

1 THE COURT: HOW MANY WITNESSES HAVE YOU GOT?

2 MR. EIDE: YOUR HONOR, WE'VE GOT, I BELIEVE,
3 ABOUT SEVEN.

4 THE COURT: ALL RIGHT.

5 MR. EIDE: WILL WE BE CALLING THEM TONIGHT?

6 THE COURT: WE'LL PROBABLY CALL SOME OF THEM.

7 MR. EIDE: CAN I GO AHEAD AND GET AHOLD OF SOME
8 OF THEM?

9 THE COURT: I'M GOING TO BRING THE JURY BACK IN.

10 MR. BENDER: YOUR HONOR, JUST BEFORE WE DO THAT
11 I THOUGHT THIS MIGHT BE AN APPROPRIATE TIME TO TAKE
12 UP THE STATE'S MOTION FOR HEARSAY, SINCE WE'RE NOT
13 BREAKING AND THE NEXT FEW WITNESSES WILL BE BRINGING
14 UP SOME HEARSAY. AND I THOUGHT WHILE THE JURY IS OUT
15 WE CAN DO THAT NOW.

16 THE COURT: ALL RIGHT. DO YOU HAVE A WRITTEN
17 MOTION FILED?

18 MR. BENDER: YES, YOUR HONOR, THE NOTICE OF
19 INTENT SHOULD BE IN THE COURT FILE.

20 THE COURT: DOES THE DEFENSE WISH TO MAKE ARGUMENT
21 ON THAT?

22 MR. EIDE: YES, WE WOULD, YOUR HONOR. I'M TRYING
23 TO LOCATE THE PHONE NUMBERS FOR MS. CASHMAN TO CALL
24 OUR WITNESSES.

25 THE COURT: WELL, I DON'T SEE THE MOTION.

1 MR. BENDER: YOUR HONOR, IT WAS FILED SOME MONTHS
2 AGO. I DON'T KNOW WHY IT'S NOT IN THE COURT FILE.

3 IT'S A "NOTICE OF INTENT TO USE HEARSAY
4 STATEMENTS AND MOTION TO ADMIT THEM DURING TRIAL,"
5 IS THE TITLE. I HAVE AN EXTRA COPY, IF YOU WOULD
6 LIKE TO SEE IT.

7 THE COURT: I SURE DON'T SEE THE MOTION. OH,
8 HERE WE ARE. FILED ON JUNE 12TH. ALL RIGHT.

9 MR. BENDER: WE WOULD LIKE TO --

10 THE COURT: I WASN'T THINKING BACK FAR ENOUGH.

11 MR. BENDER: WELL, I WANTED TO GET IT IN BEFORE
12 THE TEN-DAY RULE REQUIREMENT.

13 THE COURT: YOU SUCCEEDED.

14 MR. BENDER: YOUR HONOR. THE STATUTE IN QUESTION
15 THAT THE STATE WOULD BE RELYING ON IS FOUND IN THE
16 EVIDENCE CODE, FLORIDA STATUTE 90.803(23).

17 THE COURT: WHAT HEARSAY STATEMENTS ARE YOU GOING
18 TO ASK THEM? YOU ARE GOING TO ASK THE MOTHER TO TESTIFY
19 AS TO WHAT THE DAUGHTER HAS TOLD HER?

20 MR. BENDER: THE MOTHER, AS TO BOTH DAUGHTERS;
21 AND, INVESTIGATOR ROACH, AS TO BOTH. THOSE WOULD BE
22 THE ONLY HEARSAY STATEMENTS WE WOULD UTILIZE.

23 THE COURT: WHAT IS THE DEFENSE'S RESPONSE?

24 MR. EIDE: WE WOULD LIKE TO APPROACH THIS IN A
25 TWO-POINT SITUATION.

1 FIRST OF ALL, AS TO THE HEARSAY STATEMENTS
2 BY MICHELLE [REDACTED], 90.803(23) APPLIES ONLY TO THE
3 VICTIM OF A SEXUAL ABUSE, NOT A WITNESS. IF THE
4 COURT WOULD LOOK AT THE ACTUAL LANGUAGE OF THE
5 STATUTE, THEY WOULD SEE THAT.

