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1 the product of sincere judgment and sound discretion
2 in accordance with these rules of law.

3 Now you will listen to arguments of
4 counsel who will endeavor to aid you to reach a
5 proper verdict by refreshing in your minds the
6 evidence and by showing the application thereof to
7 the law; but, whatever counsel may say, you will bear
8 in mind it is your duty to be governed in your
9 deliberations by the evidence as you understand it
10 and remember it to be and the law as given you in
11 these instructions.

12 Now, I have already informed you that
13 since the State does have the burden to prove beyond
14 a reasonable doubt, under our system the State is
15 given the opportunity for the first summation. So we
16 will hear from the Deputy District Attorney in final
17 argument then Mr. Cichoski will have an opportunity
18 to respond and then we will hear a final summation by
19 a Deputy District Attorney.

20 Who will give the opening summation?

21 MS. MONROE: I will, Your Honor.

22 THE COURT: You may proceed with your
23 opening summation.

24 MS. MONROE: May it please the Court,
25 cocounsel, Mr. Cichoski. Ladies and gentlemen of the

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1 jury, good afternoon. We are finally at the part
2 where after five days the attorneys, the judge, the
3 witnesses have done their part in this plan and
4 scheme that we've been through. Now it's your turn.
5 Now this trial goes to you and 12 of you will go back
6 into that deliberation room, and you will make the
7 decision as to whether or not Curtis Downing is
8 guilty of the crimes that the State has charged him
9 with.

10 I want to thank each and every one of you
11 as I'm sure on behalf of myself and other counsel
12 here for spending the last five days of your life in
13 this courtroom with us and hearing everything that
14 went on. You all have different jobs that you do.
15 You all have different lives, but you were willing to
16 come in and do your duty, listen to the evidence and
17 now play out that final role which is to make a
18 decision in this case.

19 And these things go on every day in every
20 city and every state in this nation. The criminal
21 justice system and you've probably read about it, it
22 happens everywhere, and that's what 12 of you will
23 now experience when you go back in and make your
24 decision.

25 I wasn't present during the opening

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1 statements or in that part of the trial, but I'm sure
2 that Mr. Lukens told that you that opening statement
3 was just like a scheme of what would go on, what the
4 evidence would show.

5 If it had been my opening statement I
6 probably would have said it was like a videotape.
7 You start out somewhere on a long trip in New York,
8 and you're going across the nation and you're taking
9 your video camera and you're taking pictures as you
10 go.

11 And that's kind of like what the evidence
12 on the stand is because when you walked in here on
13 Monday you had no idea what this case was about. You
14 had something read to you that said some horrible
15 things had happened to an individual. You saw the
16 parties that played out those roles, the attorneys
17 that asked the questions, but you really didn't know
18 what this was about.

19 You didn't know until four days later
20 after you had heard all of the witnesses testify, and
21 you saw all the exhibits brought in. You didn't know
22 what it was about. But each day, if you look at that
23 trip as you went across the nation you got a little
24 bit more idea of what took place.

25 There are some general instructions that

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1 Judge Leavitt read to you. One of them talks about
2 the believability or credibility of a witness on the
3 stand. You 12 people who go back there are the
4 judges of who you believed when they testified from
5 this stand. You have two very different stories.
6 You have Kristie Chiles saying, I was raped. I was
7 sexually assaulted. I don't know that man. I've
8 never seen that man. I didn't give him permission to
9 come into my house on January the 21st of 1993. And
10 you heard Mr. Downing get up here and say, I knew
11 her. We had sex three times.

12 So you have a decision to make. Who's
13 telling the truth in this case?

14 And the instruction tells you that you can
15 look at the relationship to the parties that any
16 witness had, the witness's ability to observe the
17 matters to which they testified and the
18 reasonableness of their statements and strengths or
19 weaknesses of their recollections. How much they
20 remembered about those instances that happened. How
21 much they remembered about that time frame that we've
22 talked about over the past week. What answers they
23 could give to the questions that were asked.

