ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO,	:	Case No. 2008-1693
Plaintiff-Appellee,	:	
v.	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
MICHAEL S. ARNOLD,	:	
Defendant-Appellant.	:	Court of Appeals Case No. 07AP-789

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF AMICUS INTEREST 3

STATEMENT OF THE CASE AND FACTS 3

ARGUMENT 5

***Amicus Curiae* Attorney General's Proposition of Law:**

Statements by a child made during an interview conducted by a hospital employee at a children's advocacy center for the purpose of medical diagnosis and treatment and without participation by law enforcement are nontestimonial for purposes of the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution 5

A. The Sixth Amendment confrontation right is not implicated by a nontestimonial out-of-court statement. 5

B. Where an out-of-court statement is made in response to questioning by someone other than law enforcement or its equivalent, the statement is testimonial only if made under circumstances that would lead an objective witness reasonably to believe the statement would be available for use at a later trial. 6

C. Because an objective witness in this child's position would not have reasonably believed that her statements would be available for use at a later trial, her statements were nontestimonial, and the Sixth Amendment is not implicated. 10

CONCLUSION 15

CERTIFICATE OF SERVICE ..... unnumbered

TABLE OF AUTHORITIES

Cases **Page(s)**

California v. Sisavath (Cal. Ct. App. 2004),
13 Cal. Rptr. 3d 753 13

Colorado v. Vigil (Colo. 2006),
127 P.3d 916 ..... 12, 15

Connecticut v. Arroyo (Conn. 2007),
935 A.2d 975 14

Crawford v. Washington (2004),
541 U.S. 36 ..... *passim*

Davis v. Washington (2006),
547 U.S. 813 ..... *passim*

Florida v. Contreras (Fla. 2008),
979 So. 2d 896 ..... 13, 14

Hernandez v. Florida (Fla. Ct. App. 2007),
946 So. 2d 1270 14

Idaho v. Hooper (Idaho 2007),
176 P.3d 911 14

In re Rolandis G. (Ill. Ct. App. 2004),
817 N.E.2d 183 ..... 13, 14

In re T.T. (Ill. App. 2004),
815 N.E.2d 789 14

Iowa v. Bentley (Iowa 2007),
739 N.W.2d 296 14

Maryland v. Snowden (Md. 2005),
385 A.2d 314 ..... 13, 14

Massachusetts v. DeOliveira (Mass. 2006),
849 N.E.2d 218 12

Minnesota v. Krasky (Minn. 2007),
736 N.W.2d 636 14

Missouri v. Justus (Mo. 2006),
205 S.W.3d 872 14

North Dakota v. Blue (N.D. 2006),
717 N.W.2d 558 ..... 13, 14

Ohio v. Roberts (1980),
448 U.S. 56 5

Oregon v. Mack (Or. 2004),
101 P.3d 349 13

Rangel v. Texas (Tex. App. 2006),
199 S.W.3d 523 14

State v. Arnold,
2008 Ohio App. Lexis 2927, 2008-Ohio-3471 4

State v. Muttart,
116 Ohio St. 3d 5, 2007-Ohio-5267 ..... *passim*

State v. Self (1990),
56 Ohio St. 3d 73 5

State v. Siler,
116 Ohio St. 3d 39, 2007-Ohio-5637 6

State v. Stahl,
111 Ohio St. 3d 186, 2006-Ohio-5482 ..... *passim*

T.P. v. Alabama (Ala. Crim. App. 2004),
911 So.2d 1117 14

Statutes, Rules and Constitutional Provisions

R.C. 109.02 3

Ohio Const. art. I, § 10 ..... 4, 5

U.S. Const. amend. 6 ..... 4, 5, 10

INTRODUCTION

Statements made by a child victim of sexual abuse to health-care providers at a hospital-based children's advocacy center during an interview conducted for the purpose of medical diagnosis and treatment do not implicate the Confrontation Clauses in the United States Constitution and the Ohio Constitution.