6 AND THERE'S ALSO A CASE, CHILDRESS V.
7 STATE, 543 SO.2D 413, FLORIDA FIRST DISTRICT, 1989.

8 IT SAYS IN THERE, YOUR HONOR: "MORE
9 IMPORTANTLY, WE NOTE THAT THE TRIAL COURT ERRED IN
10 HOLDING THAT 90.803(23) APPLIES TO NON-SEXUAL ABUSE,
11 NON-SEXUAL CHILD ABUSE CASES."

12 THE COURT: WE HOLD WHAT?

13 MR. EIDE: "MORE IMPORTANTLY, WE NOTE THAT THE
14 TRIAL COURT ERRED IN HOLDING THAT 90.803(23) APPLIES
15 TO NON-SEXUAL CHILD ABUSE CASES."

16 IN OTHER WORDS, THIS WOULD NOT APPLY TO A
17 CASE EXCEPT WHERE THE VICTIM IS --

18 THE COURT: WELL, DOES THE STATE HAVE ANY ARGUMENT
19 TO THAT?

20 MR. BENDER: YOUR HONOR, IF YOU READ THE LANGUAGE
21 IN THE STATUTE, IT SAYS, ET CETERA, ET CETERA, "OR
22 ANY OTHER OFFENSE INVOLVING AN UNLAWFUL SEXUAL ACT,
23 CONTACT, INTRUSION, OR PENETRATION PERFORMED IN THE
24 PRESENCE OF, WITH, BY, OR ON THE DECLARANT CHILD."

25 CLEARLY, THE STATUTE DOES NOT REQUIRE THAT

1 MICHELLE ██████ BE THE VICTIM OF SEXUAL ABUSE, AS LONG
2 AS IT HAPPENED IN HER PRESENCE. SHE WAS IN THE BED.

3 MR. EIDE: YOUR HONOR --

4 THE COURT: WAIT. WAIT.

5 MR. EIDE: WE HAVE FURTHER ARGUMENT.

6 MR. BENDER: DO YOU HAVE ANOTHER COPY OF THAT
7 CASE?

8 MR. EIDE: I DON'T, MARK, AND I APOLOGIZE.

9 MR. BENDER: COULD I SEE YOUR COPY FOR A MOMENT?

10 MR. EIDE: YOU'RE WELCOME TO. HERE YOU GO, MARK.
11 THAT'S MY ERROR.

12 MR. BENDER: THAT'S ALL RIGHT.

13 THE COURT: OKAY. DOES THE STATE WANT TO MAKE
14 ANY OTHER ARGUMENT?

15 MR. BENDER: YOUR HONOR, FIRST OF ALL, THIS IS
16 A FIRST DISTRICT COURT OF APPEAL. AND WITH ALL DUE
17 RESPECT, I THINK THAT THIS APPELLATE COURT HAS
18 INTERPRETED THE LANGUAGE OF 90.803(23).

19 THE COURT HAS READ IT. IT INDICATES THAT.

20 THE COURT: GET RID OF YOUR GUM. GO AHEAD.

21 MR. BENDER: THE STATUTE INDICATES THAT:

22 "ANY CHILD WITH A PHYSICAL, MENTAL, EMOTIONAL,
23 OR DEVELOPMENTAL AGE OF ELEVEN OR LESS DESCRIBING ANY
24 ACT OF CHILD ABUSE, SEXUAL ABUSE, OR ANY OTHER OFFENSE
25 INVOLVING AN UNLAWFUL SEXUAL ACT."

1 NOW, HERE, CLEARLY, "A SEXUAL ABUSE OR ANY
2 OFFENSE INVOLVING UNLAWFUL SEXUAL ACT" IS COVERED.

3 "CHILD ABUSE" COVERS MANY DIFFERENT VARYING FORMS.