24 Instruction No. 15 is the reasonable doubt
25 instruction. In a criminal case, the standard that

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1 the State must proof the defendant's guilt is beyond
2 a reasonable doubt. It's the highest standard there
3 is when you come into a trial. And that's because of
4 just how severe and how -- what the defendant faces
5 if he's convicted.

6 And the State has that burden and
7 Mr. Lukens and I took that burden on, and we do it
8 every time we come into a trial, and we believe that
9 the evidence shows beyond a reasonable doubt that
10 Mr. Downing is guilty of the offenses. And that
11 instruction talks about that reasonable doubt is a
12 doubt based on reason. Not mere possible doubt but
13 is such a doubt as would govern or control a person
14 in the more weighty affairs of life.

15 If in your minds after you've read all the
16 evidence and remembered it and put it all together,
17 if you can say that you feel an abiding conviction of
18 the truth of the charge then there is no reasonable
19 doubt. Doubt to be reasonable must be actual not
20 mere possibility or speculation.

21 We could always come into this courtroom
22 and speculate as to a lot of things that can happen.
23 But you base your decision on the evidence. And if
24 after you've heard all the evidence in this case you
25 don't have any doubt, then Mr. Downing is guilty.

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1 Instruction No. 18 talks about two
2 different kinds of evidence. Direct evidence and
3 circumstantial. And to be brief, basically direct
4 evidence is when somebody sees something happen, an
5 eyewitness to something.

6 Circumstantial is where you didn't see it
7 happen, but different things that occur can lead you
8 to believe that it happened. And we use a lot of
9 times the example of we've been in this courtroom all
10 day long. When we came in this morning it was
11 sunshiny, 81 degrees outside, supposed to be 105
12 today. But if we walk out of this courtroom tonight
13 and there's water on the ground and there's wet
14 bushes, it rained, and we know it rained. We didn't
15 have to see it. Maybe that sun's out shinning again,
16 but there's water. And when you use your common
17 sense and your judgment and you didn't see it rain so
18 I couldn't come in and say well, I saw it rain as
19 neither could any of you, but you could all walk out
20 of this courtroom and know in your mind that it
21 rained, and that's circumstantial evidence. You
22 didn't directly see it, but there are things that
23 lead you to know exactly what took place.

24 Kristie Chiles is an eyewitness to what
25 took place on January the 21st of 1993. She told you

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1 what happened to her. Circumstantial evidence would
2 be all the other things that came in to help point us
3 to the person that did these things. They are to be
4 given equal weight. It doesn't matter that one is
5 direct and one is circumstantial. They play the same
6 role. They play the same part.

7 Mr. Downing has been charged with several
8 different offenses. The first one is burglary with
9 the intent to commit a crime. What are the elements,
10 because that's what the State -- what Mr. Lukens and
11 I had to prove to you through the witnesses over the
12 last five days. And then we look at what needs to be
13 proven, and then we'll go over the evidence to see if
14 indeed a burglary was committed. Every person who
15 enters a house, room, apartment -- in this case we
16 had an apartment, 4738 O'Bannon, apartment No. B --
17 with the intent to commit a sexual assault, which is
18 a felony, is guilty of burglary.

19 It doesn't have to be a breaking or forced
20 entry, but the State must prove that the person who
21 entered that apartment on January the 21st of 1993,
22 entered with the intent to commit sexual assault.

23 When we look at the facts that you've
24 heard over the last few days -- and let me tell you
25 up front, ladies and gentlemen, if I say something

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1 that you don't remember was the testimony that came
2 out, it's your recollection that governs not my
3 statements. What I say during closing argument, what
4 Mr. Cichoski says during closing argument, and what
5 Mr. Lukens says during closing argument is not
6 evidence. What you wrote down in your notes as to
7 what the witnesses said, that's what is the evidence
8 as you remember it. So if I misstate something, it's
9 not intentional.

10 But if you go back in that room and say
11 well, Ms. Monroe told us this, but my notes reflect
12 that, then it's up to you to decide what was really
13 said. And I apologize to you if I do misstate
14 something, but I'm only putting down what I wrote
15 down and what I remember. But that's not what will
16 govern you when you go back in there.

