHAT THE TRUTH WAS, AND YOU HEARD HER TESTIFY

1 THAT SHE PROMISED TO TELL THE TRUTH TODAY.

2 YOU ALSO HEARD HER SAY THAT, "IF I DON'T
3 TELL THE TRUTH I KNOW I COULD GET INTO TROUBLE."

4 AND WHAT WOULD PROMPT A LITTLE GIRL TO
5 COME INTO A COURTROOM FULL OF STANGERS, TO SIT ON
6 THAT WITNESS STAND, AT TEN YEARS OF AGE, AND TALK
7 ABOUT A VERY TRAUMATIC, VERY EMBARRASSING EVENT,
8 IN FRONT OF A BUNCH OF STRANGERS, AND MAKE UP A STORY
9 THAT THIS MAN WAS IN HER BEDROOM COMMITTING A SEXUAL
10 BATTERY?

11 FORGET THAT CHILDREN LIE. IT'S UNBELIEVABLE
12 THAT THEY EVEN COME FORWARD IN THE FIRST PLACE, KNOWING
13 WHAT THEY HAVE TO GO THROUGH, THE TRAUMA AND THE STRESS
14 AND THE UNCERTAINTY.

15 WE'RE LUCKY THAT CHILDREN HAVE THE COURAGE
16 TO COME FORWARD AT ALL. AND IT IS NO DIFFERENT IN ANY
17 SEXUAL BATTERY, REGARDLESS OF THE AGE.

18 ANGELA [REDACTED] CAME IN YESTERDAY AND TOLD YOU
19 WHAT HAD HAPPENED TO HER. SHE TOLD YOU THAT SCOTTY
20 MERSON, WHOM SHE HAD KNOWN FOR YEARS, WHOM SHE HAD
21 BEEN OUT SOCIALLY WITH, WITH HER OLDER SISTER, TINA,
22 MANY, MANY TIMES; THAT SHE HAD BEEN BABYSAT BY THE
23 DEFENDANT SCOTTY MERSON; THAT MICHELLE [REDACTED] ALSO KNEW.
24 THAT MICHELLE [REDACTED] AND ANGELA [REDACTED] WERE GOOD FRIENDS
25 WITH SCOTTY MERSON; THAT THERE WAS NO ANIMOSITY BETWEEN

1 THEM. THERE WERE NO FIGHTS. THEY LIKED SCOTTY.

2 WHY WOULD THEY MAKE UP A STORY ABOUT SOMEONE
3 THAT THEY LIKED; THAT HAD BEEN THEIR FRIEND; THAT HAD
4 GONE OUT WITH THEM?

5 WHAT WOULD POSSESS A TEN-YEAR-OLD AND A
6 SEVEN-YEAR-OLD TO MAKE UP A STORY OF THIS NATURE, OF
7 THIS MAGNITUDE? ASK YOURSELVES THAT QUESTION. AND
8 ASK YOURSELVES WHY ON EARTH THEY WOULD COME IN AND
9 TESTIFY TO GET INTO TROUBLE, NOT TO GET OUT OF TROUBLE.

10 ANGELA [REDACTED] AND MICHELLE [REDACTED] GET NO REWARD
11 BY TESTIFYING. THEY GET NO FAME OR FORTUNE. THEY
12 HAVE NOTHING TO GAIN BY COMING FORWARD AND LYING TO
13 YOU ON THAT WITNESS STAND.

14 BUT WHEN WE LOOK AT OTHER WITNESSES THAT
15 HAVE TESTIFIED, WE HAVE TO EVALUATE THE REASONS THAT
16 THEY CAME FORWARD. WE HAVE TO EVALUATE THEIR TESTIMONY.

17 IF YOU RECALL DURING THE OPENING STATEMENT,
18 I ASKED YOU TO REFLECT ON THREE THINGS WHEN YOU HEARD
19 THE TESTIMONY OF THE WITNESSES.

20 I ASKED YOU TO CONCENTRATE, ONE, ON THE
21 CREDIBILITY OF EVERYONE THAT WAS GOING TO TESTIFY, TO
22 WATCH THEM CAREFULLY, TO WATCH THEM CAREFULLY, TO USE
23 YOUR OWN COMMON SENSE AND GOOD JUDGMENT IN DETERMINING
24 THE CREDIBILITY OF WITNESSES.