4 AND I THINK CHILDRESS FAILS TO COVER THAT
5 IN THEIR OPINION, WHEN THEY STATE THAT: "MORE
6 IMPORTANTLY, WE NOTE THAT THE TRIAL COURT ERRED IN
7 HOLDING THAT 90.803(23) APPLIES TO NON-SEXUAL CHILD
8 ABUSE CASES." CLEARLY, THE LANGUAGE OF THE STATUTE
9 DOES.

10 MORE IMPORTANTLY, WE HOLD THAT MICHELLE
11 IS A VICTIM OF A BATTERY COMMITTED UPON HER WHILE
12 MR. MERSON BURGLARIZED THE HOME.

13 AND, CLEARLY, ANY CHILD THAT WAS IN THE
14 PRESENCE OF ANOTHER CHILD BEING SEXUALLY ABUSED, IT
15 CLEARLY ALLOWS THAT TO BE ADMITTED, IF THE CHILD IS
16 UNDER THE AGE OF ELEVEN, AS LONG AS THE COURT FINDS
17 THAT THERE ARE OTHER INDICATIONS OF RELIABILITY.

18 THE COURT: IT TALKS ABOUT THE VICTIM. IT SAYS:
19 "UNLESS THE SOURCE OF INFORMATION OR THE METHOD OR
20 CIRCUMSTANCES BY WHICH THE STATEMENT IS REPORTED
21 INDICATES A LACK OF TRUSTWORTHINESS, AN OUT-OF-COURT
22 STATEMENT MADE BY A CHILD VICTIM WITH A PHYSICAL,
23 MENTAL, EMOTIONAL, OR DEVELOPMENTAL AGE OF ELEVEN
24 OR LESS DESCRIBING ANY ACT OF CHILD ABUSE, SEXUAL
25 ABUSE OR ANY OTHER OFFENSE INVOLVING AN UNLAWFUL

1 SEXUAL ACT, CONTACT, INTRUSION, OR PENETRATION."

2 I REALLY, I THINK THE FIRST DISTRICT COURT
3 OF APPEALS IS WRONG ON THIS. BUT I DON'T THINK IT'S --

4 MR. EIDE: WE HAVE FURTHER ARGUMENT, TOO.

5 THE COURT: IT SAYS: "ANY ACT OF CHILD ABUSE,"
6 RIGHT IN THE THING. I DON'T KNOW HOW THEY CAN RULE
7 THAT IT DOESN'T APPLY TO NON-SEXUAL CHILD ABUSE.

8 MR. BENDER: YOUR HONOR, MORE IMPORTANTLY --

9 THE COURT: YOU ALL SHEPARDIZED THIS. WERE THERE
10 NO OTHER DECISIONS ON THIS?

11 MR. EIDE: NOTHING ELSE, YOUR HONOR, AT THIS TIME.

12 MR. BENDER: GO AHEAD. BUT I JUST HAD A COUPLE
13 OF MORE POINTS I WOULD LIKE TO BRING OUT, YOUR HONOR.

14 MR. EIDE: YOUR HONOR, LET ME PUT OUT THE OTHER
15 PRONGS OF THE ARGUMENT.

16 FIRST OF ALL, YOUR HONOR, I WOULD REFER THE
17 COURT TO TREATISE OF EHRHARDT ON EVIDENCE. MR. EHRHARDT
18 IS, OF COURSE, A WELL RENOWN AUTHOR ON THE EVIDENCE AREA.
19 IN HIS BOOK "FLORIDA EVIDENCE BY CHARLES EHRHARDT" --
20 THIS IS THE 1984 EDITION -- HE DISCUSSES --

21 THE COURT: WHEN WAS THIS LAW ADOPTED?

22 MR. EIDE: EXCUSE ME, YOUR HONOR?

23 THE COURT: WHEN WAS THE LAW ADOPTED?

24 MR. EIDE: THE STATUTE ITSELF WAS IN 1986, WITH
25 EIGHT ADDITIONS UNTO '87.

1 HE STATES IN HERE IN ON PAGE 193 OF THE
2 POCKET PART FOR 1989, THE MOST CURRENT ONE TO THE
3 BOOK, AND I'LL QUOTE: "THE EXCEPTION DOES NOT APPLY --
4 THE EXCEPTION TO 90.803(23) -- "THE EXCEPTION DOES
5 NOT APPLY TO STATEMENTS BY CHILDREN WHO ARE WITNESSES
6 BUT ARE NOT VICTIMS."