17 Let's look at what happened on January
18 21st of 1993, to see if we have a burglary with the
19 intent to commit sexual assault. Kristie Chiles
20 testified that that evening she went and worked out
21 with her boyfriend, that they came back, they watched
22 TV. I believe her testimony was that about 11 or
23 12:00 that night he left, and she went to sleep in
24 her apartment.

25 She was in the master bedroom. She had

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1 her television on and the next thing that she
2 remembered was about 5:00 in the morning she was
3 sleeping on her stomach and felt a weight on top of
4 her. The person on top of her had a ski mask on, and
5 she couldn't see his face. The person on top of her
6 had a gun in his hand. The person on top of her had
7 a flashlight in his hand. The person on top of her
8 had rope with him. She heard the person on top of
9 her say, Don't scream or I'll kill you. He taped her
10 eyes with some tape, and he tied her wrists
11 together.

12 Kristie testified that she told him if
13 you're going to rape me please take me to the living
14 room because I don't want you to do this in the
15 bedroom, and that's what the person did. He moved
16 her into the living room. Kristie told you that she
17 said to him, What are you going to do to me. And his
18 response was, You know what I'm going to do to you.
19 She asked him to wear a condom. And that person
20 said, Don't worry, I have one with me. And she
21 testified that she heard the ripping of paper and a
22 snapping sound.

23 Did the person who came into Kristie's
24 apartment on January 21st of 1993, have the intent to
25 sexually assault her, ladies and gentlemen? The

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1 evidence is very clear. If the person who came in on
2 January 21st -- and I'm saying the person who came in
3 at this point because I have two things to prove to
4 you as we've gone through this week. One, that the
5 crime was committed, and two, that this man is the
6 person who committed them. So I'm starting with that
7 very first premise. Were there crimes committed on
8 January the 21st of 1993? We'll get into is this the
9 man who did it in just a few minutes.

10 Well, whoever came into that apartment
11 that night with that ski mask and the ropes and the
12 gun and the flashlight, assuming at this point that
13 we're not talking about the person who did it, there
14 was no forced entry. She gave no one permission to
15 come in. In fact, there was a screen off her bedroom
16 window, the spare bedroom that she didn't use. This
17 was the window where the partial palm print was found
18 on the window sill.

19 The evidence is very clear, ladies and
20 gentlemen, that the rapist on January the 21st of
21 1993, came in through that window, took that screen
22 off, popped that window, slid it open, left their
23 palm print on the window, and came inside, the intent
24 to commit sexual assault.

25 If this person wanted to burglarize only,

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1 why would he have rope? If he only wanted to come in
2 to do something like take money or steal property,
3 why would he have a gun? Why would he have tape, and
4 why would he have a condom on him. He entered that
5 apartment with only one thing in mind and that was to
6 rape Kristie Chiles. I'm sure that this jury will
7 have no trouble believing that the person on January
8 the 21st had the intent to rape Kristie Chiles when
9 they made entry into that apartment.

10 Mr. Downing has also been charged with
11 robbery. Robbery with use of a deadly weapon. We'll
12 talk about the weapon in a minute. Let's talk about
13 the elements of robbery. The unlawful taking of
14 personal property, that's Instruction No. 9, from the
15 person of another or in this person's presence and
16 against that person's will accomplished by means of
17 force or violence of fear or injury.

18 The value of the property or money taken
19 is not an element of the crime of robbery. It is
20 only necessary that the State prove that some
21 property or money was taken.

22 What did Kristie Chiles tell you? As she
23 laid on the floor in the living room with her hands
24 tied and the tape over her eyes, her assailant said,
25 Where's your money. Where's your wallet. And she

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1 said, It's over there. She told you it was in the
2 black bag.

3 She also told you that her sense of
4 hearing became very acute, and she could hear a lot
5 of things even though she couldn't see, and she could
6 hear rustling going around, and then when she could
7 see hours later when this was all over, or perhaps
8 when she finally realized her rapist had left the
9 apartment, she saw her wallet on the floor. She saw
10 the contents scattered around. She told you that she
11 knew she had between 40 and \$45 inside of her wallet
12 when she went to bed, and it was gone after her
13 rapist had left.