25 AS I GO ON WITH THE REST OF MY CLOSING

1 ARGUMENTS I WANT YOU, OF COURSE, TO ALL REFLECT UPON
2 YOUR OWN RECOLLECTION OF THE TESTIMONY. AND I CERTAINLY
3 AM NOT TRYING TO MISSTATE OR MISLEAD YOU. IF SOMETHING
4 I SAY DIFFERS WITH YOUR RECOLLECTION, THEN BY ALL MEANS
5 YOU ARE TO GO BY YOUR RECOLLECTION.

6 ANGELA [REDACTED] AND MICHELLE [REDACTED] TESTIFIED.
7 YOU SAW THEM ON THE WITNESS STAND. OBVIOUSLY, MICHELLE
8 [REDACTED] WAS A LITTLE FRIGHTENED, A LITTLE SCARED, A LITTLE
9 INTIMIDATED BY THE ENTIRE PROCESS. THAT'S NOT UNUSUAL.

10 AS ADULTS WE ARE OFTEN FRIGHTENED AND NERVOUS
11 ABOUT SPEAKING IN FRONT OF PEOPLE, PARTICULARLY PEOPLE
12 WE HAVE NOT MET BEFORE.

13 I WOULD SUBMIT THAT MICHELLE [REDACTED] WHEN SHE
14 TESTIFIED, WHILE SHE WAS UNABLE TO REMEMBER SPECIFIC
15 DATES AND TIMES, WHICH IS COMMON AMONG ALL OF US, SHE
16 WAS ABLE TO PLACE SCOTTY MERSON IN THAT BEDROOM THAT
17 NIGHT, A PERSON THAT SHE HAD KNOWN FOR YEARS.

18 THERE WAS NO MISTAKE ABOUT IT. AND SHE
19 WENT OVER AND POINTED OUT SCOTTY MERSON. YES, SHE SAID
20 HE HAD ON A BLACK COAT. DARK-BLUE AND BLACK LOOK ALIKE
21 FROM A DISTANCE. MICHELLE [REDACTED] KNOWS WHO SCOTTY MERSON
22 IS, AND SHE POINTED HIM OUT.

23 WHY WOULD MICHELLE [REDACTED] LIE? YOU, AND ONLY
24 YOU, ARE THE SOLE ARBITRATORS OF CREDIBILITY. IF YOU
25 BELIEVE MICHELLE [REDACTED] IS LYING, THEN THAT IS WHAT YOU

1 MUST SO FIND.

2 BUT IF YOU BELIEVE THAT SHE WAS BEING
3 TRUTHFUL, WE MUST ALSO THEN LOOK AT ANGELA [REDACTED]'S
4 TESTIMONY. ANGELA IS THREE YEARS OLDER THAN HER
5 SISTER.

6 I THINK WE ALL AGREE THAT ANGELA IS A VERY
7 BRIGHT, ARTICULATE AND VERY ATTRACTIVE YOUNG GIRL.
8 HER DEMEANOR ON THE STAND WAS EXEMPLARY, AND SHE
9 ANSWERED MY QUESTIONS WITH MATURITY SEVERAL YEARS
10 BEYOND HER YOUNG AGE.

11 AND SHE TOLD YOU IN NO UNCERTAIN TERMS WHAT
12 HAPPENED ON MAY 17TH AND MAY 18TH OF THIS YEAR. THAT
13 SHE AWOKE TO FIND SCOTTY MERSON ON MICHELLE'S SIDE OF
14 THE BED.

15 HE CAME OVER, PULLED UP HER UNDERWEAR,
16 LIFTED UP HER NIGHTIE AND PLACED HIS TONGUE ON HER
17 VAGINA AND LICKED HER VAGINA.

18 SHE USED THE WORD "PRIVATES". THAT IS NOT
19 AN UNUSUAL TERM FOR A CHILD TO USE AND FOR SOME ADULTS
20 TO USE.

21 SHE WASN'T SQUEAMISH OR TIMID. SHE TOLD
22 YOU WHAT HAD HAPPENED, IN NO UNCERTAIN TERMS WHAT HAD
23 HAPPENED. YOU HAD A CHANCE TO WATCH HER TESTIMONY AND
24 TO GAUGE HER CREDIBILITY.

25 IF YOU BELIEVE THAT ANGELA [REDACTED] IS LYING

1 AND IF YOU BELIEVE THAT MICHELLE [REDACTED] IS LYING, THEN
2 YOU HAVE A DUTY AND AN OBLIGATION TO RETURN A VERDICT
3 OF NOT GUILTY.

