

## The Illinois "Outcry" Hearsay Exception

*The Illinois Supreme Court held that only hearsay statements made by sexual assault victims below the age of 13 at the time of the outcry may be admitted against a defendant at trial.*

*People v Holloway, 177 Ill 2d 1, 682 NE2d 59 (1997).*

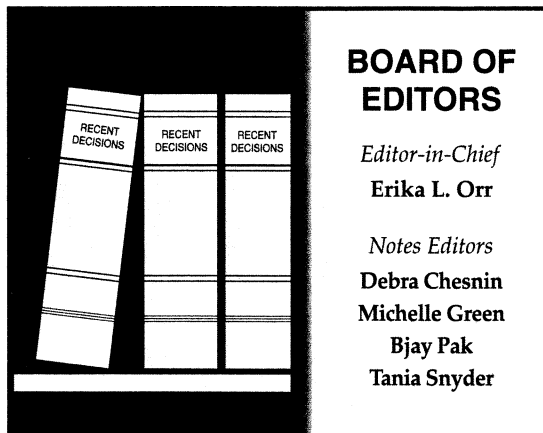
The Illinois Supreme Court held in *Holloway*<sup>1</sup> that prosecutors may only seek to introduce outcry hearsay testimony if the statements about an assault were made before the victim reaches age 13. Outcry hearsay is only allowed to corroborate the testimony of young victim-witnesses that have difficulty testifying. The court's decision eliminates the ambiguity that had surrounded the interpretation of section 115-10(a) of the Code of Criminal Procedure of 1963.<sup>2</sup> This case puts clear limits on prosecutors' use of hearsay in adolescent and child sexual assault cases.

While the court's new bright-line rule will be easier to comply with, it will also make convicting a person who sexually assaults a child under the age of 13 more difficult. This undesirable consequence will likely spark a legislative response in the immediate future.

### I. Fact Summary

In November of 1987, Jerome Holloway, the defendant, traveled to Rosemont to visit his ex-wife and their three children. At the time of the visit the defendant's oldest daughter, C.H., was 11 years old. She testified that, on a Thursday afternoon during the visit C.H. returned home from school around 3 p.m. She found that her younger sisters were elsewhere in the apartment complex and that her father was home alone watching television from the couch. C.H. testified that she sat next to her father until he began to touch her in an uncomfortable manner. C.H. went on to describe an assault that included her father penetrating her both orally and vaginally.

In August of 1990, C.H. hosted a slumber party. Her older cousin Erin Dalzell was present. Erin testified at Mr. Holloway's trial that on the night of the slumber party C.H. seemed distracted and distant. She stated that C.H. was quiet and would not answer when asked what was bothering her. Eventually, C.H. confessed that she was having nightmares about her father and then related the details of the alleged attack from three years prior. At the time of these statements to her cousin C.H.



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was almost 14 years old. Erin convinced C.H. to report the alleged assault to her mother and stepfather and the defendant's prosecution ultimately resulted. It was testimony about C.H.'s outcry to Erin that was the subject of appeal.

Dr. Sharon Ahart testified that C.H. had been sexually abused. The defense called Lieutenant Lee Mayer of the Rosemont police. He testified to some inconsistencies between what C.H. said at trial about events surrounding the assault and what she had told him when he was investigating her complaint. According to Mayer's testimony, however, the details of the assault itself were identical both in court and when he spoke with C.H. prior to trial.

The defendant was the last to take the stand. He testified that he was never alone with C.H. during the visit and generally denied all the charges. Prior to the beginning of the trial the defense objected to the admission of the hearsay statements that C.H. had made to her cousin. These objections were overruled under section 115-10. The defendant was found guilty at his bench trial of two counts of aggravated sexual assault and sentenced to two concurrent six-year terms in prison.

### II. Majority Opinion

The supreme court held in an opinion written by Justice Miller that the hearsay statements made by C.H. to her cousin when she was over the age of 13 were inadmissible. The court was faced with interpreting section 115-10(a), which states in relevant part:

(a) In a prosecution for a sexual act perpetrated upon a child under the age of 13, including but not limited to prosecutions for violations of Section 12-13 through 12-16 of the Criminal Code of 1961, the following evidence shall be admitted as an exception to the hearsay rule:

testimony by such child of an out of court statement made by such child that he or she complained of such act to another; and

testimony of an out of court statement made by such child describing any complaint of

such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual act perpetrated on a child.<sup>3</sup>

Both the prosecution and the defense argued that the statute was unambiguous. However, the parties specifically disagreed as to the meaning to be given the phrase "such child." The state argued the phrase was merely a description of the type of crime involved and not an age limit for the admissibility of "outcry" statements. The defense submitted that the phrase was meant as a requirement that the statements be made by a declarant under age 13. The court found both interpretations to be reasonable because the statute was ambiguous.

The court then turned to the statute's legislative history to clear the ambiguity. The court first took notice of the difficulty prosecutors have historically had winning convictions in child sexual assault cases. The history surrounding section 115-10(a) suggested that it was the young victims' lack of cognitive and verbal skills that prevented them from adequately expressing the details of the crime in court. According to the court, the legislature saw a need to bolster the testimony of very young victim-witnesses in order to facilitate successful prosecution of this crime. The legislature responded by creating a hearsay exception that would allow the victim and third parties to bolster the victim's testimony with statements that the victim had complained of the crime to another out of court.

As support for this conclusion, the court cited the discussion of the bill in question on

1. *People v Holloway*, 177 Ill 2d 1, 682 NE2d 59 (1997). Unless otherwise indicated, all references in sections I, II, and III are to this citation.

2. 725 ILCS 5/115-10(a) of the Code of Criminal Procedure of 1963.

3. *Id.*