14 Fear of force or violence. She testified
15 that on several occasions she knew the gun was
16 there. He had threatened her with the gun. Don't
17 scream or I'll hurt you. He had tied her up. He had
18 taped or eyes. Fear of force or violence.

19 I would submit to you, ladies and
20 gentlemen, the evidence is clear. The robbery of the
21 money in Kristie Chiles' purse did take place, that
22 the assailant who entered her apartment with the
23 intent to rape her also robbed her of \$42.

24 But that wasn't all that her rapist robbed
25 her of that night. Mr. Downing has been charged with

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1 sexual assault, and the instructions tell you what
2 the elements of sexual assault are. Any person who
3 subjects another person to sexual penetration against
4 their will or under conditions where they know or
5 should have known that the victim could not resist is
6 guilty of sexual assault.

7 Instruction No. 6 goes on to tell you that
8 sexual penetration means cunnilingus. Cunnilingus is
9 the act of placing one's mouth or tongue on a
10 female's vagina. Sexual penetration is any intrusion
11 however slight of any part of a person's body
12 inserted by that person into the genital openings of
13 the body of another including sexual intercourse in
14 its ordinary meaning.

15 A penis inserted into a vagina without the
16 consent or under a person's duress not wanting that
17 to happen is sexual assault. A person placing his
18 tongue into a woman's vagina when she's tied up on
19 the floor and her eyes are taped and she doesn't want
20 it to happen to her, that's sexual assault.

21 Instruction No. 7 tells you that if the
22 State had presented Kristie Chiles and you believed
23 her testimony alone that that would be enough to
24 convict Mr. Downing. That's enough, ladies and
25 gentlemen, but you have more in this case. You have

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1 a whole lot more. So you can go beyond Instruction
2 No. 7 because of all of the evidence against
3 Mr. Downing.

4 Instruction No. 8 talks about that
5 physical force is not necessary to be -- don't have
6 to prove that. Well, there was physical force
7 present so you don't have to reach that issue
8 either. A gun, tied up, taped, threats, don't scream
9 I'll kill you; there was physical force involved in
10 this rape. This was not consensual sex.

11 The instructions tell you that if you
12 decide -- or after you decide that these crimes have
13 been committed you must decide if a deadly weapon was
14 used. The instructions also tell you that a firearm
15 is a deadly weapon. And Instruction No. 12 defines
16 for you what a firearm is. It's any weapon with a
17 caliber of .177 inches or greater from which a
18 projectile may be propelled. Any weapon that would
19 fire a bullet or projectile greater than .177, which
20 is about a pellet gun.

21 Kristie Chiles testified that the weapon,
22 that the gun that she saw that night was dark colored
23 and she could see the holes on the side where the
24 bullets went, a revolver, and she didn't say that it
25 looked like a little pellet gun. And you had

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1 testimony that the bullets that were recovered from
2 Mr. Downing's wife's vehicle probably came from .357
3 magnum.

4 Instruction No. 11 says, The State doesn't
5 have to recover the deadly weapon. We don't have to
6 produce the deadly weapon in order to establish that
7 a deadly weapon was used. That's for the jury to
8 decide. Based on Kristie Chiles' testimony that her
9 assailant used a gun, and from her testimony you can
10 assume that it was a revolver by the way that she
11 described it. And because you can use your common
12 sense and make reasonable inferences, ladies and
13 gentlemen, you can also infer that these .357 bullets
14 found hidden, and from the photograph you can see in
15 the tire well of Mr. Downing's wife's car could have
16 just fit in this gun that Kristie Chiles described
17 for you.

18 Was a deadly weapon used? Did her rapist
19 come in with a gun that could fire greater than
20 a .177 projectile? I would submit to you, ladies and
21 gentlemen, that there isn't any doubt in your mind
22 that that gun was probably -- fits in that definition
23 of the firearm. And if you believe Kristie Chiles'
24 testimony that her assailant had a gun, then you
25 would -- you do find a deadly weapon is used, and

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1 your proper verdict would be that these crimes were
2 committed with a deadly weapon.

