

1                   THANK YOU.

2                   THE COURT: THE DEFENSE WISH TO MAKE AN OPENING  
3 STATEMENT NOW?

4                   MR. EIDE: YES, YOUR HONOR WE WOULD.

5                   THE COURT: YOU MAY PROCEED.

6                   MR. EIDE: THANK YOU.

7                                   OPENING STATEMENT

8                   MR. EIDE: WELCOME BACK. THIS IS MR. MERSON,  
9 AS WE'VE BEEN THROUGH, SCOTTY MERSON. AND THIS IS  
10 TRISH CASHMAN, MY CO-COUNSEL.

11                                   THERE ARE A FEW THINGS THAT WE TALKED  
12 ABOUT A LITTLE BIT. AND I WANT TO REQUIRE NOW AS WE  
13 GO THROUGH THE CASE, REMEMBER THOSE LITTLE THREE-WORD  
14 PHRASES: "PRESUMPTION OF INNOCENCE" AND "BEYOND A  
15 REASONABLE DOUBT".

16                                   AND THEN THERE'S ANOTHER THREESOME THAT  
17 WE WILL BE LOOKING AT, AND THIS IS THE CRUX OF WHAT  
18 YOUR DUTY WILL BE.

19                                   WHEN YOU GO BACK YOU'LL LOOK AT THE  
20 EVIDENCE AT THE END, AND YOU'LL WEIGH IT ALL. AND  
21 I WANT YOU TO DO THAT THROUGHOUT THE TRIAL. I WANT  
22 YOU TO LOOK AT WHAT'S BEING SAID AND LOOK AT WHAT IS  
23 BEING PRESENTED.

24                                   AND THERE ARE THREE THINGS THAT YOU SHOULD  
25 USE AS GUIDES THROUGHOUT THE TRIAL, AND THESE THREE

1 THINGS IS WHAT CAN CAUSE A REASONABLE DOUBT. THESE  
2 THREE THINGS ARE: LACK OF EVIDENCE, A CONFLICT IN  
3 THE EVIDENCE, OR THE EVIDENCE ITSELF.

4 THE JUDGE WILL INSTRUCT YOU AFTER THE TRIAL.  
5 BUT THROUGHOUT THE TRIAL I WANT YOU TO THINK ABOUT  
6 THOSE.

7 THERE WILL BE IN THIS CASE A LACK OF  
8 EVIDENCE. THERE WILL BE CONFLICTS IN THE EVIDENCE.  
9 AND THERE WILL BE THINGS IN THE EVIDENCE ITSELF THAT  
10 JUST DON'T MAKE SENSE.

11 THE CASE ITSELF, THE STATE MAY POINT TO  
12 AS AN ARGUING MATCH, AND WHO DO YOU BELIEVE THE MOST.  
13 BUT THE OTHER WAY TO LOOK AT IT, OVER CREDIBILITY,  
14 IS: DOES IT MAKE SENSE?

15 AND LIKE WE TALKED ABOUT, YOU ARE EXPERT  
16 WITNESSES TO THE WAY THINGS HAPPEN IN JUST NORMAL LIFE  
17 EXPERIENCES. THE THINGS THAT YOU'RE GOING TO HEAR  
18 TODAY AND TOMORROW WILL NOT MAKE SENSE. THERE'S A  
19 LOT OF PROBLEMS.

20 THE STATE SAYS THAT MR. MERSON WALKED INTO  
21 THE HOUSE, WALKED THROUGH THE HOUSE AND WENT INTO THE  
22 BEDROOM THEN COMMITTED THE CUNNILINGUS ON THE CHILD  
23 AND THEN LEFT.

