

1 they can't testify as to what he did on that  
2 particular night. They can't furnish an alibi for  
3 that particular morning.

4 Okay. We'll bring in the jury. Court's  
5 in recess.

6 (Short recess.)

7 THE COURT: Let the record show this is  
8 Case No. C114390, the State of Nevada versus Curtis  
9 Lundy Downing. Let the record show the presence of  
10 the defendant with his attorney, Mr. Mark Cichoski.  
11 Let the record also show the presence of the Deputy  
12 District Attorney, Mr. John Lukens.

13 Will counsel stipulate to the presence of  
14 the jury?

15 MR. LUKENS: Yes, Your Honor.

16 MR. CICHOSKI: Yes, Your Honor.

17 THE COURT: You may make your opening  
18 statement, Mr. Lukens.

19 MR. LUKENS: Thank you.

20 May I get the podium, Your Honor?

21 THE COURT: You may.

22 MR. LUKENS: Good morning, ladies and  
23 gentlemen. This is the time the judge told you the  
24 attorneys have an opportunity to make an opening  
25 statement. The purpose for the opening statement is

1 that, as you're going to see during this trial, the  
2 evidence in a criminal trial doesn't always come in a  
3 logical or chronological order. The reason for that  
4 is to accommodate witnesses' schedules. Some  
5 witnesses can be here at other times. Some witnesses  
6 are being brought in from out of state and so forth.  
7 It simply can't flow in an orderly pattern.

8           So it's sort of like a book report. If I  
9 were going to tell you about a book and you heard  
10 somebody read to you chapter 6 and then chapter 2 and  
11 then chapter 7 and then chapter 4 and then 10, it  
12 would be hard to put it all into order unless someone  
13 beforehand had said I'm going to give you a book  
14 report. Here's what this book is about, and here's  
15 what we anticipate that the evidence is going to  
16 show. So that at least before the evidence starts  
17 coming in you have somewhat of an idea of what the  
18 total picture is anticipated to be.

19           Now, the judge has instructed you that  
20 what we say, we being the attorneys, Mr. Cichoski and  
21 myself, is not evidence. It is not. And you will  
22 notice that when I say something to you I try to very  
23 carefully preface what I say to you by saying it is  
24 anticipated that the evidence is going to show that,  
25 and that's because right now there is no evidence

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1 before you, and what I say is not evidence.

2 I'm telling you just what I think the  
3 evidence is going to show and the reason being is  
4 because I have obviously talked to the witnesses in  
5 the preparation of this case and said what happened  
6 and when did it happen, and what are you going to  
7 say, and they tell me so I can put the case  
8 together. And now I come before you in an opening  
9 statement and tell you so that you can put this  
10 evidence into context as it comes in.

11 The law under our system of justice places  
12 the burden of proving the case on the State. In  
13 other words, it's on my shoulders to convince you  
14 beyond a reasonable doubt that this crime happened  
15 and that that man seated there is the one that  
16 committed the crime. It places no burden whatsoever  
17 on him or his attorney. They need not present one  
18 scintilla of evidence.

19 At the conclusion of the State's case they  
20 may well take the posture, we don't believe the  
21 State's met its burden to prove everything beyond a  
22 reasonable doubt, and we're not going to present any  
23 evidence whatsoever. That's their option.

24 They have the option of making an opening  
25 statement after I do, or they can say we will wait

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1 and make an opening statement later on at the  
2 beginning of our case.

3 One of the rules is that we are not  
4 allowed to argue our case. We're not allowed to say  
5 because of this and because of this. We're not  
6 allowed to do that. All we're allowed to do at this  
7 point in time is simply tell you this is what we  
8 believe the evidence is going to produce, is going to  
9 show. With that in mind now we begin.

10 This case started as somewhat of a  
11 mystery. Kristie Chiles, who you will meet later on  
12 in the trial, her birthday is December 25th, 1972.  
13 On January 21st, 1992 -- 1993 when this happened,  
14 Kristie was just 20 years old, and she was living by  
15 herself in an apartment, a ground floor apartment, in  
16 an apartment complex called Newport Cove. She had a  
17 boyfriend and was living the life that most  
18 20-year-old girls live coming and going and doing  
19 what 20-year-old girls do.

20 She came home on this particular night  
21 after having been out with her boyfriend and changed  
22 into a night shirt and went to bed. Kristie's  
23 apartment was a two-bedroom apartment. She slept in  
24 one bedroom, and the other bedroom was kind of used  
25 for storage. There was a bed in it, but there was

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1 nothing kept in there. Kristie went to bed that  
2 night, nothing special, nothing unusual.