3 Mr. Downing has been charged with three
4 counts of sexual assault with use of a weapon. Let's
5 go back through Kristie's testimony as to what
6 happened to her. Her testimony was that in the
7 living room he laid her on her back, that he kissed
8 her breasts, and then he moved down to her stomach
9 area, and then he committed cunnilingus on her;
10 that's one count of sexual assault.

11 Then he put his penis into her vagina and
12 had sex with her without her wanting to engage in it;
13 that's another count of sexual assault.

14 And her testimony was that she could feel
15 the gun as she moved around. She knew that gun was
16 there.

17 Then she testified that the phone rang,
18 and her boyfriend called her and left a message, I'm
19 sorry I didn't call. I'm late, supposed to call you
20 at 6; it's 6:10. I hope you're okay. And that's
21 when she told you that he picked her up and guided
22 her over to the phone, and she could hear him
23 fumbling around, and he removed the tape from the
24 machine, and then he put her back on the living room
25 floor, only this time, ladies and gentlemen, he had

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1 her on her knees, and this time when he sexually
2 assaulted her he did it doggie style.

3 And as she laid there on other hands and
4 knees on the floor, her assailant put his penis in
5 her vagina once again. She didn't want him to do
6 it. She didn't even want him there, but he did it,
7 and that is your third count of sexual assault.

8 And that's why Mr. Downing has been
9 charged with three counts. Those are three separate
10 instances and three separate offenses for which he
11 can be found guilty.

12 Well, the next question you have to ask is
13 who did it, because as I told you the State has two
14 things to prove; one, that a crime was committed,
15 that the burglary with the intent was committed, that
16 the robbery with the use of a deadly weapon was
17 committed and that three counts of sexual assault
18 with the weapon was committed, but you also have to
19 decide who did it.

20 Well, it would have been nice if Kristie
21 Chiles could have come into this room and sat up here
22 at this witness stand and we could have said to her,
23 do you see your assailant here in court today? And
24 she could have pointed from the stand and said, Yes,
25 that man right there. He did it. But Kristie

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1 couldn't do that because her assailant wore a ski
2 mask. He taped her eyes; she never saw him. But
3 there is other things that tell us who was in the
4 apartment that night.

5 Now, if you remember correctly she never
6 said anything about a beard. She felt his face and
7 Mr. Cichoski went through a long list of did you say
8 this to the police, I think it was with Detective
9 Miller, did you talk to Kristie Chiles and get a
10 description. There was nothing about facial hair,
11 just a face that she felt as he moved from her
12 breasts down to her stomach and then down to her
13 vagina.

14 But what was left, and you heard from the
15 ID specialist Monte Spoor that he came and that he
16 looked around the apartment and he was able to
17 recover a partial print off of the window sill of
18 that spare bedroom, the bedroom with no screen on
19 it.

20 You know that Kristie after this happened
21 went to University Medical Center where she went
22 through the rigors and the having a sexual assault
23 kit done on her, and you heard the nurse Carole
24 Peterson talk about what you get to do if you get
25 raped and you go into the hospital, and you spend

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1 about three or four hours in there, and they draw
2 blood, and they take swabs. They have you spit on
3 paper. They comb your pubic hairs. They look for
4 debris. They swab different areas, and then they
5 send those to the lab.

6 And you learned that semen was found on
7 the vaginal swabs of Kristie Chiles. But there was
8 no suspect at that time, no idea who had done this
9 because Kristie hadn't seen her assailant. She
10 didn't know who did this to her.

11 Remember Detective Miller telling you that
12 a lineup was conducted and she picked out an
13 individual that she said, I can't say for sure, I
14 can't say for sure who did it, but there's a couple
15 guys that look real similar to the man that maybe did
16 it, because she did see his face ever so briefly in
17 the shower but not enough to come in and tell you
18 this is the man who did it.

19 You'll see that photograph. You can go
20 back in there and look at it. Look at the
21 similarity. There is a similarity because the man
22 that she said looks like the guy but I can't say for
23 sure that's the one, happens to be his brother.