Where, as here, a declarant makes an out-of-court statement to an interviewer who is not a member or agent of law enforcement, this Court applies an "objective witness" test to determine whether the statement is testimonial. This test is properly viewed as an inquiry into whether a person in the declarant's position would have reasonably believed that her statements would be available for use at a later trial. See *State v. Stahl*, 111 Ohio St. 3d 186, 2006-Ohio-5482, ¶ 36 (citing *Crawford v. Washington* (2004), 541 U.S. 36, 52). And, as this Court has already recognized, a declarant's statements made to medical personnel for purposes of medical diagnosis or treatment are not testimonial for confrontation purposes. See *State v. Muttart*, 116 Ohio St. 3d 5, 2007-Ohio-5267, ¶ 63. This case requires nothing more than application of that precedent to these facts.

Here, a mother took her four-year-old daughter to a hospital shortly after an incident of suspected sexual assault. A social worker interviewed the child for purposes of medical diagnosis and treatment. She attempted to ascertain what had happened and told the child that she would be physically examined by a nurse after the interview. A nurse then physically examined the child, using the information gathered by the social worker to determine the proper testing and treatment options. The child did not know that anyone, much less law-enforcement staff, observed the interview. And there is no indication that the questions asked during this hospital interview would have caused the child to believe that her statements would be used later

at a trial. Because a person in the child's position would not have reasonably believed that her statements would be used at a later trial, these statements were not testimonial.

Defendant Michael Arnold urges this Court to disregard its own precedent, arguing that the child's statements to the social worker were testimonial because: (1) Ohio law links children's advocacy centers with law enforcement; (2) law-enforcement personnel observed the hospital interview from another room; (3) the primary purpose of the interview was to develop evidence for the criminal investigation and prosecution; (4) there was no ongoing emergency at the time of the interview; and (5) an "objective observer would reasonably expect the child's statements to be available for use in a prosecution." Brief of Defendant-Appellant Michael S. Arnold ("Arnold Br.") at 17, 19.

None of Arnold's reasons holds up. The record shows that the hospital interview was conducted for purposes of medical diagnosis and treatment. Law-enforcement personnel observed the interview from another room, unbeknownst to the child, and they neither directed nor participated in the interview in any way. The interview did not become the functional equivalent of a police interrogation simply because law enforcement had access to information collected during the interview. And law enforcement's access to information acquired during the interview did not convert the hospital's medical staff into government agents. Because the interview was not conducted by law enforcement or an agent thereof, the absence of an emergency is irrelevant to the confrontation analysis. Finally, Arnold's reference to "an objective observer" has no proper place in a Confrontation Clause analysis.

Nothing in these facts indicates that this interview was the equivalent of a police interrogation or that the child would have thought that her statements were for prosecutorial rather than medical purposes. Therefore, as the Tenth District properly held, the child's

statements were not testimonial, and their admission at trial did not violate Arnold's confrontation rights.

STATEMENT OF AMICUS INTEREST

Ohio Attorney General Richard Cordray acts as Ohio's chief law enforcement officer. R.C. 109.02. Accordingly, he has a strong interest in the correct interpretation and enforcement of Ohio's criminal laws and procedures. Moreover, as a protector of the public welfare, the Attorney General naturally has a strong interest in protecting Ohio's more vulnerable citizens—like children—from abuse and other harm. Consequently, the Attorney General lends his support to the State of Ohio, with a view toward keeping Ohio's children safe from abusers and also helping them to avoid, where possible, multiple interviews that force them to re-live painful experiences.

STATEMENT OF THE CASE AND FACTS

On December 7, 2005, Wendy Otto found her husband, Michael Arnold, alone with their four-year-old daughter in a locked bedroom under suspicious circumstances—namely, Arnold's boxer shorts were not on properly and the girl was under a blanket on an air mattress with her underpants around her feet. Trial Transcript ("Tr.") 71; 76-78. Otto called 911. Tr. at 81. One of the responders, Columbus firefighter Charles Fritz, asked the girl what had happened, and she told him that someone had touched her private parts. Tr. 49, 53. Fritz took Otto, the girl, and Otto's five-year-old son to Children's Hospital, and a rape kit was used to collect samples from the girl. Tr. 53; 86.

The next morning, Otto took her daughter to the Center for Child and Family Advocacy at the same hospital. Tr. 86. A licensed social worker, Kerri Marshall, interviewed the child alone about the previous evening. Tr. 124-25. Other people, including a police detective, watched the interview from another room via closed-circuit television, but the child was unaware of their

presence. Tr. 147, 152. The interview was recorded to DVD. Tr. 156. Marshall told the child that a nurse would physically examine her after the interview. Tr. 154. During the interview, the child made statements about Arnold's conduct that, if true, would mean that he had sexually abused her. See Tr. 154. After the interview, Marshall shared this information with a nurse practitioner, Gail Hornor, who then physically examined the child. Tr. 237-38. Hornor observed abrasions to the girl's hymen, and concluded that they showed a recent attempt to penetrate the girl's vagina. Tr. 239.