24 BUT THE EVIDENCE WILL ALSO SHOW THAT THE  
25 DOORS WERE OPEN TO ALL THE OTHER BEDROOMS AND NO ONE

1 HEARD ANYTHING, NOT EVEN THE LIGHT SLEEPER, WILLIE  
2 STOCKWELL.

3 THEY'LL SAY, I'M SURE, "THAT WE THINK WE  
4 HEARD SOMETHING. WE THOUGHT SOMETHING CAME UP."

5 BUT NO ONE DID ANYTHING. NO ONE, SPECIFIC,  
6 CAME OUT. THERE WON'T BE ANY EVIDENCE OF HIM BEING  
7 THERE, EXCEPT THE STATEMENTS OF THE CHILDREN.

8 AND THEN THERE WILL BE QUESTIONS. DID THE  
9 CHILDREN SEE EXACTLY WHAT THEY'RE SAYING THEY SAW?  
10 DID THEY SEE SOMETHING CLOSE TO WHAT THEY'RE SAYING  
11 THEY SAW? IS IT POSSIBLE?

12 ARE THE FACTS AS THEY'RE LAYING THEM OUT  
13 POSSIBLE, GIVEN THE ACTUAL CIRCUMSTANCES OF THE TIME?  
14 THE TIME OF NIGHT, THE LIGHTING SITUATION, WHO WAS  
15 AWAKE, WHO WAS ASLEEP. WHAT THEY DID BEFORE IT  
16 HAPPENED AND WHAT THEY DID AFTERWARDS.

17 WE WILL PRESENT EVIDENCE. LIKE I TOLD YOU,  
18 THERE WILL BE THE REST OF THE STORY. THESE PEOPLE  
19 WILL TELL YOU WHAT HAPPENED THAT NIGHT, AND THEY'LL  
20 DESCRIBE WHAT DID HAPPEN.

21 WHAT THEY'LL SAY IS THAT SCOTTY CALLED  
22 SOMEWHERE AROUND NINE OR TEN O'CLOCK TO THEM AND SAID,  
23 "HEY, LET'S GET TOGETHER."

24 THEY WENT FROM APOPKA AND DROVE TO GET HIM,  
25 OUT TOWARDS THE AIRPORT; PICKED HIM UP; BROUGHT HIM

1 BACK TO APOPKA, TO THEIR HOUSE.

2 AT THAT POINT THEY ALL SAT DOWN AND WATCHED  
3 SOME MOVIES. THEY STOPPED ON THE WAY BACK AND GOT A  
4 SIX-PACK OF BEER AND SOME CIGARETTES. THEY WATCHED  
5 MOVIES.

6 ONE BY ONE THEY WENT TO SLEEP. THE LAST  
7 ONES AWAKE WAS MR. MERSON AND HIS GIRLFRIEND AND JUDY  
8 WILLEY AND TAMMY WILLEY, THE PERSONS WHOSE HOUSE THEY  
9 WERE STAYING.

10 AND THEY WILL TELL YOU HE WAS THERE WHEN  
11 THEY WENT TO SLEEP, AND HE WAS THERE WHEN THEY WOKE  
12 UP. AND HE HAD NO ACCESS TO GET FROM APOPKA TO  
13 COLLEGE PARK. AND THAT WILL BE WHAT THEY'RE GOING  
14 TO SAY.

15 THAT'S AN INKLING OF WHAT THE REST OF THE  
16 STORY WILL BE. AND, REMEMBER, WE TALKED ABOUT HOLDING  
17 OFF AND HEARING BOTH SIDES OF THE STORY.

18 NOW, REMEMBER, THAT THROUGHOUT THE CASE  
19 THE STATE WILL BE PRESENTING EVIDENCE. AND WE KNOW  
20 THAT THE STATE HAS TO PROVE EACH AND EVERY ELEMENT  
21 BEYOND A REASONABLE DOUBT.