24 Ladies and gentlemen, we probably wouldn't
25 have been here today except for the fact that

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1 Detective Miller continued his investigation to find
2 out who raped Kristie Chiles. And because of that
3 continued investigation Curtis Downing became a
4 suspect. Lucky for Kristie Chiles that Detective
5 Miller was so dead set, if you will, on finding who
6 raped her because Detective Miller had that palm
7 print compared and lo and behold, who did it come out
8 to? Mr. Downing.

9 And remember Mr. Scarborough came in here
10 and he said, You know, I examined the latent print.
11 He told you what a latent print was, and you saw it
12 examined. He demonstrated it for you on the cup. He
13 put his print on and dusted it, and you saw a latent
14 print. We don't know who it belonged to, but it was
15 Mr. Lukens, while he was walking around he put his
16 fingerprint on there, and by golly that showed up on
17 that cup just like this partial palm print came out
18 on the window sill.

19 And Mr. Scarborough came in here and said
20 here's the ink print that I compared, Curtis
21 Downing's ink print, and you heard from the
22 corrections officer that rolled his print. And I
23 compared it to the latent print. Remember he talked
24 to you about what he looked for points of
25 identification, and he has to have so many before

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1 they can say it's a positive match. And then he went
2 on to tell you, I found 15 points of match between
3 the ink print of Curtis Downing and this unknown palm
4 print that was on Kristie Chiles's window sill.

5 And Mr. Scarborough said, I can tell you
6 the palm print on that window sill was only made by
7 one person, only one person put his palm print there;
8 that was Curtis Downing.

9 We have other identifying factors too.
10 The semen that was found. Well, once the palm print
11 came back to Curtis Downing then what did Detective
12 Miller do? He went and he took a serology standards
13 kit, and you have testimony that this was blood that
14 was drawn from Curtis Downing, and the blood from
15 Curtis Downing was sent to Cellmark along with the
16 blood and the vaginal swabs that were taken from both
17 Kristie Chiles and Tami Zold.

18 And you heard all about that DNA evidence
19 that took most of the afternoon. And you heard how
20 they do it, and you heard what they look for, and you
21 heard that one third of their cases that they've
22 actually been able to exclude people. I mean,
23 Cellmark isn't in this to say, Hey, let's go find a
24 suspect for the State of Nevada. They're there to
25 say, this sample belonged to this person. You heard

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1 them say that there had been times when we've been
2 able to get somebody out of prison and say they're
3 innocent. They didn't do this.

4 They came in and they gave you factors.
5 They told you what DNA was. They told you that we
6 each have unique DNA. If they drew any of your blood
7 and charted out your DNA pattern or my DNA pattern,
8 we'd all have a separate pattern unless you're an
9 identical twin. We each have our own
10 characteristics.

11 And what did we find from the DNA evidence
12 of Kristie, from her -- the vaginal swabs that were
13 taken and the semen that was found in Kristie Chiles'
14 vagina that was taken the morning of her rape. We
15 found that the only person who could have left the
16 semen in her vagina was Curtis Downing. No other
17 person in the world, as Dr. Word told you, left the
18 semen but Curtis Downing; that was his.

19 Well, we have Curtis Downing's semen in
20 Kristie's vagina. We have Curtis Downing's palm
21 print on her window sill. What other things do we
22 have that tells us who her assailant was on January
23 the 21st of 1993? We have Tami Zold.

24 Now, there is an instruction that tells
25 you, No. 19, it tells you that we did not bring Tami

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1 Zold in to testify about what happened to her so that
2 the jury could then go back and say he must be a bad
3 man. That is not why Tami Zold was brought in, and
4 that's not what you are to consider it for.

5 Instruction No. 19 tells you that you can
6 use Tami Zold's testimony for showing intent, state
7 of mind, a modus operandi or identity of the rapist.
8 Modus operandi, the signature of a person. Their
9 stamp of what they do at the scene of a crime. How
10 they do it, the similarities. The way a person
11 operates.