3 She was awakened at about sometime around  
4 maybe 5:00 in the morning by a man who was on top of  
5 her. This man had a gun, a gun with a long barrel.  
6 This man was wearing a ski mask. He was wearing  
7 sweat-shirtish type of clothes. Kristie knew what  
8 was going to happen.

9 The man taped her eyes and tied her wrists  
10 with rope. Kristie, not wanting to be assaulted in  
11 her bedroom pleaded and said, Please, let's go to the  
12 living room. He moved her to the living room. He  
13 asks her about money. She says, My purse is  
14 somewhere. It's over there somewhere. He goes to  
15 the purse. He leaves her, he goes and he comes back,  
16 and later on Kristie would find her purse, it's on  
17 the floor. She had about 40 or \$42 in her purse;  
18 it's gone.

19 When the man speaks to her, he speaks to  
20 her in what she described later as a fake Hispanic  
21 accent. She knows he's black. She thinks maybe one  
22 eyelid droops. She's not going to be able to give a  
23 very good description. The man puts her down on the  
24 floor, pushes her nightshirt up, and begins kissing  
25 her breasts, performs oral sex on her, and then has

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1 sexual intercourse with her.

2 She will also tell you this man was  
3 wearing gloves. The telephone rings and the answer  
4 machine goes on. And she hears the voice; it's her  
5 boyfriend calling, checking in, saying it's 6:10.  
6 Sometime the defendant gets up, goes to the answering  
7 machine. He's going to take the tape. Kristie  
8 reaches out and feels his hands to see if he still  
9 has the gun. She doesn't feel the gun.

10 At one point during this ordeal Kristie  
11 thinks she may have heard someone else in the room.  
12 She asks the defendant or her assailant and she says,  
13 Is someone else here, and he says, No, he's not going  
14 to want any of you. Not precisely in those words,  
15 something similar to that.

16 As this man was about to assault her  
17 Kristie says, as probably many women might, I've got  
18 a disease, please wear a condom. She hears a noise  
19 that sounds like there's a condom. She hears a  
20 package and a snap, but she's not sure.

21 After the telephone call from her  
22 boyfriend, her assailant returns to her, puts her  
23 down on the floor, and has her get on her hands and  
24 knees and sexually assaults her again.

25 He's not done, however, with the things

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1 that he's going to have Kristie do. He now orders  
2 Kristie into the bathroom, orders her to turn on the  
3 water and orders her to wash herself, in essence to  
4 douche. Kristie does.

5           During the course of Kristie's ordeal, at  
6 one time he may have taken his mask off, but Kristie  
7 doesn't see enough to recognize him. There are only  
8 certain little details that she's able to pick out.  
9 She is in the bathroom. He says to her, I don't hear  
10 the water running. Water runs, she washes herself.  
11 After awhile she comes out and her assailant is  
12 gone.

13           One of the people Kristie calls  
14 immediately is her mom and then she is taken to the  
15 hospital, and she reports being sexually assaulted.  
16 Detective John Fox responds, takes information  
17 regarding who and what as best information as he can  
18 and she can give under those circumstances.

19           The Las Vegas Metropolitan Police  
20 Department goes to Kristie's apartment to begin to  
21 process the scene, to look for evidence, to look for  
22 clues as to who Kristie's assailant may have been.

23           Monte Spoor finds on the interior window  
24 sill of the bedroom window that Kristie does not  
25 sleep in, a latent -- you'll learn that means hidden

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1 little but maybe enough and nobody to match it  
2 against.

3           The detectives a little bit later bring  
4 Kristie a photo lineup to see is there anybody in  
5 this lineup that you recognize or that looks familiar  
6 to you. Kristie answers, she says, there are two  
7 people in that lineup that look familiar -- that look  
8 similar to the person that attacked me. On a zero to  
9 ten scale this may be a 7 and this one may be an 8,  
10 but I'm not positive.

11           Remember that her assailant attacked her  
12 in the dark wearing a ski mask. You'll learn that  
13 one of those that looked familiar or similar was the  
14 defendant's brother Michael Downing. Eventually  
15 Mr. Downing is determined to be a suspect. The man  
16 that sits there was determined to be a suspect.

17           They went to Mr. Downing's residence, and  
18 they found in Mr. Downing's car not a gun, but .357  
19 bullet rounds. Then they compared Mr. Downing's palm  
20 prints and they matched. The palm print from the  
21 inside of the window matched Mr. Downing.

22           Serology testing, the matching of blood  
23 groups and so forth wasn't done right away because  
24 there may not have been enough sample. Didn't want  
25 to consume it, to use it up. And that sample was



1 sent to Cellmark Laboratories for DNA testing.  
2 Cellmark Laboratories is the same laboratory that did  
3 the DNA testing in the O.J. Simpson test.