22 AS THE TESTIMONY COMES OUT, WEIGH IT, LOOK  
23 AT IT AND DECIDE IT AT THAT POINT. AND BRING IT, EACH  
24 PIECE OF EVIDENCE, BRING IT FORWARD WITH YOU, WHETHER  
25 ITS BE FROM THE STATE, FROM THE CROSS-EXAMINATIONS

1 OR FROM THE DEFENSE.

2 AND, REMEMBER, IN WEIGHING THE EVIDENCE  
3 THE COMMON SENSE. DOES THAT SEEM RIGHT? DOES THAT  
4 FEEL RIGHT? IS THAT CORRECT? THIS IS GOING TO BE  
5 A COMMON SENSE SITUATION. AND THOSE ARE THE THINGS  
6 WE WILL BE ASKING YOU FOR; NOT SYMPATHY, NOT QUESTIONS,  
7 BUT APPLY YOUR COMMON SENSE.

8 NOW, THE TRIAL THAT WE'RE GOING TO HAVE --  
9 IT'S BASICALLY AN ARENA OF PEOPLE COMING FORTH AND  
10 TELLING YOU WHAT HAPPENED. NO ONE CAN BE THERE WHEN  
11 THINGS ALLEGEDLY HAPPENED. AND THE TRIAL WILL BE  
12 BRINGING FORTH THINGS THAT HAPPENED.

13 WE ASK YOU TO WATCH EACH THING AND BRING  
14 IT FORWARD AND WEIGH IT. BECAUSE YOU WILL BE THE  
15 ONES THAT ARE PAYING ATTENTION TO IT, LIKE A MOVIE.

16 REMEMBER, THAT MR. MERSON WAS ALLEGED TO  
17 HAVE DONE THIS. MR. MERSON WENT TO ARRAIGNMENT, WAS  
18 ARRAIGNED ON THE CHARGE. STOOD UP BEFORE A JUDGE,  
19 AND THEY ASKED HIM, "HOW DO YOU PLEA TO THIS CHARGE?"

20 AND HE SAID, "I AM NOT GUILTY. I'M NOT  
21 GUILTY OF EACH CHARGE. I WANT MY TRIAL. I WANT MY  
22 DAY IN COURT."

23 AND HERE WE ARE. HE STANDS HERE TODAY  
24 SAYING, "I'M NOT GUILTY," AND HE STANDS READY TO DEFEND  
25 HIMSELF AGAINST THE CHARGES OF THE STATE; REMEMBER THAT.

1 REMEMBER THAT HE HAS STEPPED FORWARD AND SAID, "I'M  
2 NOT GUILTY."

3 ALSO REMEMBER, THAT AS WE GO THROUGH IT,  
4 THE EVIDENCE WILL START PIECING TOGETHER. AND WHEN  
5 WE'RE DONE, THE EVIDENCE WILL BE PUT TOGETHER.

6 AND I'M CONFIDENT THAT AS YOU GO ALONG AND  
7 YOU HEAR THE TESTIMONY AND YOU HEAR WHAT THE STATE  
8 PRESENTS AND WHAT WE PRESENT ALSO, THROUGH OUR CASE  
9 AND THROUGH THE STATE'S CASE, THAT YOU'LL BE CONVINCED  
10 WHEN IT'S OVER, THAT ALTHOUGH SOMETHING MAY HAVE  
11 HAPPENED OR MAY NOT HAVE HAPPENED, THAT ALTHOUGH THE  
12 CHILDREN MAY BE NICE AND YOU MAY BELIEVE THEY'RE  
13 TELLING THE TRUTH, THAT IN THE END, WHEN THE ACTUAL  
14 JOB IS THERE AND THE ACTUAL QUESTION IS, THAT YOU'LL  
15 SEE THAT THE EVIDENCE DOESN'T SHOW AT ALL CLOSE TO A  
16 REASONABLE DOUBT THAT SCOTTY DID IN ANY WAY COMMIT A  
17 SEXUAL BATTERY ON ANGELA, NOR DID HE BREAK INTO THE  
18 HOUSE, NOR DID HE COMMIT A BATTERY ON THE CHILD. NONE  
19 OF THESE THINGS WILL BE PROVEN BEYOND A REASONABLE  
20 DOUBT.

