

1 OCTOBER 16, 1990

2 2:10 O'CLOCK P.M.

3 P R O C E E D I N G S

4 THE COURT: COUNSEL, APPROACH THE BENCH.

5 (THEREUPON, COUNSEL APPROACHED THE BENCH, AND THE  
6 FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE  
7 JURY, AND ON THE RECORD AS FOLLOWS:)

8 THE COURT: WHAT'S ALL THIS? DO YOU HAVE ANY  
9 DISAGREEMENT?

10 MR. BENDER: NO, YOUR HONOR TO SAVE SOME TIME  
11 WE DON'T. THE ONLY THING, WE WOULD ASK THAT THEY NOT  
12 BE ALLOWED TO MAKE ANY MENTION OF THESE ITEMS, EITHER.

13 THE COURT: WHAT?

14 MR. BENDER: THAT THEY NOT BE ALLOWED TO DISCUSS  
15 THESE MATTERS, EITHER.

16 MR. EIDE: THAT WE NOT BE ALLOWED TO MARK THEM?

17 MR. BENDER: RIGHT.

18 THE COURT: WELL, THAT'S THEIR PREROGATIVE, IF  
19 THEY WANT TO GO INTO THOSE MATTERS THEY HAVE A RIGHT  
20 TO DO THAT.

21 MR. BENDER: THE ONLY THING I'M CONCERNED ABOUT,  
22 YOUR HONOR, IS THE HAIR FIBERS. ✓

23 MR. EIDE: YOUR HONOR THERE ARE TWO OTHERS THAT  
24 I NOTED AFTER THIS LIST WAS PREPARED.

25 MR. BENDER: I'M SORRY. I DIDN'T HEAR THAT.

1 MR. EIDE: THERE ARE TWO OTHERS THAT I NOTED  
2 AFTER THIS LIST WAS PREPARED. ✓

3 MR. BENDER: WHAT'S THAT? ✓

4 THE COURT: THERE'S NOT GOING TO BE ANY HAIR ✓  
5 TESTIMONY?

6 MR. BENDER: NO, YOUR HONOR. ✓

7 THE COURT: AND YOU'RE NOT GOING TO OFFER ANY  
8 TESTIMONY IN THAT REGARD. ✓

9 MR. EIDE: NO, YOUR HONOR.

10 THE COURT: OKAY ANYTHING ELSE WE HAVE TO TAKE  
11 CARE OF?

12 MR. EIDE: YOUR HONOR, IN THE TESTIMONY THE  
13 OFFICER SAID THAT HE FOUND SOME PORNO MAGAZINES  
14 OVER AT SCOTTY'S HOUSE DURING THE SEARCH WARRANT.

15 WE THINK THAT'S IRRELEVANT AS TO ANYTHING  
16 HE FOUND OVER AT THE HOUSE.

17 THE COURT: I DON'T KNOW WHY THAT WOULD BE  
18 RELEVANT.

19 MR. BENDER: I DO NOT EVEN RECALL THAT. THIS  
20 IS THE FIRST TIME I'VE HEARD ABOUT IT.

21 MR. EIDE: HE SAID SOMETHING ALLEGED TO BE  
22 HOMOSEXUAL TOOLS.

23 MR. BENDER: WE'RE NOT GOING TO MENTION ANY OF  
24 THAT, YOUR HONOR.

25 MR. EIDE: THE OTHER THING IS THE STATE HAD FILED

1 NOTICE TO USE HEARSAY STATEMENTS AND BEFORE THEY PLAN  
2 ON DOING SO WE WOULD HAVE ARGUMENT AS TO THAT.

3 MR. BENDER: I THINK AT THE APPROPRIATE TIME --

4 THE COURT: JUST WHEN YOU GET READY TO OBJECT,  
5 IF IT'S MORE THAN JUST THE NORMAL OBJECTION JUST ASK  
6 TO APPROACH THE BENCH RATHER THAN STARTING INTO IT  
7 THERE AT THE TABLE.

8 MR. BENDER: I THINK AN APPROPRIATE TIME TO TAKE  
9 THAT MATTER UP WOULD BE AFTER THE TWO GIRLS TESTIFY,  
10 AND THEN I HAVE NO PROBLEM WITH A SHORT HEARING.

11 THE COURT: ALL RIGHT.

12 MR. EIDE: MY UNDERSTANDING IS ALL THE MOTIONS  
13 IN LIMINE WERE GRANTED.

14 THE COURT: I HAVEN'T STUDIED THIS, SO IF THE  
15 STATE OBJECTS TO ANY ONE OF THESE THINGS, WE'LL LOOK  
16 AT IT INDIVIDUALLY.