Arnold was indicted by a grand jury and prosecuted in the Franklin County Court of Common Pleas. Tr. 323. The child was determined to be unavailable to testify at trial, and the State was allowed to present the DVD of Marshall interviewing the child. Tr. 133, 157. Both Marshall and Hornor testified that the interview was conducted for purposes of medical diagnosis and treatment. Tr. 128; 232-35. Hornor further testified that Marshall's information was important for making an accurate diagnosis and also for deciding how she would examine the child and what tests she might conduct. Tr. 233, 237-38.

Arnold was convicted of one count of rape of a child under ten years of age, designated a sexual predator, and sentenced to life in prison. See *State v. Arnold*, 2008 Ohio App. Lexis 2927, 2008-Ohio-3471, ¶ 6.

Arnold appealed to the Tenth District Court of Appeals. Among other things, he argued that the use of the recorded interview at trial violated his right to confront witnesses guaranteed by the Sixth Amendment to the federal constitution and under Section 10, Article I of the Ohio Constitution. *Id.* at ¶ 7. The Tenth District rejected his argument, concluding that the child's statements in the recorded interview were nontestimonial and, thus, did not implicate Arnold's constitutional confrontation rights. *Id.* at ¶ 34.

ARGUMENT

***Amicus Curiae* Attorney General's Proposition of Law:**

Statements by a child made during an interview conducted by a hospital employee at a children's advocacy center for the purpose of medical diagnosis and treatment and without participation by law enforcement are nontestimonial for purposes of the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution.

A. The Sixth Amendment confrontation right is not implicated by a nontestimonial out-of-court statement.

Because this Court has held that the Ohio Constitution provides no greater confrontation right than the United States Constitution, see *State v. Self* (1990), 56 Ohio St. 3d 73, 79, an analysis based on the federal Constitution will meet both of Arnold's constitutional challenges.

The United States Supreme Court significantly changed the landscape of confrontation-clause analysis in *Crawford*, 541 U.S. 36, and *Davis v. Washington* (2006), 547 U.S. 813. In *Crawford*, the Court rejected the long-standing approach of *Ohio v. Roberts* (1980), 448 U.S. 56, which held that an out-of-court statement by an unavailable witness was admissible for Sixth Amendment purposes if it was sufficiently reliable—that is, if it fell within a firmly rooted hearsay exception or bore particularized guarantees of trustworthiness. See *Crawford,* 541 U.S. at 40. But *Crawford* announced a new rule: For Sixth Amendment purposes, an out-of-court testimonial statement may be admitted into evidence only if the witness is unavailable and the defendant had a prior opportunity for cross-examination. *Id.* at 68-69. In *Davis*, the Court confirmed that the Confrontation Clause applies *only* to testimonial statements, and does not implicate nontestimonial ones. *Davis,* 547 U.S. at 821.

The outcome of this appeal, given the question presented and that Arnold had no prior opportunity to cross-examine the child, turns on whether the child's statements were testimonial or nontestimonial. Arnold can prevail only if the statements were testimonial.

B. Where an out-of-court statement is made in response to questioning by someone other than law enforcement or its equivalent, the statement is testimonial only if made under circumstances that would lead an objective witness reasonably to believe the statement would be available for use at a later trial.

Crawford and *Davis* did not comprehensively define what constitutes a testimonial or a nontestimonial statement. When faced with a Confrontation Clause challenge to out-of-court statements, this Court determines whether the statements are testimonial by applying one of two tests: (1) the primary-purpose test applies if the statements were made in response to questioning by law enforcement (or agents thereof), *State v. Siler*, 116 Ohio St. 3d 39, 2007-Ohio-5637, ¶ 30; and (2) the objective-witness test applies if the statements were made in response to questioning by someone else, *Stahl*, 2006-Ohio-5482 at ¶ 36. Accordingly, to decide whether a statement is testimonial for purposes of the Confrontation Clause, this Court must first determine which test applies. Because law enforcement was not involved in questioning the child here, the objective-witness test applies.