21 AND WHEN YOU HEAR ALL THE EVIDENCE, WE'RE  
22 SURE THAT YOU WILL LOOK AT IT AND SAY THE STATE CANNOT  
23 PROVE, HAS NOT PROVEN THEIR CASE AND THAT MR. MERSON  
24 IS CORRECT WHEN HE SAYS HE'S NOT GUILTY. AND THAT  
25 WHEN YOU COME BACK, WE BELIEVE YOU'LL COME BACK WITH

1 A VERDICT OF NOT GUILTY.

2 I THANK YOU NOW FOR YOUR TIME AND ATTENTION.  
3 AND WHEN YOU COME BACK, WE ARE CONFIDENT THAT THE STATE  
4 WILL HAVE FAILED TO SHOW THEIR CASE. AND WE THANK YOU.

5 THE COURT: THE STATE --

6 MR. BENDER: YOUR HONOR, AT THIS TIME THE STATE  
7 WOULD INVOKE STATUTE 918.16, WHICH SAYS THAT THE  
8 COURTROOM BE CLEARED OF ALL BUT ESSENTIAL PEOPLE  
9 LISTED IN THE STATUTE DURING THE TESTIMONY OF BOTH  
10 MICHELLE AND ANGELA [REDACTED].

11 THE COURT: THE COURT SO INSTRUCTS THAT THE  
12 COURTROOM BE CLEARED OF ALL PARTIES EXCEPT THOSE  
13 THAT ARE ESSENTIAL FOR THE TRIAL.

14 THE STATE MAY CALL ITS FIRST WITNESS.

15 MR. BENDER: YOUR HONOR, THEY WERE SUPPOSED TO  
16 BE HERE AT 2:30.

17 THE COURT: COUNSEL, APPROACH THE BENCH.

18 (THEREUPON, COUNSEL APPROACHED THE BENCH, AND THE  
19 PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE JURY,  
20 AND OFF THE RECORD.)

21 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT RECESS.  
22 (THEREUPON, COURT RECESSED AT 2:40 P.M., TO RECONVENE  
23 AT 2:45 P.M., AFTER WHICH THE FOLLOWING TRANSPIRED:)

24 THE COURT: THE JURY IS ACROSS THE HALL?

25 THE COURT DEPUTY: YES, SIR.

1 THE COURT: MR. EIDE INDICATED THAT HE WANTED  
2 TO VOIR DIRE YOUR FIRST WITNESS AS TO HER COMPETENCY  
3 TO TESTIFY.

4 MR. EIDE: YES, YOUR HONOR. AT THIS TIME I ASKED  
5 MR. BENDER, AND HE STATED THAT HE WAS GOING TO PUT ON  
6 MICHELLE [REDACTED], WHO IS A SEVEN-YEAR-OLD GIRL. IT'S  
7 BASED UPON THE DEPOSITION ITSELF AND THE AGE.

8 THE COURT: ALL RIGHT. BRING HER IN.

9 MR. BENDER: YOUR HONOR, BEFORE WE DO THAT.  
10 YOUR HONOR, I'M OBJECTING AT THIS LATE JUNCTURE TO  
11 HAVING A COMPETENCY HEARING, MOMENTS BEFORE HER  
12 TESTIMONY, WHEN MR. EIDE HAS HAD THE CHANCE TO DEPOSE  
13 HER AND HAS NOT BROUGHT IT UP.

14 ANYWAY, MICHELLE [REDACTED] IS AMPLELY QUALIFIED  
15 AND COMPETENT AS A WITNESS. AND WE DO NOT UNDERSTAND  
16 THE REASON WHY MR. EIDE FEELS SHE IS NOT. HE HAS GIVEN  
17 NO REASON WHY HE FEELS SHE IS NOT.

18 THE COURT: WHAT'S THE BASIS?

19 MR. EIDE: YOUR HONOR, DURING DEPOSITION TAKEN  
20 OF MICHELLE [REDACTED] ON AUGUST 29TH, 1990, THE SPECIFIC  
21 QUESTIONS WERE ASKED TO WHICH SHE WAS UNABLE TO ANSWER  
22 CERTAIN THINGS. FOR INSTANCE: "HOW LONG HAVE YOU  
23 KNOWN SCOTTY?" "HAVE YOU GOT --

24 THE COURT: "HOW LONG HAVE YOU KNOWN HIM?" WHAT  
25 DOES THAT HAVE TO DO WITH HER COMPETENCY?



1 MR. EIDE: WELL, THERE'S A STRING OF THEM, YOUR  
2 HONOR. HAVE YOU GOT THE DEPOSITION IN FRONT OF YOU,  
3 YOUR HONOR?

4 THE COURT: I'VE GOT CATHY [REDACTED], TINA [REDACTED] AND  
5 ANGELA [REDACTED], MICHELLE [REDACTED], YEAH.

6 MR. EIDE: AS TO PAGE SIX IS WHERE THEY HAVE  
7 THAT. PAGE FOUR ASKS: "HOW LONG HAVE YOU KNOWN  
8 SCOTTY; DO YOU REMEMBER?"

9 "I DON'T KNOW."

10 PAGE SIX IS WHERE: "DO YOU LIVE RIGHT NOW?"

11 "I DON'T KNOW."

12 THE COURT: WHAT IS THIS? PAGE FOUR IS WHAT?

13 MR. EIDE: PAGE FOUR, THE QUESTION AT LINE 21:  
14 "HOW LONG HAVE YOU KNOWN SCOTTY; DO YOU REMEMBER?"

15 ANSWER: "NO."

16 THE COURT: "KNOWN HIM FOR A LONG TIME?"

17 "NOT TOO LONG."

18 MR. EIDE: SHE HAD TROUBLE WITH TIMES AND DATES  
19 AND DISTANCES. AS TO PAGE SIX, LINES 24 AND 25, IT  
20 STATES: "WHERE DO YOU LIVE RIGHT NOW?"

21 ANSWER: "I DON'T KNOW."

22 THE COURT: IT SAYS SHE LIVES AT HER GRANDMA'S  
23 HOUSE.

24 MR. EIDE: IT STATES: "WHERE DO YOU LIVE NOW?"

25 "I DON'T KNOW."

1 THE COURT: WHAT?

2 MR. EIDE: HER ANSWER WAS ON LINE --

3 THE COURT: YEAH. BUT CLARIFYING, FURTHER ON  
4 DOWN, IT SAYS: "DO YOU LIVE IN A HOUSE?"

5 "YES."

6 "OKAY. WHOSE HOUSE IS IT?"

7 "MY GRANDMOTHER'S."

8 MR. EIDE: IT TOOK FURTHER QUESTIONING. SHE DOESN'T  
9 KNOW THE ADDRESS.

10 ON PAGE EIGHT, QUESTION LINE 18, WE GO  
11 FURTHER: "HOW LONG AGO WAS IT WHEN SCOTTY CAME INTO  
12 YOUR HOUSE?" THAT'S A COMBINATION OF LINES 15 TO 18.

13 SHE SAYS: "I DON'T KNOW."

14 LINE 20: "OKAY. WERE YOU IN SCHOOL AT  
15 THE TIME?"

16 THE ANSWER: "I DON'T REMEMBER."

17 LINE 22, THE QUESTION WAS: "ALL RIGHT.  
18 DO YOU REMEMBER WHAT DAY OF THE WEEK IT WAS?"

19 LINE 24, ANSWER: "HUH-UN."

20 YOUR HONOR, THE STATEMENT THAT WAS TAKEN  
21 BY INVESTIGAATOR ROACH DIRECTLY AFTER THE EVENT, WHICH  
22 I BELIEVE THIS WAS ON THE 18TH -- DOES THE COURT HAVE  
23 THAT ALSO IN ITS POSSESSION?