4 BECAUSE, AS I'VE TOLD YOU BEFORE, WE HAVE
5 NO OTHER EVIDENCE LINKING SCOTTY MERSON TO THIS CRIME.
6 WE HAVE NO FINGERPRINTS. WE HAVE NOTHING ELSE TO
7 ESTABLISH HIS PRESENCE THERE OTHER THAN THE TESTIMONY
8 OF THESE WITNESSES, ANGELA AND MICHELLE [REDACTED], WHICH I
9 HAVE TOLD YOU IS ALL YOU NEED TO CONVICT.

10 BUT YOU DON'T JUST HAVE ANGELA'S WORD. WE
11 HAVE MICHELLE'S, AS WELL. WE HAVE MORE THAN ONE PERSON
12 TELLING YOU THAT SCOTTY MERSON WAS IN THAT BEDROOM.
13 BOTH GIRLS IDENTIFIED HIM. BOTH GIRLS HAD NO REASON
14 TO LIE.

15 NOW, I ASK YOU TO REMEMBER THE CREDIBILITY
16 OF ALL THE WITNESSES. AND YOU HEARD FROM THE
17 GRANDMOTHER, WILLIE STOCKWELL. YOU HEARD FROM THE
18 GRANDFATHER, RAYMOND STOCKWELL. YOU HEARD FROM THEIR
19 MOTHER, CATHY COLE. AND YOU HEARD FROM INVESTIGATOR
20 FRANK ROACH.

21 AND I WOULD SUBMIT TO YOU THAT THEIR
22 TESTIMONY WAS BELIEVABLE AND CREDIBLE; NO REASON TO
23 LIE, NO INCONSISTENCIES, OTHER THAN AN UNCERTAINTY
24 BY MR. STOCKWELL AS TO WHAT TIME HIS WIFE HAD LEFT.
25 OTHER THAN THAT MINOR POINT, THEIR TESTIMONY WAS

1 ACCURATE.

2 SURE, THEY ARE THE FAMILY MEMBERS OF ANGELA
3 AND MICHELLE [REDACTED], BUT DO NOT LET THAT INFLUENCE YOUR
4 DECISION ON THEIR CREDIBILITY.

5 THEY ADMITTED THEY DIDN'T SEE SCOTTY MERSON.
6 THEY CANNOT TELL YOU FOR CERTAIN WHETHER HE WAS THERE.
7 THEY TOLD YOU THEY DON'T KNOW IF HE WAS.

8 THEY DIDN'T SEE THEM WITH THEIR OWN EYES.
9 AND THE SAME WITH CATHY [REDACTED], AND THE SAME WITH FRANK
10 ROACH. I WOULD SAY THAT THEIR CREDIBILITY IS BEYOND
11 REPROACH.

12 LET US TURN NOW TO THE WITNESSES THAT YOU
13 SAW PRESENTED BY MR. EIDE; FRIENDS, GIRLFRIEND OF THE
14 DEFENDANT. AND I ASK YOU TO REFLECT UPON THEIR
15 CREDIBILITY AS WELL. REMEMBER VERY CAREFULLY AS TO
16 WHAT THEY HAD TO SAY.

17 THE JUDGE WILL READ TO YOU THAT IN SUMMING
18 UP OR CONSIDERING HOW TO GAUGE THE CREDIBILITY OF A
19 WITNESS YOU CAN LOOK AT THESE FOLLOWING FACTORS; SOME
20 THINGS YOU SHOULD CONSIDER ARE:

21 DID THE WITNESS SEEM TO HAVE AN OPPORTUNITY
22 TO SEE AND KNOW THE THINGS ABOUT WHICH THE WITNESS
23 TESTIFIED?

24 DID THE WITNESS SEEM TO HAVE AN ACCURATE
25 MEMORY?

1 WAS THE WITNESS HONEST AND STRAIGHTFORWARD
2 WHEN ANSWERING THE QUESTIONS OF THE ATTORNEYS?

3 DID THE WITNESS HAVE SOME INTEREST IN HOW
4 THE CASE SHOULD BE DECIDED?

5 AND, LASTLY, DID THE WITNESS' TESTIMONY
6 AGREE WITH THE TESTIMONY OF THE OTHER WITNESSES?

7 LADIES AND GENTLEMEN, YOU'VE HEARD MARY
8 ALLISON LOWERY. YOU HEARD MICHAEL HYLAND. YOU HEARD
9 MICHAEL WILLEY, SHAWN WILLEY, CHRISTI MOORE, JUDY
10 WILLEY AND TAMMY WILLEY. YOU HEARD THEIR TESTIMONY.