If a statement was made in response to interrogation by "police or those determined to be police agents," this Court decides whether the statement is testimonial by evaluating the primary purpose of the interrogation. *Siler*, 2007-Ohio-5637 at ¶¶ 29, 30 (adopting the primary-purpose test to evaluate statements made by a child during a police interrogation). Under this test, if the primary purpose of an interrogation is to meet an ongoing emergency, a statement made in response to questioning is nontestimonial. *Id.* at ¶ 30. By contrast, if an interrogation occurs outside the context of an emergency and its primary purpose is to establish past events that are potentially relevant to criminal prosecution, a statement made in response to questioning is testimonial. *Id.*

If a statement is made in response to questioning by someone other than the police or their agents, however, this Court applies an objective-witness test to determine whether the statement

is testimonial. See *Stahl*, 2006-Ohio-5482 at ¶ 36. This Court adopted *Crawford*'s "objective witness" test in *Stahl*, explaining that such a statement is testimonial if it was "made 'under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.'" *Id.* at syllabus, ¶ 1 (quoting *Crawford*, 541 U.S. at 52). This test focuses on the expectation of the declarant when the statement was made; the questioner's intent is relevant only to the extent that it could have affected a reasonable declarant's expectations. *Stahl*, 2006-Ohio-5482 at syllabus, ¶ 2.

This Court has applied the objective-witness test to evaluate statements made to healthcare practitioners for purposes of medical diagnosis or treatment, even when the questioning occurred at a facility designed for victims of assault or abuse. For example, in *Stahl*, an adult sexual-assault victim made statements to a nurse practitioner at a hospital's Developing Options for Violent Emergencies ("DOVE") unit, which specialized in providing healthcare services to victims of sexual assault and domestic disturbances. *Id.* at ¶ 2. A police officer brought the woman to the DOVE unit and was present during the interview. *Id.* at ¶ 7. At the interview, the woman signed a consent form agreeing to the release of any evidence, information, clothing, and photographs for prosecution of the case. *Id.* at ¶¶ 3-4. The nurse practitioner took the victim's history, *id.* at ¶¶ 5-6, and physically examined her, *id.* at ¶ 8. This Court rejected a confrontation challenge to the admission of statements made during the interview, explaining that, even though the DOVE unit "gathers forensic evidence for potential criminal prosecution" and "partly serves a prosecutorial function by collecting evidence," its "primary purpose is to render medical attention to its patients." *Id.* at ¶¶ 25, 39. Accordingly, the victim's statements were unlike the "statements made to law-enforcement officers" in *Davis*. *Stahl*, 2006-Ohio-5482 at ¶ 25. This

Court adopted the objective-witness test, *id.* at ¶ 36, considered the circumstances of the victim's statements, *id.* at ¶¶ 36-47, and concluded that they were nontestimonial, *id.* at ¶ 48.

Similarly, in *Muttart*, the Court held that "[s]tatements made to medical personnel for purposes of diagnosis or treatment are not inadmissible under *Crawford*, because they are not even remotely related to the evils which the Confrontation Clause was designed to avoid."[1] *Muttart*, 2007-Ohio-5267 at ¶ 63 (citations omitted). The defendant, Muttart, raised a confrontation challenge to the admission of (1) a child sexual-abuse victim's statements during a hospital interview conducted by a social worker who helped direct a child-abuse program in a hospital's child maltreatment clinic, and (2) the child's statements during therapy conducted by a clinical counselor and therapist. The child's mother had taken her to the appointments after receiving an initial hospital referral from the child's regular doctor. *Id.* at ¶¶ 14-15, 18. The Court saw no indication that the child's statements were testimonial, specifically observing the absence of evidence indicating that the questioning was "a pretext or façade for state action" or that the statements were "fostered by the state rather than by [the mother] acting in furtherance of medical diagnosis and treatment on behalf of [the child]." *Id.* at ¶ 61. Because the statements were made during appointments that were "for medical diagnosis and treatment" or "for therapeutic rather than prosecutorial purposes," they were not "made for the state's use," even though they were later used during prosecution. *Id.* at ¶ 62.

