



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 170  
June 28, 1992

## EXCEPTION TO HEARSAY RULE

Reference: Donald D. Dezarn  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1226  
P.2d  
May 29, 1992

### FACTS:

On June 13, 1989, a two-year-old girl, S.F., and her mother were enroute in their car to visit friends. S.F.'s mother noticed that she was unusually quiet and asked her if anything was wrong. S.F. replied, "Mommy, Don licked my vagina." Donald Dezarn was the mother's live-in boyfriend at the time. Dezarn subsequently confessed, both to a police investigator and to his mother, that he had sexually abused S.F.

At Dezarn's trial for first-degree sexual abuse of a minor which began in December, S.F. was unable to recollect or meaningfully relate the circumstances of the abuse. The Court ruled that S.F.'s mother could testify as to what S.F. told her in the car. Dezarn was convicted and appealed.

### ISSUE:

Can the mother testify on behalf of S.F.?

HELD: Yes--the statement through the mother's testimony is admissible as an "excited utterance" under Alaska Evidence Rule 803(2), Hearsay Exceptions.

### REASONING:

1. To be admissible under an excited utterance, an out-of-court statement must have been made while the declarant (S.F. in this case) was under a condition of excitement which temporarily stilled the capacity for reflection and produced utterances free of conscious fabrication.

2. S.F.'s mother testified that S.F. was unusually quiet in the car and the judge concluded that S.F.'s withdrawn behavior was a symptom of her emotional distress.

3. While the judge recognized that S.F. had made a statement in response to her mother's question, he found that the mother's question had been a neutral, non-suggestive, "What's wrong?" (emphasis added)

4. S.F. reported the abuse to her mother at the "first opportunity (10 hours after the event) to report to a reliable adult privately."

NOTES:

In another civil case released the same date, D.W. v. State of Alaska--Opinion No. 3847, the Alaska Supreme Court upheld the use of "hearsay" in this "children in need of aid" case. D.W. was accused of sexually abusing his daughter. A videotape the victim's interview was admitted at trial even though the victim did not testify. The Court ruled that this was an exception to the "hearsay rule" under Alaska Evidence Rule 804(b)(5), Other Exceptions.

This Legal Bulletin should serve as a reminder that there are numerous "exceptions to the hearsay rule." It is advisable to contact your District Attorney if ever in doubt about admissibility of "hearsay."

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