11 ALL I CAN TELL YOU, AND I WOULD SUBMIT TO
12 YOU, IS THAT THEY ARE ALL LIARS IN ONE WAY OR ANOTHER.
13 WE HAVE HEARD SO MUCH CONFLICTING TESTIMONY FROM THE
14 DEFENSE WITNESSES, I DON'T KNOW WHO TO BELIEVE. I
15 DON'T KNOW WHO TO BELIEVE.

16 AND I ASK YOU, IF YOU RECALL, TO CONSIDER A
17 SECOND THING WHEN CONSIDERING THEIR TESTIMONY. DO YOU
18 RECALL, ON OPENING STATEMENT I ASKED YOU TO CONSIDER
19 THE LOYALTY OF A FRIEND AND WHAT THEY WILL DO FOR THAT
20 FRIEND? REMEMBER THE LOYALTY HERE.

21 I THINK WHEN WE APPLY THAT FIRST STANDARD,
22 GAGING THE CREDIBILITY, IN CONTEXT WITH WHAT INTEREST
23 DO THEY HAVE, WHAT LOYALTY DO THEY HAVE TO THE DEFENDANT,
24 I THINK IT MAKES IT ABUNDANTLY CLEAR THAT THEIR STORIES
25 WERE FULL OF CONTRADICTIONS AND FULL OF LIES.

1 WHY? I CAN ONLY SUPPOSE IT WAS IN ORDER
2 TO PROTECT THIS MAN -- (INDICATING). HE WAS FACING
3 A SERIOUS CRIME. HIS FRIENDS DECIDED TO GET A STORY
4 TOGETHER. THE PROBLEM WAS THEY COULDN'T GET THEIR
5 STORIES STRAIGHT. THEY COULDN'T GET IT STRAIGHT.

6 WE HEARD SOME INCONSISTENCIES ABOUT THE
7 VIDEOTAPES. WE HEARD INCONSISTENCIES ABOUT THE CAR,
8 MICHAEL WILLEY'S CAR, AND WHETHER OR NOT IT WAS DRIVABLE
9 OR NOT AND WHETHER OR NOT HAD IT A FLAT TIRE.

10 WE HEARD SOME INCONSISTENCIES ABOUT WHAT
11 TIME PERSONS WENT TO BED AND FROM JUDY AND TAMMY
12 WILLEY, WHO SAID THEY WALKED OUT AND LOOKED AND SAW
13 THE DEFENDANT LAYING ON THE MATTRESS.

14 EVERYONE WAS ASLEEP. DO YOU BELIEVE THAT
15 EVERYONE WAS ASLEEP? BUT WE HEARD FROM THE DEFENDANT,
16 HIMSELF, THAT HE WAS AWAKE AND ALTHOUGH HE HEARD SOMEONE
17 IN THE TRAILER, HE DID NOT SEE THEM.

18 AND I ASKED, "DID THEY SEE YOU?"

19 "I DON'T KNOW. I DON'T KNOW."

20 THEN HE HEARD ANOTHER PERSON COMING OUT
21 FROM, APPARENTLY, A BEDROOM INTO THE KITCHEN; ASSUMING
22 THAT'S PROBABLY TAMMY WILLEY COMING TO GET A BOTTLE
23 FOR HER SON.

24 "DID YOU SEE HER?"

25 "NO."

1 "DID SHE SEE YOU?"

2 "I DON'T KNOW."

3 TAMMY WILLEY SAID, "I CAME AROUND AND I
4 LOOKED, AND THERE WAS MICHAEL WILLEY, MARY LOWERY AND
5 SCOTTY MERSON. THEY WERE ALL ASLEEP."

6 DO YOU RECALL MR. MERSON'S TESTIMONY? "I
7 WAS AWAKE. I DIDN'T SEE THEM."

8 "DID THEY SEE YOU?"

9 "I DON'T KNOW."

10 HOW CONVENIENT. SELECTIVE MEMORY IS A
11 TRAIT OF ALL ADULTS. WE SOMETIMES REMEMBER THINGS
12 THAT WE WANT TO REMEMBER. AT OTHER TIMES WE DON'T
13 REMEMBER THEM BECAUSE WE DON'T WANT TO REMEMBER THEM.