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[1] In evaluating the statements, the Court cited the United States Supreme Court's three examples of testimonial statements: ex parte in-court testimony (or its equivalent), extrajudicial statements in formalized testimonial materials, and "a class of statements that are made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Muttart*, 2007-Ohio-5267 at ¶ 60 (internal quotations and citations omitted). Because the statements were not the equivalent of ex parte in-court testimony or made in formalized testimonial materials, the Court's analysis must have turned on whether the statements met the objective-witness test.

Consistent with *Stahl* and *Muttart*, the objective-witness test applies here. Otto brought her daughter to the hospital's children's advocacy center the morning after the alleged assault. Tr. 86. Marshall interviewed Otto's daughter for the purpose of medical diagnosis and treatment. Tr. 128. Marshall's questions were consistent with (and, indeed, necessary for) this purpose, Tr. 154-58, and nurse practitioner Hornor confirmed that she relied on the information gathered during the interview to guide her subsequent physical examination of the child and to help her determine the proper testing and treatment protocol, Tr. 232-38. Marshall, a hospital employee, was not a member of law enforcement. Tr. 123. And no evidence suggests that any law-enforcement personnel (or agents thereof) directed Marshall or participated in the interview, or that law enforcement owned or operated the center. In fact, the only actual involvement of law enforcement was to observe the interview from another room, unbeknownst to the child. Tr. 152-53.

In spite of these facts, Arnold essentially argues that the interview at the children's advocacy center was the functional equivalent of a police interrogation and that, therefore, the primary-purpose test applies. He points to certain statutory and regulatory provisions, and claims that they demonstrate an intricate connection between children's advocacy centers, law enforcement, and prosecution, and that the centers therefore serve a law-enforcement function. See Arnold Br. at 10-13. But even if the advocacy center "partly serves a prosecutorial function" (because the State could use evidence gathered at the center in a subsequent trial), *Stahl*, 2006-Ohio-5482 at ¶¶ 25, 39, that fact does not mean Marshall was acting as an agent of the police when she interviewed the child. Marshall conducted the interview for medical purposes, not law-enforcement purposes. This remains true even though the interview was in fact used during a subsequent law-enforcement investigation. See *Muttart*, 2007-Ohio-5267 at ¶ 62 ("The fact

that the information gathered by the medical personnel in this case was subsequently used by the state does not change the fact that the statements were not made for the state's use."). Regardless of whether one can imagine a situation where children's advocacy center staff would be deemed agents of law enforcement, there is no record evidence to support such a finding in this case.

The record here does not indicate any law-enforcement-related purpose for the interview. To the contrary, witnesses testified that the interview was conducted in preparation for a medical examination to diagnose and treat the child. Tr. 128, 149, 233, 237-38. Law-enforcement officers did nothing more than passively observe the interview from another room, without the child's knowledge. Tr. 152-53. Indeed, the facts here indicate less connection to law enforcement than was present in *Stahl*, where a police officer took a woman—an adult who signed a consent form mentioning prosecution—to the hospital for an interview with a DOVE nurse on the day after an incident and remained present during the interview. Even on those facts, this Court applied the objective-witness test, recognizing that the interview was primarily for medical diagnosis and treatment and not for criminal investigation and prosecution. Given that this Court applied the objective-witness test in *Stahl*, it must apply the same test here.

C. Because an objective witness in this child's position would not have reasonably believed that her statements would be available for use at a later trial, her statements were nontestimonial, and the Sixth Amendment is not implicated.

Because the objective-witness test applies here, this Court must ask whether the child's out-of-court statements were "made 'under circumstances which would lead an objective witness reasonably to believe that the statement[s] would be available for use at a later trial.'" *Stahl*, 2006-Ohio-5482 at syllabus, ¶ 1 (quoting *Crawford*, 541 U.S. at 52). The objective-witness test focuses on the declarant's expectation at the time a statement is made; the questioner's intent is relevant only to the extent that it could have affected a reasonable declarant's expectations.

Stahl, 2006-Ohio-5482 at syllabus, ¶ 2. Here, the child would not have reasonably believed that her statements would be available for use at trial, and the Court should deem the statements nontestimonial.

In *Stahl*, this Court concluded that statements made in response to a nurse practitioner's questions were not testimonial because the declarant would not have reasonably believed her statements would be available for use at trial. 2006-Ohio-5482. This was true even though the declarant was an adult woman, she was taken to the hospital by a police officer and interviewed in the officer's presence, *id.* at ¶ 7, and she signed a consent form at the hospital specifically allowing release of physical evidence for prosecution, *id.* at ¶¶ 3-4. Moreover, there was a clear connection between the DOVE unit and law enforcement in *Stahl*: the unit's mission statement included a purpose of assisting law enforcement. *Id.* at ¶ 39. The DOVE unit even sought to collect DNA evidence by swabbing, photography, ultraviolet light, and taking a used napkin. *Id.* at ¶ 8. In spite of all these circumstances, this Court noted the absence of any showing that these facts would have caused the woman to believe anything other than that her statements were for medical purposes. *Id.* at ¶¶ 37-48.

The facts here compel the conclusion that the child would not have reasonably believed her statements would be available for use at a later trial. First, this was a four-year-old child who was taken to a hospital by her mother and interviewed by a social worker who told her a nurse was about to physically examine her. Tr. 86, Transcript of Taped Interview with M.A. 3-4. Without more, the likelihood of such a young child believing that the interview or examination was connected to a criminal proceeding is virtually nonexistent, particularly where—as here—law enforcement did not participate in the interview and the child was not aware that anyone

(much less a member of law enforcement) was observing the interview.[2] Second, nothing indicates that the social worker said anything during the interview that would have caused the child to believe that her statements would be used later at trial. The social worker did not question the child in a formal manner indicating the solemnity that a declarant might associate with non-medical purposes. And the social worker did not tell the child that she would be helping the police (or anyone else) in trying to hold Arnold accountable. The social worker asked questions to help prepare for a physical examination by a nurse that the child was told would take place next. Given these circumstances and the child's young age, she would not have reasonably believed that her statements would be available for use at a later trial. Her statements, therefore, are nontestimonial, and their introduction at trial did not violate Arnold's confrontation rights.

Furthermore, even if this Court were to conclude that the child advocacy center acted as an agent of law enforcement here (and it should not), the child's statements should nevertheless be deemed nontestimonial under the primary-purpose test. *Davis* held that statements to law enforcement "are testimonial when the circumstances objectively indicate that there is no . . . ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. But the social worker interviewed the child mere hours after she was initially examined at the hospital. See Tr. 86 (Otto and her daughter left the hospital around 2:30 a.m. on December 8, 2005); Tr.

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[2] Some courts have explicitly held that the declarant's age is a factor to be considered in applying the objective-witness test so that, for example, a reasonable four-year-old would not be expected to perceive a purpose related to law enforcement or prosecution in the same way a reasonable adult would be. See, e.g., *Colorado v. Vigil* (Colo. 2006), 127 P.3d 916, 925-26; *Massachusetts v. DeOliveira* (Mass. 2006), 849 N.E.2d 218, ¶¶ 225-26 & n.11. This approach is faithful to the principles behind the objective-witness test because it focuses on what a declarant would have reasonably believed about her statements.

151 (Otto and her daughter returned to the child advocacy center at 9 a.m. on December 8, 2005). And, more important, the interview's primary purpose was not "to establish or prove past events potentially relevant to later criminal prosecution." *Davis*, 547 U.S. at 822. To the contrary, the interview's primary purpose was for medical treatment and diagnosis. Tr. 128; 232-35; 237-38. Under either test, then, admission of the child's statements into evidence did not violate Arnold's constitutional rights.

Arnold cites a number of cases for the proposition that statements made during interviews at child advocacy centers are widely held to be testimonial. See Arnold Br. at 13-16. But those cases are generally distinguishable based not on the setting of the interviews (which is not determinative by itself), but rather based either on law enforcement's active participation in the interviews or the lack of a medical purpose for the interviews. See, e.g., *North Dakota v. Blue* (N.D. 2006), 717 N.W.2d 558 (forensic interview conducted one week after medical examination for trial-preparation purposes, with no medical purpose); *California v. Sisavath* (Cal. Ct. App. 2004), 13 Cal. Rptr. 3d 753, 758 (child's statements to police and to forensic interviewer in the presence of police, months after incidents, with no evidence of medical purpose); *Florida v. Contreras* (Fla. 2008), 979 So. 2d 896, 898, 905 (non-medical interview at domestic-violence shelter, where police officer was electronically able to suggest questions to interviewer); *In re Rolandis G.* (Ill. Ct. App. 2004), 817 N.E.2d 183, 188-89 (statements to police officer and to child-advocacy worker, with no medical purpose); *Maryland v. Snowden* (Md. 2005), 385 A.2d 314, 316-17, 325-30 (interviews by sexual-abuse investigator at juvenile assessment center, done at request of police and in presence of police; any therapeutic purpose was secondary to "overarching investigatory purpose"); *Oregon v. Mack* (Or. 2004), 101 P.3d 349, 350 (interview of child, at police direction, by social worker who conceded her purpose was to assist law

enforcement with criminal investigation); *Rangel v. Texas* (Tex. App. 2006), 199 S.W.3d 523, 534-35 (child's statements to child-protective services, months after incidents, where child was told information would prevent recurrence and interviewer made no claim of medical purpose); *Hernandez v. Florida* (Fla. Ct. App. 2007), 946 So. 2d 1270, 1281-83 (police arranged for hospital visit, escorted child to and from hospital, and provided information to the interviewer); *T.P. v. Alabama* (Ala. Crim. App. 2004), 911 So.2d 1117, 1119, 1123-24 (child's statements to social worker and police investigator as part of criminal investigation, with no medical purpose); *In re T.T.* (Ill. App. 2004), 815 N.E.2d 789, 801-03 (interview by social worker who was also abuse investigator, upon request of state's attorney for assistance in prosecution; no claim of medical purpose).[3]

This Court should apply its reasoning in *Stahl* and *Muttart* to the facts here and hold that the child's statements during a hospital interview, conducted for purposes of medical diagnosis and treatment, were not testimonial. See also, e.g., *Connecticut v. Arroyo* (Conn. 2007), 935 A.2d 975, 993-99 (child's statements nontestimonial where social worker interviewed child for medical diagnosis and treatment at hospital sexual-abuse clinic, even though videotaped and

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[3] The Ohio Public Defender cites many of the same cases in its amicus brief, claiming that some of these cases and others involve "nearly identical factual scenarios to the instant case." Brief of Amicus Curiae Office of the Ohio Public Defender 12. But that characterization is incorrect. For the reasons stated above, there are significant distinctions between this case and *Contreras*, *Rolandis G.*, *Snowden*, and *Blue*. Moreover, this case is not on all fours with *Idaho v. Hooper* (Idaho 2007), 176 P.3d 911, 917-18 (police arranged interview by doctor and consulted with doctor during interview to develop questions; child was told police were observing interview); *Iowa v. Bentley* (Iowa 2007), 739 N.W.2d 296, 299-300 (police arranged interview by counselor and consulted with counselor during interview to develop questions; child was told during interview that police were observing and that it was "really important the police know about everything that happened"); or *Missouri v. Justus* (Mo. 2006), 205 S.W.3d 872, 876, 880 (counselor asked child if she would tell story to judge and also conceded that interview was "an official legal interview done for law enforcement, which serve[d] an investigatory, fact-finding purpose" (internal quotations omitted)).

observed by police officer through one-way mirror); *Minnesota v. Krasky* (Minn. 2007), 736 N.W.2d 636, 641-43 (child's videotaped statements nontestimonial where child was interviewed and physically examined by nurse at hospital center dealing with sexual abuse for medical diagnosis and treatment); *Vigil*, 127 P.3d at 921-24 (child's statements to doctor during "forensic sexual abuse examination" held nontestimonial where questioning occurred for medical diagnosis and treatment, even though examination occurred at request of police and doctor was member of child protection team). Accordingly, the introduction of the child's statements at trial did not implicate Arnold's confrontation rights.

CONCLUSION

For the foregoing reasons, the Attorney General respectfully asks this Court to affirm the Tenth District's decision below.

Respectfully submitted,

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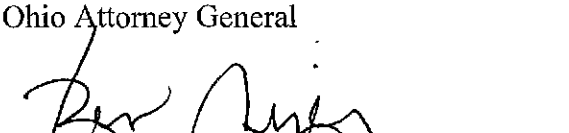
Ohio Attorney General



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I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General in Support of Appellee State of Ohio was served by U.S. mail this 19th day of May 2009 upon the following counsel:

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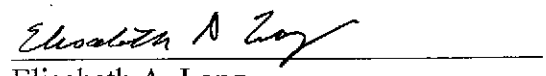

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