7 IT THEN REFERS TO FOOTNOTE THREE:
8 "THE SUBSEQUENT INCLUSION IN THE PROVISION OF SEXUAL
9 ACTS" -- AND IT'S IN QUOTATIONS -- "'PERFORMED IN THE
10 PRESENCE OF,' UNQUOTE, "THE DECLARANT WAS INTENDED TO
11 MAKE THE EXCEPTION APPLICABLE TO LEWD AND LASCIVIOUS
12 ACTS IN WHICH THERE WAS NO TOUCHING OF THE CHILD.
13 THE EARLIER LANGUAGE IN THE SUBSECTION MAKES CLEAR
14 THAT ONLY 'OUT-OF-COURT STATEMENTS MADE BY A CHILD
15 VICTIM ARE INCLUDED.'"

16 SO, IN OTHER WORDS, THOSE WORDS THAT THE
17 STATE ARGUED APPLIED TO NON-VICTIMS WERE ONLY TO
18 ASSIST A VICTIM OF A LEWD AND LASCIVIOUS ACT. ✓

19 AND I CAN GIVE THE COURT THE COPY OF THE
20 EHRHARDT.

21 THE COURT: NO, SIR. ✓

22 MR. BENDER: YOU SAY THAT IS A 1984 EDITION?

23 MR. EIDE: THE 1989 POCKET PART. THIS IS THE
24 UPDATED VERSION OF HIS BOOK.

25 MR. BENDER: I NOTICE THIS AMENDMENT TO THE

1 HEARSAY WAS FORMULATED IN 1985, AND IF I READ THE
2 '85 CHAPTER CORRECT. THAT IS THE YEAR, REGARDLESS
3 OF THE POCKET PART, YOUR HONOR -- I DON'T KNOW IF
4 HE IS ADDRESSING JUST MICHELLE OR ANGELA.

5 MR. EIDE: I'M ADDRESSING MICHELLE ONLY IN THE
6 FIRST ONE I PRESENTED.

7 THE COURT: MICHELLE IS THE SEVEN-YEAR-OLD? ✓

8 MR. BENDER: RIGHT.

9 MR. EIDE: I PRESENTED TWO PRONGS OF MY THREE-PRONG
10 ARGUMENT.

11 THE COURT: WELL, LET'S HEAR THE OTHER PRONG.

12 MR. EIDE: YOUR HONOR, THE OTHER PRONG IS NOT
13 ONLY DOES THIS HAVE TO MEET THE ADMISSIBILITY STANDARD
14 IN ORDER TO BE ADMITTED, JUST THE FACT THAT THERE'S
15 AN EXCEPTION, IT ALSO HAS TO MEET THE RELEVANCY.

16 THE COURT: RELEVANCY?

17 MR. EIDE: THAT'S CORRECT. IT HAS TO BE RELEVANT
18 IN THIS CASE. AND IT WOULD ONLY BE RELEVANT -- IF YOU
19 READ THE STATUTE, IT WOULD ONLY BE RELEVANT IF THE STATE
20 SHOWS AND CAN OVERCOME OUR BELIEF THAT IT INDICATES A
21 LACK OF TRUSTWORTHINESS, OR THE CIRCUMSTANCES LACK
22 TRUSTWORTHINESS.

23 WE'VE HEARD HER TESTIMONY HERE IN COURT ✓
24 TODAY. AND I THINK THE CIRCUMSTANCES THAT THE STATEMENT
25 WAS TAKEN IN, AND AS SHOWN BY TODAY, INDICATES A LACK

1 OF TRUSTWORTHINESS; DONE BY AN OFFICER AT THE TIME,
2 WITH SEVEN OR EIGHT OTHER PEOPLE AROUND ELICITING THE
3 INFORMATION.