14 WE DON'T WANT TO TELL SO WE CONVENIENTLY SAY,
15 "I DON'T RECALL. I DON'T REMEMBER. I DON'T KNOW."

16 THIS WAS ONLY FIVE MONTHS AGO, MAY OF 1990.
17 IN FACT, TODAY IS EXACTLY FIVE MONTHS FROM THE DATE OF
18 THE EVENT. THAT'S NOT A LONG PERIOD OF TIME. YET
19 THERE WAS A LOT OF THINGS THE DEFENSE WITNESSES COULD
20 NOT REMEMBER.

21 AND THAT'S UNDERSTANDABLE. CHILDREN FORGET.
22 SO DO ADULTS. BUT, REMEMBER, AS I TOLD YOU DURING THE
23 JURY SELECTION THAT ADULTS ARE PRACTICED LIARS.

24 WE KNOW HOW TO LIE BETTER THAN KIDS DO. BUT
25 THAT'S BECAUSE WE'RE OLDER. WE'RE MORE MATURE. WE'VE

1 EXPERIENCED LIFE A LITTLE MORE. ADULTS CAN LIE A LOT
2 BETTER THAN CHILDREN BECAUSE, BASICALLY, WHEN CHILDREN
3 ARE LYING WE CAN PRETTY WELL TELL WHEN THEY ARE.

4 AND I WOULD SUBMIT TO YOU THAT ANGELA AND
5 MICHELLE COLE WERE NOT LYING ON THAT WITNESS STAND THE
6 OTHER DAY; THAT THEY WERE TELLING YOU THE TRUTH.

7 THAT SCOTTY MERSON, FOR WHATEVER REASON,
8 FOR WHATEVER REASON -- BECAUSE, REMEMBER, THE STATE
9 IS NOT REQUIRED TO PROVE A MOTIVE FOR HIS ACTIONS,
10 FOR MR. MERSON'S ACTIONS ABOUT GOING INTO THAT BEDROOM,
11 GOING TO A HOUSE WHERE HE WAS INTIMATELY FAMILIAR WITH
12 THE LAYOUT OF THE HOME, WAS INTIMATELY FAMILIAR WITH
13 THE ROOMS IN THE HOUSE.

14 ALTHOUGH, ON SOME QUESTIONS HE CAN'T REMEMBER
15 THE DETAILS OF THE HOME EVEN THOUGH HE HAD BEEN A GUEST
16 FOR MANY YEARS AND HAD BEEN DATING TINA COLE FOR EIGHT
17 YEARS.

18 ALL I CAN TELL YOU, THE DEFENSE WITNESSES,
19 WHILE THEY WERE TELLING YOU SOME ACCURATE INFORMATION
20 SUCH AS THEIR NAMES AND WHERE THEY LIVED, FOR THE MOST
21 PART THEY WERE LYING. THEIR STATEMENTS WERE SO
22 INCONSISTENT. PLEASE USE YOUR OWN RECOLLECTION.

23 I THINK ONE OF THE MOST GLARING IS REGARDING
24 MICHAEL WILLEY'S CAR. DO YOU RECALL THE DEFENDANT,
25 SCOTT MERSON, COMES FROM WORKING TWO WEEKS OR SO DOWN

1 IN SOUTH FLORIDA, SOME ARDUOUS LABOR, DIGGING UP PALM
2 TREES.

3 AND HE HURRIES HOME AND DECIDES TO GO OUT
4 TO APOPKA, SOME 15, 20 MILES AWAY, TO SLEEP ON A MATTRESS
5 WITH ANOTHER MAN AND WATCH VIDEOS AND DRINK BEER, AND
6 THAT HE WAS GOING TO FIX THE FLAT TIRE AS HE GETS UP
7 IN THE MORNING, OF MICHAEL WILLEY'S CAR.

8 PERHAPS I SHOULD CORRECT MYSELF. THERE
9 WAS ONE DEFENSE WITNESS THAT I WOULD SUBMIT WAS BEING
10 TRUTHFUL. THAT WAS MICHAEL HYLAND.

11 MICHAEL HYLAND TOLD YOU -- AND I HAVE TO
12 SAY ALMOST MADE A MISTAKE IN TELLING YOU -- THAT THAT
13 CAR AND THAT TIRE WERE WORKABLE.