24 THE COURT: WHAT IS IT?

25 MR. EIDE: THE TRANSCRIPT OF THE STATEMENT OF

1 MICHELLE ██████, TAKEN BY INVESTIGAATOR ROACH.

2 MR. BENDER: HE WOULD NOT HAVE THAT.

3 MR. EIDE: IT'S PART OF DISCOVERY, YOUR HONOR.  
4 YOU WOULDN'T HAVE IT?

5 MR. BENDER: IT DOESN'T GO TO THE COURT FILE.

6 MR. EIDE: IT SAYS AT ONE POINT FOR THE STATE,  
7 ON PAGE SEVEN, THE QUESTION WAS: "WHAT DOES THE  
8 TRUTH MEAN?"

9 THE ANSWER WAS: "I CAN'T EXPLAIN IT, BUT  
10 I KNOW WHAT IT MEANS."

11 I'LL SHOW THAT TO THE COURT NOW.

12 THE COURT: THAT'S UP TO THE STATE TO ESTABLISH  
13 THAT SHE KNOWS RIGHT FROM WRONG. SO THAT MAY NOT BE  
14 ADMISSIBLE, IF SHE'S NOT PROPERLY PLACED UNDER OATH.

15 MR. EIDE: WE WERE MERELY CONCERNED ABOUT HER  
16 ABILITY TO TESTIFY, GIVEN THE AGE AND WHAT THE TRUTH  
17 AND LIE WAS.

18 MR. BENDER: YOUR HONOR, IT'S NOT LIKE SHE IS  
19 THE ONLY WITNESS. ANGELA ██████ HAS CORROBORATED  
20 EVERYTHING MICHELLE ██████ HAS SAID. IT'S NOT LIKE  
21 WE'RE NOT SURE THESE EVENTS TOOK PLACE.

22 MR. EIDE: YOUR HONOR, THAT'S NOT THE POINT AS  
23 TO WHETHER OR NOT SOMEBODY IS COMPETENT.

24 THE COURT: COMPETENCY TO TESTIFY NEEDS TO BE  
25 ESTABLISHED BY THE STATE DURING THEIR QUESTIONING OF

1 HER, BASED ON HER AGE AND HER ABILITY TO DETERMINE  
2 RIGHT FROM WRONG, TRUTH FROM UNTRUTH.

3 THAT WILL BE ESTABLISHED BY THE STATE AS  
4 TO WHETHER SHE CAN TESTIFY BASED ON HER KNOWLEDGE OF  
5 RIGHT AND WRONG, OR TRUTH AND UNDERSTANDING TRUTH.

6 THE REQUEST TO VOIR DIRE WILL BE DENIED.  
7 I SAY, IT WILL BE DENIED. IF I THINK IT'S APPROPRIATE  
8 I MAY ALLOW VOIR DIRE, OR I MAY VOIR DIRE. BUT AT  
9 THIS POINT WE'RE NOT GOING TO DO IT.

10 RETURN THE JURY.

11 (THEREUPON, THE JURY ENTERED THE COURTROOM, AFTER WHICH  
12 THE FOLLOWING PROCEEDINGS TRANSPIRED:)

13 THE COURT: THE STATE MAY PROCEED AND CALL ITS  
14 FIRST WITNESS.

15 MR. BENDER: YOUR HONOR, AT THIS TIME WE WOULD  
16 CALL MICHELLE ██████.

17 YOUR HONOR, MAY WE APPROACH THE BENCH FOR  
18 A SECOND?

19 THE COURT: HMM-HMM.

20 (THEREUPON, PROCEEDINGS WERE HAD OUTSIDE THE PRESENCE  
21 OF THE JURY, AND OFF THE RECORD.)

22 THE COURT: NOW, DON'T HAVE A SEAT YET.

23 SHE HASN'T BEEN PLACED UNDER OATH, HAS SHE?

24 THE COURT DEPUTY: NO.

25 THE COURT: YOUR NAME IS MICHELLE; IS THAT RIGHT?