4 But you learn something about DNA  
5 testing. Most people hear about it in the criminal  
6 field, but you'll find that DNA testing has really  
7 been around for a long period of time, was not  
8 developed as a tool for forensic purposes like  
9 fingerprint identification. It was developed for  
10 other purposes and the forensic use of it actually  
11 grew out of those other purposes.

12 You'll hear that DNA testing and analysis  
13 and matching has a lot of different uses. Cellmark  
14 Laboratories you'll learn has a contract with the  
15 federal government to identify war dead. That's one  
16 of the uses of this type of matching. It's used in  
17 plant biology. It's used in animal genetics. You  
18 may read something about they're going to have a  
19 tomato on the market that has something to do with it  
20 doesn't get soft. That was the field of DNA testing  
21 before we began to use it for forensic purposes.

22 So this sample was sent back to Cellmark  
23 to test. Was the semen left behind in Kristie  
24 Chiles' vagina Curtis Downing's? Was there enough  
25 sample to test? You will hear people from Cellmark

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1 come in and say it matched. Not only did it match,  
2 but they will testify that the frequency is 1 in  
3 4.5 billion. Curtis Downing left behind his semen.

4 But the State's case won't rest there.  
5 Because identification or motive is an issue, you  
6 will also hear testimony from another young girl.  
7 The young girl named Tami Zold. Tami will testify  
8 that three days earlier on the 18th of January, she  
9 was walking with a friend through the parking lot of  
10 Clark High School in the evening hours. And as she  
11 was walking that man with not a ski mask but a beanie  
12 on wearing a jogging sweat type of clothes and a dark  
13 jacket accosted her and her friend, dragged them to  
14 the bushes.

15 As he was going to do three days later  
16 with Kristie Chiles, he covers her head, forces her  
17 down on the ground. As he's going to do three days  
18 later with Kristie Chiles he binds her. As he is  
19 going to do three days later with Kristie Chiles he  
20 speaks to her in a false or a fake Hispanic accent.  
21 As he is going to do three days later with Kristie  
22 Chiles, he kisses her breasts, he performs oral sex  
23 on her and he has sexual intercourse with her, and he  
24 threatens to kill her as he did with Kristie Chiles.

25 You will also hear that as with Kristie

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1 Chiles he leaves his semen behind, but his semen is  
2 behind in such significant quantity this time that  
3 instead of these numbers it matches Curtis Downing to  
4 1 in, I think, 1.5 trillion. And that is what the  
5 State intends to show you in its case in chief for  
6 Kristie Chiles.

7 Tami Zold will tell you about the  
8 similarities of the attack at the hands of that man.  
9 That the evidence, and the judge will give you an  
10 instruction on it and you will hear me say this again  
11 and again, the evidence with reference to Tami Zold  
12 is not offered to you to show that, gee, you need to  
13 convict him of Kristie Chiles because he's a bad guy,  
14 but to show you the similarities in the attack.

15 So as -- there are some differences in the  
16 attack, but oh, similarities in the attack, Tami Zold  
17 will also tell you that Curtis Downing when he was  
18 finished with her had her go over to a rain spout  
19 because it had been raining and wash herself off,  
20 just as Kristie Chiles had been ordered to do. That  
21 is what the case will be in the State's case in  
22 chief.

23 In the event that the defense presents  
24 witnesses and/or evidence, the State will have an  
25 opportunity to call rebuttal witnesses. And since --

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1 although the way that our system works, although the  
2 State has, I mean, the defense has all of our reports  
3 and so forth since they don't have an obligation to  
4 present evidence, we don't know what evidence they're  
5 going to present or what witnesses they may call.

6 And so since not knowing that I cannot  
7 address or tell you what evidence we may have in  
8 rebuttal, if there is a rebuttal case.

9 But that concludes sort of my book report  
10 as to the outline of what's going happen. The people  
11 that are actually going to put words to and the faces  
12 that will appear before you are going to be police  
13 officers John Fox, Loyal Miller, the nurses that  
14 examined Kristie at the hospital, the nurse that drew  
15 Mr. Downing's blood at the jail, the experts from  
16 Cellmark who have come here from Maryland.

17 You're going to learn more about DNA than  
18 you ever thought you want to know. But they're going  
19 to be the ones that will provide the evidence of that  
20 man's crimes that I just finished giving you a book  
21 report on.

22 Thank you for your attention.

23 THE COURT: Mr. Cichoski.

24 MR. CICHOSKI: Thank you, Your Honor.

25 Good morning, ladies and gentlemen. The

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