14 REMEMBER WHAT HE SAID? "MIKE AND I FIXED
15 THE TIRE EARLIER THAT DAY."

16 AND HE WENT LIKE IT SLIPPED OUT, LIKE HE
17 DIDN'T MEAN TO SAY IT. BUT HE DID. AND I WOULD SUBMIT
18 HE WAS THE ONLY ONE TELLING THE TRUTH.

19 AND I SUBMIT THAT SCOTTY MERSON WAS ABLE
20 TO DRIVE THE NINE POINT ONE OR NINE POINT TWO MILES,
21 HOWEVER MUCH THAT DISTANCE WAS, IN AT LEAST 15 TO 18
22 MINUTES.

23 BUT, REMEMBER, HE IS DRIVING LIKE 1:30,
24 TWO O'CLOCK IN THE MORNING, AND TRAFFIC IS NOT THAT
25 HEAVY. SO AT THE VERY OUTSIDE IT TOOK HIM 18 MINUTES.

1 HE WAS ONLY IN THE HOUSE FOR A FEW MINUTES.
2 BECAUSE HE WAS FAMILIAR WITH THE LAYOUT OF THE HOUSE,
3 HE KNEW WHERE HE WAS GOING AND HE GOT THERE QUICKLY.

4 HE THEN GOT BACK IN THE CAR AND DROVE BACK.
5 MAYBE 45 MINUTES IN ALL; EASILY TO BE DONE, BETWEEN
6 ONE AND TWO A.M.

7 MARY ALLISON LOWERY, SHE'S HIS GIRLFRIEND.
8 SHE CARES FOR HIM DEEPLY. ASK YOURSELVES: DOES THE
9 WITNESS HAVE SOME INTEREST IN HOW THE CASE SHOULD BE
10 DECIDED? I'LL LET YOU ANSWER THAT QUESTION IN THE
11 JURY ROOM.

12 ABRAHAM LINCOLN ONCE SAID THAT THE JURY IS
13 THE VOICE OF THE COMMON PEOPLE. AND TODAY YOU ARE THE
14 COMMON SENSE OF THE PEOPLE, THE STATE OF FLORIDA VERSUS
15 SCOTTY MERSON; YOU, AND YOU ALONE.

16 AS WE TALKED ABOUT ALL THAT GOOD STUFF IN
17 CIVIC PRIDE AND CIVIC DUTY, IT ALL BOILS DOWN NOW --
18 IT'S FOURTH AND GOAL ON THE ONE YARD LINE, AND TIME
19 IS RUNNING OUT.

20 THIS IS REAL LIFE. THIS IS NOT AN ACT.
21 THIS IS AN ACTUAL TRIAL, WITH REAL PEOPLE. AND IT NOW
22 SHORTLY WILL BE YOUR DECISION, WHETHER OR NOT YOU WILL
23 CONVICT SCOTTY MERSON OF THE SEXUAL BATTERY AND A
24 BURGLARY WITH A BATTERY THEREIN.

25 LISTEN CAREFULLY TO YOUR HEART, AS YOU HAVE

1 LISTENED TO THOSE WITNESSES AND ASSESS THEIR CREDIBILITY,
2 THEIR VERACITY, THEIR TRUTHFULNESS AND WHETHER THEY
3 WERE BEING STRAIGHTFORWARD, WHETHER THEY WERE ABLE TO
4 GET THEIR STORY TOGETHER.

5 REMEMBER INVESTIGATOR ROACH SPEAKING WITH
6 THOSE PEOPLE AFTERWARDS? MARY ALLISON LOWERY SAID SHE
7 WAS IN BED AT ONE O'CLOCK.

8 HE TESTIFIED IT WAS TWO, 2:30. HE, OBVIOUSLY,
9 MADE A DIFFERENCE OF AN HOUR AND 20 MINUTES, YESTERDAY
10 ON THE STAND, TO IMPROVE HER STORY.

11 REMEMBER, SCOTTY HAD AN OPPORTUNITY TO CALL
12 MICHAEL WILLEY SHORTLY AFTER HIS ARREST, PLENTY OF TIME
13 TO SAY, "I NEED YOU MY BUDDY, WHO I'VE KNOWN FOR YEARS.
14 YOU NEED TO HELP ME OUT. OKAY? ALL I NEED IS A LITTLE
15 BIT OF DOCUMENTATION FROM YOU GUYS THAT I WAS THERE
16 THAT NIGHT."