12 Well, you remember on January the 18th of
13 1993, three days before Kristie Chiles, that she was
14 walking her friend Tara home, she and Angie, and when
15 they were walking back through Clark High School,
16 they saw a black man coming towards them. He was in
17 a jogging suit and a beanie. And Tami said, I wasn't
18 too worried about it. He looked like any guy out
19 walking, and I didn't think too much about it until
20 he came up to us and he grabbed Angie and me. And he
21 said to them, Don't look at me or I'll kill you. He
22 had a fake Hispanic accent. He pulled her shirt over
23 her head as well as Angie's head. He tied Tami's
24 hands with shoelaces. He kissed her breasts. He
25 performed cunnilingus, and then he had penile-vaginal

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1 sex. Where have you heard those identical signature
2 marks? From Kristie Chiles.

3 He had a ski mask. He tried to disguise
4 himself. He didn't want her to see him. He didn't
5 want Tami to see him. He said, Don't look or I'll
6 kill you. He had a fake Hispanic accent. Kristie
7 Chiles told you that the man on top of her that night
8 three days later used a fake Hispanic accent.

9 He pulled Tami's shirt over her head. He
10 taped Kristie's eyes. He tied Tami's hands with
11 shoelaces. He tied Kristie's hands with rope. He
12 kissed Tami's breasts after he pulled her shirt up.
13 He kissed Kristie's breasts after he pulled her
14 nightshirt up. He went down her stomach and
15 performed cunnilingus on Tami. He went down
16 Kristie's stomach with his mouth and performed
17 cunnilingus on Kristie. He then performed
18 penile-vaginal sex on Tami. He did the same thing to
19 Kristie. Similarities. Modus operandi. The
20 signature of a rapist.

21 You can use Tami Zold's testimony for
22 identity to make your determination as to who raped
23 Kristie.

24 Now, Kristie talked about her assailant,
25 that she noticed was a droopy eye, had a droopy eye.

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1 And in fact, you saw a photograph of Mr. Downing and
2 if you look real closely his left eye looked a little
3 droopy. Well, maybe some of you say, I don't know, I
4 looked at that photograph. I'm not really sure I saw
5 a droopy eye. Well, you heard today from Abigail
6 Finlay that the defendant has a lazy eye, and when he
7 gets mad or when he gets mean or when he gets nervous
8 or when he gets tired, it's a noticeable droopy eye.
9 That was another thing that Kristie remembered about
10 her rapist, that he had droopy eye.

11 Now, Mr. Downing took the stand and he
12 testified too. Only his defense is consensual, this
13 was consensual sex, because there are only two
14 defenses in rape cases, ladies and gentlemen, the, I
15 don't know who did it some other guy must have done
16 it because it wasn't me, or she wanted it. It was
17 consensual. Only two defenses.

18 Well, it's hard for Mr. Downing to come in
19 here and say, It wasn't me, I didn't do it, because
20 the semen was found. He can't say I was never at
21 Kristie Chile's apartment couldn't be me because a
22 palm print was found.

23 So what did he tell you today? Hey, I met
24 her outside, I wanted to buy her Volkswagen. We had
25 a little conversation. We ended up in her

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1 apartment. Boom, we did it. We didn't talk
2 afterwards. I left. And then doesn't remember when,
3 but he went over there again and had sex again, and
4 then he doesn't remember after that, but then he went
5 a third time and had sex again, but he doesn't know
6 anything about her. He doesn't know anything about
7 her because they didn't talk when they were done, and
8 he doesn't really remember anything they talked
9 about, but he didn't stay around after they were
10 finished having sex, he left.

11 I would submit to you that Kristie Chiles
12 is not the kind of woman, and you saw her; you can
13 make that determination, that is going to meet a man
14 who says, Can I buy your Volkswagen, go in and have a
15 wine cooler, jump into bed, maybe a week later, two
16 weeks later, we don't when, jumps into bed again and
17 then a third time jumps into bed again.

18 She told you she had a boyfriend. Did she
19 seem to be from watching her testify, from what she
20 said to be that kind of a girl because that's what
21 you have to believe if you believe Mr. Downing. That
22 was it; that's all there was to it. Oh, and by the
23 way I can account for my hand print, my palm print
24 there, that was the second time I went over there.
25 That's when I went into her apartment and she was

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1 real antsy, and I followed her into the master
2 bedroom and then she went into the bathroom, and I
3 didn't follow in there. And then we went into that
4 back bedroom; that's when I left my print because it
5 was when we just decided we were going to do it. I
6 must have left it and put my print down here because
7 I was taking my clothes off, and I put my palm
8 there. That's how that palm print got on the window
9 sill.