4 AND THE OTHER PORTION OF RELEVANCY --

5 THE COURT: WHY DOES IT LACK TRUSTWORTHINESS?

6 MR. EIDE: BECAUSE WE'VE HEARD HER TESTIFY TODAY.

7 AND HER TESTIMONY TODAY WAS A BIT CONFUSED AND NOT
8 SURE OF WHAT HAPPENED WHERE.

9 AND AT THE TIME WHEN SHE HAD SEVEN OR EIGHT
10 PEOPLE THERE WITH HER, SHE WAS GOING OVER THE TESTIMONY,
11 OR GOING THROUGH IT WITH HER, AND THE OFFICER GOING
12 THROUGH IT WITH HER. THEN IS WHEN THE STATEMENT WAS
13 ORIGINALLY TAKEN. AND ALSO --

14 THE COURT: WHAT DOES THAT HAVE TO DO WITH
15 TRUSTWORTHINESS?

16 MR. EIDE: THE STATEMENT? I QUESTION WHETHER THE
17 STATEMENT WAS HERS OR WAS SOMETHING SHE WAS REPEATING
18 FROM JUST HAVING HEARD IT.

19 THE COURT: WHAT EVIDENCE DO YOU HAVE THAT SOMEBODY
20 WAS REPEATING THIS TO HER?

21 MR. EIDE: THERE WERE SEVEN OR EIGHT PEOPLE THAT
22 WERE THERE. THE OFFICERS SHOWED UP. THEY WERE PULLED
23 OUT OF SCHOOL EARLY.

24 THE COURT: WELL, I DON'T AGREE WITH THE FIRST
25 DISTRICT COURT OF APPEAL. I THINK THAT A VERBATIM

1 READING OF THE SECTION, SECTION 23, I THINK -- I JUST
2 DON'T SEE WHERE THE FIRST DISTRICT COURT OF APPEALS
3 GETS THEIR CONCLUSIONS.

4 HOWEVER, AND IT CERTAINLY SHOULD HAVE BEEN
5 REVIEWED, I WOULD THINK, BY THE SUPREME COURT.

6 IT GOES ON, AS FAR AS THE INTENT, AT THE
7 BOTTOM OF PAGE 414: "WHEREAS, IT IS NECESSARY THAT
8 SAFEGUARDS BE INSTITUTED FOR THE CHILDREN OF THE STATE
9 OF FLORIDA WHO ARE VICTIMIZED TO ASSURE THAT THEIR RIGHT
10 TO BE FREE FROM EMOTIONAL HARM AND TRAUMA OCCASIONED BY
11 JUDICIAL PROCEEDINGS IS PROTECTED BY THE COURT.

12 "WHEREAS, EFFECTIVE HAANDLING OF CHILD
13 ABUSE CASES IN THE JUDICIAL SYSTEM IS ESSENTIAL TO
14 FUTURE PROTECTION OF THE CHILD."

15 THE WHEREAS CLAUSE, IT TALKS ABOUT THE
16 CHILD ABUSE CASES. IT TALKS ABOUT: ANY ACT OF CHILD
17 ABUSE, COMMA, SEXUAL ABUSE, COMMA, OR ANY OTHER OFFENSE
18 INVOLVING AN UNLAWFUL SEXUAL ACT, COMMA, CONTACT,
19 INTRUSION, OR PENETRATION PERFORMED IN THE PRESENCE
20 OF, WITH, BY, OR ON THE DECLARANT CHILD.

21 AND HERE WE HAVE A CONTACT ON THE DECLARANT
22 CHILD. AND I THINK THAT THE FIRST DISTRICT COURT OF
23 APPEALS IS STRETCHING THE INTERPRETATION TO LIMIT IT
24 TO ONLY SEXUAL ACTS, OR SEXUAL ABUSE, AND SAY IT DOESN'T
25 APPLY TO NON-SEXUAL CHILD ABUSE.