17 THE JUDGE WILL INSTRUCT THAT BEFORE YOU CAN
18 FIND THE DEFENDANT GUILTY OF SEXUAL BATTERY ON A CHILD
19 LESS THAN 12 YEARS OF AGE, THAT THE STATE MUST PROVE
20 TWO ELEMENTS BEYOND A REASONABLE DOUBT; NOT BEYOND A
21 SHADOW OF A DOUBT; NOT BEYOND ALL DOUBT; NOT TO A ONE
22 HUNDRED PERCENT OF MATHEMATICAL CERTAINTY.

23 AND, REMEMBER, YOU ALL AGREED THAT YOU WOULD
24 HOLD THE STATE TO NO HIGHER BURDEN AND YOU WOULD REQUIRE
25 THE STATE ONLY TO PROVE THE ELEMENTS OF THE OFFENSE AND

1 NOTHING MORE.

2 THERE WERE TWO ELEMENTS. ONE IS THAT THE
3 VICTIM, ANGELA [REDACTED], WAS LESS THAN 12 YEARS OF AGE.
4 AND THAT'S, BASICALLY, AN EASY ELEMENT TO SHOW.

5 AT THE TIME SHE WAS NINE-YEARS-OLD. SHE IS
6 NOW TEN. SHE IS WELL BELOW THE AGE OF 12. ELEMENT
7 NUMBER ONE HAS BEEN PROVEN BEYOND ANY REASONABLE DOUBT.

8 THE SECOND ELEMENT, THIS IS A LITTLE HARDER
9 ELEMENT -- THAT THE DEFENDANT COMMITTED AN ACT UPON, IN
10 WHICH THE SEXUAL ORGAN OF THE VICTIM WAS PENETRATED OR
11 HAD UNION WITH THE MOUTH OF THE DEFENDANT. THAT'S IT.

12 WE MUST SHOW THAT ANGELA [REDACTED] WAS UNDER THE
13 AGE OF TWELVE AND THAT THE DEFENDANT'S MOUTH OR TONGUE
14 HAD UNION WITH OR CAME IN CONTACT TO THE VAGINA, THE
15 PRIVATES OF ANGELA [REDACTED].

16 AND I THINK SHE SAID SO WITH GRAPHIC DETAIL.
17 THAT LITTLE GIRL WAS FORCED TO SUFFER AT THE HANDS OF
18 THIS MAN.

19 THOSE ARE ALL THE ELEMENTS, LADIES AND
20 GENTLEMEN. THERE'S NOTHING MORE THAT NEED BE PROVEN.
21 IT BOILS DOWN TO: DO YOU BELIEVE ANGELA AND MICHELLE
22 COLE, OR DO YOU BELIEVE THAT RAG-TAG TEAM OF WITNESSES
23 THAT CAME IN AND LIED ON THE STAND?

24 IF YOU BELIEVE THE DEFENDANT'S VERSION AND
25 HIS WITNESS' VERSION OF WHAT HAPPENED, THEN YOU GO IN

1 THAT JURY ROOM AND RETURN A VERDICT OF NOT GUILTY.

2 DON'T WASTE ANY TIME DOING SO.

3 BUT IF YOU BELIEVE IN ANGELA [REDACTED] AND
4 MICHELLE [REDACTED], IF YOU BELIEVE THEIR STORY, AND IF YOU
5 LOOK AT THE TESTIMONY OF THE DEFENSE WITNESSES AS I
6 DO, WITH CONTEMPT, YOU FIND THE DEFENDANT GUILTY OF
7 SEXUAL BATTERY.

8 THE JUDGE WILL ALSO INFORM YOU THAT THERE
9 ARE CERTAIN ELEMENTS THAT THE STATE MUST PROVE REGARDING
10 A BURGLARY CHARGE, AND BEFORE YOU CAN FIND THE DEFENDANT
11 GUILTY OF BURGLARY THE STATE MUST SHOW THE FOLLOWING
12 THREE ELEMENTS:

13 ONE IS THAT THE DEFENDANT ENTERED OR
14 REMAINED IN A STRUCTURE OWNED BY OR IN THE POSSESSION
15 OF CATHY COLE.

16 AT THE TIME, NUMBER TWO, THE DEFENDANT DID
17 NOT HAVE THE PERMISSION OR CONSENT OF CATHY [REDACTED] OR
18 ANYONE AUTHORIZED TO ACT FOR HER TO ENTER OR REMAIN
19 IN THE STRUCTURE AT THAT TIME.