10 Well, if you remember Mr. Scarborough told
11 you that that was a painted wood surface, and he
12 can't tell you, come in and say, numerically well,
13 that person must have been setting 30 pounds of
14 pressure down on that window, but what did he tell
15 you? It was more than light contact. Somebody would
16 have had to press pretty hard to have left their
17 print.

18 Ladies and gentlemen, stand on one foot,
19 take your shoe off and put your print down there and
20 see how much pressure you lay down there. Your
21 weight is on your foot that's on the ground. That
22 doesn't quite fit with Mr. Downing's story as to how
23 that palm print got there.

24 But you can look at the photograph and see
25 one more conclusion. Look real closely when you're

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1 back in there at State's Proposed Exhibit 18 and the
2 way his print is. Because here's the wicker basket
3 on the floor. So the outside is this way, and here's
4 the window sill, and here's the print of the palm,
5 and if you look real closely you'll see that if this
6 were the seal here's the print coming into the
7 bedroom. Look at this when you get in there because
8 the way Mr. Downing's prints got on that window sill
9 was as he was coming in the window into that
10 bedroom. That print if he were leaning against the
11 sill this way would be like that or maybe like that,
12 but it wouldn't be up against the window like that.

13 Mr. Downing's print was left on the window
14 sill when he opened the window and climbed into it
15 from the outside on January the 21st.

16 And finally you have Abigail Finlay.
17 She's been with Mr. Downing since 1990. They have
18 two children. They lived with her sister-in-law Lynn
19 Vinson, with Edna Downing also in the Newport Cove
20 Apartments, a different building but still close.
21 Close enough for Mr. Downing to have seen Kristie
22 Chiles maybe as she walked back and forth to her car
23 or maybe went to get her mail, close enough for him
24 to know that she drove a Volkswagen, close enough for
25 him to notice some certain things about Kristie

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1 Chiles.

2 Now, his mother told you when she
3 testified, We are all in by 10:00. He never left.
4 I'm a light sleeper. I'd know if Curtis had left
5 that night. But what did his girlfriend tell you?
6 Well, she told you that he faked a Hispanic accent a
7 lot of the times. It was funny for them. They
8 thought it was kind of a funny thing for him to do.
9 She told you that he had a full beard and she thinks
10 it was sometime in the latter part of January that
11 one day she came home and that full beard was gone.
12 And she said, What did you do that for, and he said
13 well, I just got tired of it.

14 Well, on January the 18th, he had a full
15 beard because that's what Tami Zold told you. He had
16 been seen. He could be identified, and then one day
17 he just comes home the end of January sometime, as
18 Abigail told you, and it was gone.

19 She told you that he had a droopy eye, a
20 lazy eye that would droop when he got tired.

21 And she told you that during the month of
22 January he left the apartment at all hours of the
23 morning. That she would wake up and find him gone,
24 not out in the living room talking to his mother, not
25 in the kitchen fixing a baby bottle. He was gone

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1 from the apartment. And he was gone out walking
2 around the complex because he just had to get out.

3 Ladies and gentlemen, I would submit to
4 you that the evidence in this case there can be no
5 reasonable doubt. There can be no reasonable doubt
6 that the man who broke into Kristie Chiles' apartment
7 on January the 21st of 1993, was this man right
8 here. That he entered with the intent to rape
9 Kristie Chiles, that in her hour of terror, if that's
10 what you will, he sexually assaulted her three
11 different times. That he had a gun when he came in.
12 That he took money from her wallet, and that he is
13 guilty of everything that the State has charged him
14 with.

15 Thank you.

16 THE COURT: Ladies and gentlemen, we're
17 going to change court reporters, and we're also going
18 to take a short recess.

19 During this recess, it is your duty not to
20 converse among yourselves or with anyone else on any
21 subject connected with the trial or to read, watch or
22 listen to any report of or commentary on the trial by
23 any person connected with the trial or by any medium
24 of information, including, without limitation to
25 newspaper, television and radio.

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