1 HOWEVER, I DON'T HAVE ANY OTHER CASES TO GO
2 ON. AND WHILE I DON'T AGREE WITH THE FIRST DISTRICT
3 COURT OF APPEALS' INTERPRETATION, THERE'S NO OTHER
4 APPARENT REVIEW ON THIS FOR TESTIMONY OTHER THAN
5 SEXUAL ABUSE CASES, AS THEY CITE IN THERE THAT THERE
6 ARE NUMEROUS OTHER CASES APPARENTLY OF SEXUAL ABUSE,
7 BUT APPARENTLY NONE OTHER FOR NON-SEXUAL ABUSE.

8 MR. BENDER: YOUR HONOR, ANGELA ██████ -- THERE'S
9 NO QUESTION THAT A SEXUAL ACT WAS COMMITTED UPON HER.

10 THE COURT: OH, I'M TALKING ABOUT THE YOUNGER GIRL.

11 MR. BENDER: IF WE LOOK AT THE LANGUAGE OF THE
12 STATUTE, A LEWD ACT OR A CAPITAL SEXUAL BATTERY WAS
13 COMMITTED NOT ONLY UPON ANGELA ██████ BUT IT WAS ALSO
14 COMMITTED IN THE PRESENCE OF MICHELLE ██████.

15 THE COURT: NO, NOT BY HER KNOWLEDGE. SHE DIDN'T
16 KNOW WHAT WAS HAPPENING. ✓

17 MR. BENDER: IT DOESN'T SAY ANYWHERE IN THE
18 CHAPTER THE CHILD HAS TO BE VIEWING IT ENTIRELY.
19 BUT IT WAS COMMITTED IN THE PRESENCE OF.

20 THE COURT: WELL, THEIR ARGUMENT IS THAT "THE
21 PRESENCE" MEANS SOME SORT OF LEWD ACT IN THE PRESENCE
22 OF THE VICTIM.

23 MR. BENDER: THE MAIN THING WE'RE TRYING TO GET
24 OUT OF MICHELLE ██████ IS THAT SCOTTY MERSON TOLD HER TO
25 BE QUIET AND ANY OTHER THINGS, THAT MICHELLE ██████ MAY

1 HAVE TOLD.

2 ALTHOUGH SHE DID NOT TESTIFY TO IT TODAY,
3 YOUR HONOR, SHE HAS TOLD OTHER PEOPLE THAT SCOTTY MERSON
4 THREATENED TO BLOW UP THE HOUSE IF THEY TOLD ANYONE.

5 AND SINCE SHE IS UNDER THE AGE OF ELEVEN,
6 OF COURSE, THE COURT MUST FIND NOT ONLY DO WE HAVE TO
7 HAVE THESE IN PART (A) TAKEN CARE OF, BUT THE COURT
8 MUST FIND THAT: "THE TIME, CONTENT, AND CIRCUMSTANCES
9 OF THE STATEMENT PROVIDE SUFFICIENT SAFEGUARDS OF
10 RELIABILITY. IN MAKING ITS DETERMINATION, THE COURT
11 MAY CONSIDER THE MENTAL AND PHYSICAL AGE AND MATURITY
12 OF THE CHILD, THE NATURE AND DURATION OF THE ABUSE
13 OR OFFENSE, AND THE RELATIONSHIP OF THE CHILD TO
14 THE OFFENDER, THE RELIABILITY OF THE ASSERTION, THE
15 RELIABILITY OF THE CHILD VICTIM, AND ANY OTHER FACTOR
16 DEEMED APPROPRIATE; AND, THE CHILD TESTIFIES."

17 AND, YOUR HONOR, WE WOULD ASK THIS COURT
18 TO FIND THAT THESE REQUIREMENTS HAVE BEEN MET.

19 THE COURT: I DON'T KNOW ABOUT THE STATEMENT. ✓
20 I HAVE NO IDEA WHEN IT WAS MADE, IN WHOSE PRESENCE.

21 MR. BENDER: YOUR HONOR, THE STATEMENTS ARE GOING
22 TO BE THAT THE GIRLS TOLD THEIR MOTHER AND THEN TOLD
23 INVESTIGATOR ROACH WHAT SCOTTY MERSON DID TO THEM.

