

1 THE COURT: LET'S SAY, FOR THE RECORD, THAT I  
2 WOULD DENY YOUR REQUEST TO OFFER THE YOUNGEST SISTER'S  
3 STATEMENTS FOR THE SAME REASON AS I WOULD PROHIBIT THE  
4 MOTHER FROM REFERRING TO WHAT THE YOUNGER CHILD TOLD  
5 HER, UNDER THE INTERPRETATION OF THE CHILDRESS CASE, AT  
6 543 SO.2D 413, EVEN THOUGH I DON'T AGREE WITH THE CASE.

7 HOWEVER, AS TO THE STATEMENTS GIVEN TO THE  
8 POLICE OFFICER, THE INVESTIGATING OFFICER, THE DETECTIVE,  
9 MADE APPROXIMATELY 13 HOURS AFTER THE INCIDENT ALLEGEDLY  
10 OCCURRED, I FIND SPECIFICALLY THAT THEY DO FALL UNDER  
11 CHAPTER 90.803 SUBSECTION (23) AS AN EXCEPTION TO THE  
12 HEARSAY RULE.

13 AND THAT THIS CHILD IS, IN FACT, THE ALLEGED  
14 VICTIM OF SEXUAL ABUSE, OR AN UNLAWFUL SEXUAL ACT.

15 THAT THE TIME; THAT IS, 13 HOURS AFTER THE  
16 INCIDENT OCCURRED, THE CONTENT OF THE STATEMENT RELATING  
17 ON OR ABOUT WHAT HAPPENED TO HER IS CONSISTENT WITH HER  
18 STATEMENT ON THE WITNESS STAND TO THE JURY TODAY, AS  
19 WELL AS THE STATEMENT SHE MADE TO HER MOTHER THAT MORNING  
20 AND, AGAIN, THE STATEMENTS SHE MADE TO HER MOTHER ON  
21 THE WAY HOME FROM SCHOOL THAT DAY.

22 THAT THE MENTAL AND PHYSICAL AGE OF GIRL AT  
23 TEN YEARS OF AGE NOW, AND AT NINE YEARS OF AGE AT THE  
24 TIME THE STATEMENT WAS MADE AND THE MATURITY OF THE  
25 CHILD; THE NATURE AND DURATION OF THE OFFENSE, HAD IT

1 OCCURRED APPROXIMATELY 13 HOURS EARLIER.

2 AND THE RELATIONSHIP OF THE CHILD TO THE  
3 OFFENDER; THAT IS, THE PERSON THAT SHE KNEW. AND THE  
4 RELIABILITY OF THE ASSERTION, RELIABILITY OF THE CHILD  
5 VICTIM ANGELA HERE, HAVING OBSERVED HER Demeanor AND  
6 TESTIFYING BEFORE THE JURY.

7 AND HAVING HEARD THE OFFICER'S ASSERTIONS  
8 CONCERNING HIS OPINION REGARDING HER RELIABILITY BASED  
9 ON HIS REVIEW OF CASES OF THIS NATURE.

10 THE COURT FINDS THAT IT IS QUITE APPROPRIATE,  
11 UNDER CHAPTER 90.803 SUBSECTION (23) TO PERMIT THIS  
12 TESTIMONY. AND, ACCORDINGLY, THE COURT WOULD ALLOW IT,  
13 CONCERNING THE STATEMENTS MADE BY ANGELA CONCERNING  
14 THE INCIDENT, THAT SHE MADE TO THE DETECTIVE.

15 I ASSUME YOU ALSO INTERVIEWED THE YOUNGER  
16 SISTER?

17 THE WITNESS: YES.

18 THE COURT: THE LAW PROVIDES UNDER THIS CASE  
19 INTERPRETATION THAT I CITED IN CHILDRESS, THAT IT  
20 DOES SAY NON-SEXUAL CASES, NON-SEXUAL CAPITAL CASES.  
21 I DON'T AGREE WITH THAT, BUT WE DON'T HAVE ANY OTHER  
22 CASE, NOTHING TO GO ON.

23 IN AN ABUNDANCE OF CAUTION AND NOT WANTING  
24 TO CREATE A POTENTIAL FOR ADMISSIBLE ERROR IN THAT  
25 REGARD, I THINK IT'S NECESSARY TO PROHIBIT THE OFFICER

1 FROM TESTIFYING WITH REGARD TO MICHELLE SINCE SHE WAS  
2 NOT, IN FACT, THE VICTIM OF A SEXUAL ATTACK PERPETRATED  
3 UPON HER. THEREFORE, HER STATEMENTS, HEARSAY STATEMENTS,  
4 WOULD NOT BE ADMISSIBLE.

5 DURING THE COURSE OF YOUR TESTIMONY,  
6 DETECTIVE, YOU NEED TO BE VERY CAREFUL THAT YOU DON'T  
7 MAKE ANY REFERENCE TO THE SISTER MAKING ANY STATEMENTS.