17 MR. BENDER: NO.

18 THE COURT: I DON'T HAVE ANY PROBLEM WITH THIS  
19 UNTIL THE STATE SAYS, "WAIT A MINUTE. I DIDN'T  
20 REALIZE THIS WAS IN HERE. CAN WE APPROACH THE BENCH?"  
21 AND THEN I'LL DISCUSS THAT AGAIN. BECAUSE I HAVEN'T  
22 READ EACH ONE OF THESE.

23 MS. CASHMAN: AT THIS POINT THERE'S A STIPULATION  
24 FROM THE STATE.

25 MR. BENDER: YOUR HONOR, I HAVE NO PROBLEM WITH

1 IT, AND I'VE REVIEWED IT.

2 THE COURT: DO YOU WISH TO HAVE THE INSTRUCTION  
3 CONCERNING YOUR CLIENT'S RIGHT TO REMAIN SILENT READ?

4 MR. EIDE: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

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

7 MR. EIDE: YOUR HONOR, ONE OTHER THING. AT  
8 THIS TIME WE WOULD ASK THE COURT TO NOTE THAT THE  
9 DEFENSE WOULD REQUEST THE RULE BE INVOKED.

10 MR. BENDER: THE STATE WOULD REQUEST THE SAME,  
11 YOUR HONOR.

12 THE COURT: I DON'T KNOW WHETHER THESE FOLKS  
13 ARE, OR NOT.

14 MR. EIDE: THEY'RE NOT WITNESSES.

15 THE COURT: SO BOTH SIDES ARE ADVISED THAT THE  
16 RULE OF SEQUESTRATION HAS BEEN INVOKED, AND YOU ARE  
17 TO ADVISE YOUR WITNESSES ACCORDINGLY.

18 MR. EIDE: OUR WITNESSES HAVE BEEN SO INFORMED,  
19 YOUR HONOR.

20 MR. BENDER: AS HAVE THE STATE WITNESSES, YOUR  
21 HONOR.

22 THE COURT: ALL RIGHT. COUNSEL APPROACH THE  
23 BENCH.

24 (THEREUPON, COUNSEL APPROACHED THE BENCH, AND THE  
25 FOLLOWING PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE

1 JURY, AND ON THE RECORD AS FOLLOWS:)

2 THE COURT: I WOULDN'T CALL THIS EXACTLY TIMELY.  
3 I ASSUME YOU FILED THIS BEFORE AND PUT THEM ON NOTICE.

4 MR. EIDE: I GAVE IT TO MARK THE OTHER DAY. IT ✓  
5 WAS AN OVERSIGHT. THEY HAD TAKEN A STATEMENT FROM ME  
6 AT THE TIME. I JUST DIDN'T LIST THEM. I MADE IT  
7 AVAILABLE LAST MONDAY, WITHOUT SUBPOENA AND EVERYTHING.  
8 MARK TALKED TO THEM. THERE WAS NO OBJECTION.

9 THE COURT: BUT YOU HAD ALREADY GIVEN THEM A  
10 PRIOR NOTICE, WITH OTHER WITNESSES

11 MR. EIDE: YES, SIR.

12 MR. BENDER: WE'RE NOT COMPLAINING ABOUT THAT.  
13 (THEREUPON, THE SIDE-BAR CONFERENCE WAS CONCLUDED.)

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY,  
15 YOU HAVE BEEN SELECTED AND SWORN AS THE JURY TO TRY  
16 THE CASE OF THE STATE OF FLORIDA VERSUS SCOTTY MERSON.

17 THIS IS A CRIMINAL CASE. AND SCOTTY MERSON,  
18 THE DEFENDANT, IS CHARGED WITH TWO SEPARATE CRIMES;  
19 THE CRIME OF SEXUAL BATTERY IN COUNT ONE, AND THE  
20 CRIME OF BURGLARY OF A DWELLING WITH BATTERY THEREIN,  
21 AS ALLEGED IN COUNT TWO OF THE INFORMATION.

22 THE STATE OF FLORIDA, ALLEGING THROUGH  
23 LAWSON LARMAR, STATE ATTORNEY OF THE NINTH JUDICIAL  
24 CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE  
25 COUNTY, OR LAWSON LAMAR, STATE ATTORNEY OF THE NINTH