24 THE COURT: WELL, THE YOUNGEST ONE, WHAT DID
25 THE YOUNGEST ONE TELL HER MOTHER? ✓

1 MR. BENDER: SHE TOLD THAT SCOTTY MERSON HAD COME
2 IN THE BEDROOM. OBVIOUSLY, SHE WAS NERVOUS ON THE STAND.
3 SHE DID NOT RELATE THAT TODAY. BUT SHE HAS TOLD HER
4 MOTHER -- BASICALLY, THIS IS A SHORT ACCOUNT -- THAT
5 SCOTTY MERSON CAME IN; PLACED HIS HANDS OVER MICHELLE'S
6 MOUTH; THEN WALKED AROUND TO ANGELA'S SIDE OF THE BED
7 AND PERFORMED CUNNILINGUS; AND, TOLD THEM NOT TO TELL
8 ANYBODY.

9 THE COURT: WAIT. WAIT. WHAT DID THE YOUNGEST
10 GIRL, MICHELLE, TELL HER MOTHER?

11 MR. BENDER: SHE TOLD HER MOTHER THAT SCOTTY MERSON
12 HAD COME INTO HER BEDROOM.

13 THE COURT: AND THAT'S IT?

14 MR. BENDER: BASICALLY, THAT'S IT, AND COVERED
15 HER MOUTH WITH HIS HAND.

16 THE COURT: AND TOLD HER TO BE QUIET?

17 MR. BENDER: AND TOLD HER TO BE QUIET. ✓

18 THE COURT: DID SHE TELL HER MOTHER ANYTHING ABOUT
19 HIS THREATENING TO BLOW UP THE HOUSE, OR ANYTHING?

20 MR. BENDER: I WOULD HAVE TO LOOK AT HER STATEMENT,
21 YOUR HONOR. I BELIEVE THAT MICHELLE DID. BUT IT WAS
22 PRIMARILY ANGELA WHO DETAILED WHAT ALL HAPPENED.

23 THE COURT: WHEN DID MICHELLE GIVE THE STATEMENT ✓
24 TO THE MOTHER?

25 MR. BENDER: IT WOULD HAVE BEEN WHEN SHE WAS PICKED

1 UP FROM SCHOOL, AND ALSO A LITTLE BIT AT BREAKFAST PRIOR
2 TO GOING TO SCHOOL. ANGELA IS -- ✓

3 THE COURT: NOW, HER STATEMENT ON THE WITNESS STAND
4 WAS SHE DIDN'T TELL HER MOTHER ANYTHING. AND YOU ASKED
5 HER WHY, AND SHE SAID, "BECAUSE MY SISTER TOLD HER." ✓

6 MR. BENDER: RIGHT.

7 THE COURT: AT BREAKFAST?

8 MR. BENDER: MICHELLE STATED TODAY THAT ANGELA HAD
9 TOLD HER. BUT FROM MY RECOLLECTION, IN TALKING WITH
10 MICHELLE AND TALKING WITH THE MOTHER, MICHELLE DID HAVE
11 A CONVERSATION CONCERNING THAT SCOTTY WAS IN THE BEDROOM,
12 ET CETERA, ET CETERA.

13 THE COURT: AT BREAKFAST? ✓

14 MR. BENDER: AT BREAKFAST. THEY DID NOT GO INTO
15 THE ACT OF CUNNILINGUS.

16 THE COURT: WELL, MICHELLE DIDN'T KNOW ANYTHING
17 ABOUT THAT. I'M TALKING ABOUT MICHELLE ONLY, THE ✓
18 YOUNGEST ONE.

19 MR. BENDER: MICHELLE HAD TO RELY ON WHAT ANGELA
20 TOLD HER OF THE SEXUAL ABUSE.

21 THE COURT: ARE YOU GOING TO PROFFER THE WITNESSES,
22 AND I'M GOING TO MAKE THAT DETERMINATION OF TIME,
23 CONTENT AND CIRCUMSTANCES, OR ARE WE GOING TO DO THIS
24 BY MAKING A PROFFER?