8 IT'S A LITTLE MORE CRUCIAL WITH THE MOTHER,  
9 BECAUSE BOTH OF OF THEM WERE PRESENT WHEN THE  
10 STATEMENTS WERE BEING MADE, AND THEN THE YOUNGER SISTER  
11 WAS INTERJECTING WHEN THE OLDER ONE WAS TESTIFYING.

12 SO BASED ON YOUR EXPERIENCE -- WE JUST CAN'T  
13 HAVE ANY TESTIMONY CONCERNING WHAT THE YOUNGER DAUGHTER  
14 SAID.

15 NOW, IF THE DEFENSE OPENS IT UP, YOU'RE  
16 DIRECTED TO RESPOND TO WHATEVER QUESTION THEY ASK IN  
17 THAT REGARD.

18 OKAY. DO YOU HAVE ANY QUESTIONS CONCERNING  
19 THE RULING?

20 THE WITNESS, OFFICER ROACH: ALTHOUGH I CAN'T SAY  
21 WHEN ASKED, I CAN SAY WHAT ANGELA SAID ABOUT THE HAND  
22 ON MICHELLE'S MOUTH; WHAT WE JUST TALKED ABOUT?

23 THE COURT: HMM-HMM. SHE MADE THAT STATEMENT TO  
24 YOU. I DON'T WANT TO INTERPRET YOUR TESTIMONY. BUT  
25 ANGELA DIDN'T SAY SHE SAW HIS HAND THERE.

1 THE WITNESS, OFFICER ROACH: "ALLS I KNOW HE  
2 COVERED UP HER MOUTH."

3 THE COURT: SO YOU'RE ASSUMING HE COVERED IT WITH  
4 HIS HAND. BUT I THINK YOU CAN TESTIFY AS TO WHAT SHE  
5 TOLD YOU. BUT YOU NEED TO BE PRETTY PRECISE THERE.

6 MR. BENDER: IT WON'T BE AS IF WE CAN'T DISCUSS  
7 MICHELLE. IT'S JUST YOU CAN'T DISCUSS WHAT STATEMENT  
8 SHE MADE TO YOU.

9 THE COURT: YOU CAN TELL THE JURY THAT SHE MADE  
10 A STATEMENT TO YOU, BUT YOU CAN'T TELL THEM WHAT THE  
11 STATEMENT WAS ABOUT OR THAT YOU OBTAINED THE STATEMENT  
12 FROM HER.

13 MR. BENDER: WHEN THE COURT IS READY, YOUR HONOR,  
14 WE WOULD BE CALLING WILLIE STOCKWELL.

15 THE COURT: IS EVERYBODY CLEAR ON THAT?

16 ALL RIGHT. THANK YOU, DETECTIVE. YOU MAY  
17 STEP DOWN. WE WILL BE CALLING YOU SHORTLY, I TRUST.

18 THE WITNESS: YES, SIR.

19 THE COURT: ANYTHING ELSE WE NEED TO COVER BEFORE  
20 WE RETURN THE JURY?

21 MR. BENDER: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. YOU'VE GOT THE DETECTIVE.  
23 HOW LONG IS HIS TESTIMONY GOING TO BE?

24 MR. BENDER: LESS THAN THIS HEARING.

25 THE COURT: THAT'S ALWAYS THE CASE.

1 MR. BENDER: MY DIRECT EXAMINATION WILL PROBABLY  
2 TAKE EIGHT TO NINE MINUTES.

3 THE COURT: PROBABLY ANOTHER FIVE TO TEN MINUTES  
4 FOR THE DEFENSE?

5 MR. EIDE: I DON'T KNOW. THAT WOULD PROBABLY BE  
6 ACCURATE.

7 THE COURT: SO WE'VE GOT 20 MINUTES THERE. WE'VE  
8 GOT THE MOTHER, THE SISTER AND WHO, THE GRANDMOTHER?

9 MR. BENDER: THE GRANDMOTHER. EACH OF THEM ARE  
10 GOING TO BE BETWEEN FIVE AND TEN MINUTES. I'M GOING  
11 TO TRY TO BE BRIEF, YOUR HONOR. I WOULD LIKE TO SEE  
12 THEM GET TO BED TONIGHT, AND THEN THEY WOULDN'T HAVE  
13 TO COME BACK.

14 THE COURT: WELL, IT'S SIX O'CLOCK NOW. AND IF  
15 IT LOOKS LIKE WE'RE GOING TO BE HERE UNTIL 7:30, I'D  
16 JUST AS SOON BREAK AND COME BACK TOMORROW.

17 MR. BENDER: WE'LL BE DONE BEFORE SEVEN, --

18 THE COURT: ALL RIGHT. THANK YOU, DETECTIVE.

19 MR. BENDER: -- WITH MR. EIDE'S COOPERATION.

20 MR. EIDE: HE'S MORE OPTIMISTIC THAN ME.

21 THE COURT: WHY DON'T WE TAKE ABOUT A FIVE-MINUTE  
22 RECESS AND START BACK UP.

23 (THEREUPON, COURT RECESSED AT 5:58 P.M., TO RECONVENE  
24 AT 6:07 P.M., AFTER WHICH THE FOLLOWING PROCEEDINGS  
25 TRANSPIRED:)