20 AND, THREE, AT THE TIME OF ENTERING OR
21 REMAINING IN THE STRUCTURE, THE DEFENDANT, SCOTTY
22 MERSON, HAD A FULLY-FORMED, CONSCIOUS INTENT TO COMMIT
23 THE OFFENSE OF BATTERY IN THAT STRUCTURE.

24 THOSE ARE THE THREE ELEMENTS. CLEARLY,
25 ALTHOUGH SCOTTY MERSON AT ONE TIME LIVED AT THAT HOUSE,

1 HE DID NOT HAVE PERMISSION TO COME IN THAT HOME. AND
2 WE ALL KNOW THAT NO ONE COMES INTO A HOME STEALTHILY
3 AT TWO O'CLOCK IN THE MORNING FOR ANY GOOD REASON.

4 HE WALKED IN AND WENT BACK TO THE BEDROOM
5 WHERE THE GIRLS WERE STAYING. IT WASN'T HARD TO FIND.
6 HE WENT IN AND COMMITTED A BATTERY UPON MICHELLE [REDACTED],
7 WHEN HE PLACED HIS HAND OVER HER MOUTH; TOLD HER TO BE
8 QUIET, AND THEN AFTER SEXUALLY BATTERING ANGELA [REDACTED],
9 THREATENING THE GIRLS THAT, "IF YOU TELL, I'M GOING TO
10 BLOW UP THIS HOUSE."

11 IMAGINE THE FRIGHT AND CONCERN IN A SMALL
12 CHILD. CHILDREN DON'T KNOW, AND CERTAINLY ADULTS DON'T
13 EITHER, WHETHER A PERSON IS GOING TO BLOW UP A HOUSE.
14 BUT CERTAINLY, GIVEN THEIR AGE, THEY HAD NO REASON TO
15 DISBELIEVE HIM.

16 I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN,
17 THAT THE STATE HAS PROVEN THE FOLLOWING THREE ELEMENTS
18 OF A BURGLARY WITH A BATTERY BEYOND AND TO THE EXCLUSION
19 OF EVERY REASONABLE DOUBT.

20 THE LAST THING THAT I ASKED YOU TO CONSIDER
21 IN THE OPENING STATEMENT WAS CHILDREN. I ASK YOU NOW
22 TO CONSIDER THE RIGHTS OF ANGELA AND MICHELLE [REDACTED],
23 WHICH ARE THE SAME AS ALL PEOPLE, ADULT, TEENAGER OR
24 CHILDREN.

25 CHILDREN HAVE THE SAME RIGHTS WE DO. AND A

1 CHILD HAS THE SAME RIGHT AS ANYONE ELSE TO BE BELIEVED.
2 AND IF YOU BELIEVE ANGELA AND MICHELLE [REDACTED], AS I
3 SUBMIT TO YOU THEY SHOULD BE BELIEVED, GIVEN ALL OF
4 THE EVIDENCE THAT THE STATE HAS PRESENTED, I URGE YOU,
5 I IMPORE YOU TO DO YOUR DUTY AND FIND SCOTTY MERSON
6 GUILTY AS CHARGED.

7 THANK YOU, LADIES AND GENTLEMEN.

8 THE COURT: COUNSEL, APPROACH THE BENCH.

9 (THEREUPON, COUNSEL APPROACHED THE BENCH AND THE
10 FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE PRESENCE OF THE
11 JURY, AND ON THE RECORD AS FOLLOWS:)

12 THE COURT: IT'S OBVIOUS YOU AREN'T GOING TO BE
13 ABLE TO DO THIS WITHIN 30 MINUTES. YOU TAKE WHATEVER
14 TIME YOU FEEL IS REASONABLE.

15 MR. EIDE: THANK YOU.

16 (THEREUPON, THE SIDE-BAR CONFERENCE WAS CONCLUDED.)

17 THE COURT: THE DEFENSE MAY PROCEED.

18 MR. EIDE: THANK YOU.

19 CLOSING ARGUMENT

20 MR. EIDE: AN EASY QUESTION HE SAYS; THEY ARE
21 EITHER LYING OR TELLING THE TRUTH. THAT'S IT; BLACK
22 AND WHITE, SIMPLE, STRAIGHTFORWARD. AND THAT'S ALL
23 THERE IS TO IT.

24 IF YOU BELIEVE THE CHILDREN, THEN MR. MERSON
25 IS GUILTY. AND IF YOU DON'T BELIEVE THE CHILDREN, IF