25 MR. BENDER: YOU'VE HEARD THE TESTIMONY OF THE

1 CHILDREN, YOUR HONOR, SO YOU'VE HAD A CHANCE TO EVALUATE
2 THE TRUSTWORTHINESS OF THEIR STATEMENTS.

3 ALL WE'RE ASKING IS THAT -- THEY HAVE MADE
4 THOSE IDENTICAL STATEMENTS TO OTHER PEOPLE. AND WE
5 FEEL CONCERNING THEIR MENTAL AND PHYSICAL AGE AND
6 MATURITY -- PHYSICALLY, MICHELLE, SHE IS I WOULD SAY A
7 LITTLE LESS THAN DEVELOPED, AS FAR AS CHRONOLOGICALLY.

8 THE COURT: LET'S DO THIS ONE AT A TIME. YOU'RE
9 GOING TO NEED THE MOTHER IN AND PROFFER AND SO SHE CAN
10 TESTIFY AS TO THE CIRCUMSTANCES.

11 I'M BEING GIVEN A VERY LOOSE DESCRIPTION OF
12 TIME AND CONTENT AND CIRCUMSTANCES HERE, AND I NEED IT
13 TO BE A LITTLE BIT MORE SUCCINCT OR MORE ACCURATE,
14 IN ORDER FOR ME TO MAKE A RULING ON IT, IF I COMPLY
15 WITH SECTION (23).

16 MR. BENDER: SHE MADE A STATEMENT TO HER AT
17 BREAKFAST, AT AROUND 7:15 A.M. AND THEN APPROXIMATELY
18 AGAIN ABOUT 1:30 P.M., THAT DAY.

19 THE COURT: WELL, SEE, I NEED TO HAVE HER COME IN.
20 WAS THERE ANY DURESS? WAS THE MOTHER
21 THREATENING ANYBODY? WAS THE CHILD CRYING? WERE THERE
22 ANY OTHER PEOPLE PRESENT? I DON'T KNOW WHAT'S GOING ON.

23 MR. BENDER: I THOUGHT YOU HEARD CHRONOLOGICALLY
24 WHAT HAPPENED, AT LEAST, THROUGH ANGELA'S TESTIMONY.

25 THE COURT: IF YOU WANT TO OFFER THE HEARSAY

1 TESTIMONY, YOU NEED TO MAKE A PROFFER THROUGH THE MOTHER
2 AND THEN, AGAIN, A PROFFER THROUGH THE POLICE OFFICER.

3 MR. BENDER: DO YOU WANT HER TO BE BROUGHT IN NOW,
4 SO WE CAN DO THE PROFFER?

5 THE COURT: YEAH.

6 MR. BENDER: CATHY [REDACTED], PLEASE.

7 THE COURT: NOW, I'VE GOT SOME REAL RESERVATIONS)
8 AS FAR AS THE YOUNGEST CHILD'S TESTIMONY --

9 MR. BENDER: AND I UNDERSTAND THAT, YOUR HONOR.

10 THE COURT: -- OF A NON-SEXUAL ACT. AND OF HER)
11 TESTIMONY OF SOMETHING, THAT SHE MAY OR MAY NOT HAVE
12 OBSERVED, BEING COMMITTED ON HER SISTER.

13 MR. BENDER: DO YOU HAVE SIMILAR RESERVATIONS IN
14 REGARDS TO ANGELA?

15 THE COURT: NOT AT THIS POINT, NO.

16 MR. EIDE: THROUGH THE PROFFER, IT'S MY)
17 UNDERSTANDING THAT WE'LL THEN LEARN WHICH STATEMENT
18 CONTAINS KNOWLEDGE?

19 THE COURT: SURE.

20 * * * * *

21 THEREUPON,

22 CATHY [REDACTED],

23 WAS CALLED AS A WITNESS BY THE STATE AND, AFTER HAVING
24 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED ON HER
25 OATH AS FOLLOWS: