

1 LAS VEGAS-, CLARK COUNTY, NV., FRI., JULY 14, 1995

2 5:00 P.M.

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4 P R O C E E D I N G S

5

6 THE COURT: Let the record show this is
7 Case No. C114390, the State of Nevada, plaintiff,
8 versus Curtis Lundy Downing.

9 Let the record show the presence of the
10 defendant with his attorney, Mr. Mark Cichoski.

11 Let the record also show the presence of
12 the Deputy District Attorneys, Vicki Monroe and
13 John Lukens.

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

16 MR. LUKENS: Yes, your Honor.

17 MR. CICHOSKI: Yes, your Honor.

18 THE COURT: Mr. Cichoski, you may give
19 your final summation.

20 MR. CICHOSKI: Thank you, your Honor.

21 Good evening, ladies and gentlemen.

22 This is my one and only chance to talk to you at
23 the end of all the evidence, after you've had a
24 chance to sit here the last five days and hear
25 everything that's been said.

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1 The District Attorney will again have an
2 opportunity to stand up and make another statement
3 to you after I'm done, so I ask you please to
4 listen carefully to what I have to say to you.

5 In the very beginning of this process
6 you remember we've done what's known as jury voir
7 dire where we went through a process where you
8 folks ended up here in the jury box. And the
9 reason you're here is because we believe that you
10 are fair and reasonable people. I ask you to
11 continue to be fair and reasonable people.

12 The District Attorney talked to you a
13 little bit about how in order to convict somebody,
14 there has to be shown that a crime was committed
15 and that a certain person committed that crime.

16 I want to go over with you a little bit
17 about whether there was a crime committed or not.
18 You'll be given a jury instruction, jury
19 instruction No. 3 that goes over what was charged
20 in this case, what the crimes are that are
21 charged.

22 The very first thing is burglary. Now
23 as has been explained to you, in order to find
24 somebody guilty of burglary, you have to believe
25 that a person entered this apartment and at the

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1 time they entered the apartment, at the time they
2 crossed the threshold, it was their intent to
3 sexually assault the person in the apartment.

4 Let's look at the facts and the
5 evidence. And I want you to listen to remember
6 back to what you actually heard on the witness
7 stand, because the attorneys in this case have been
8 familiar with this case for awhile and we may say
9 things that weren't said from the witness stand. I
10 want you to remember what was said from the witness
11 stand.

12 Now as I listened to the people on the
13 witness stand, what I heard is that Christy was
14 awakened in her bed, she asked to go into the
15 living room. When she got to the living room, the
16 very first thing that happened was this guy said,
17 Where is your wallet? Where is your money? And
18 she told him, she said, Well, my purse is over here
19 somewhere. And he takes off and he goes rummaging
20 through the purse.

21 When he first entered the apartment,
22 however, when he entered the apartment, was it his
23 intent to sexually assault the person, or was it
24 his intent to take money? He had rope, he had
25 tape, people who are robbed get roped, get tied up

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1 and get taped.

2 After he had found, or allegedly found
3 the money is when he started talking about sexual
4 assault and asked her to lie down and stuff like
5 that.

6 There's a charge of robbery with use of
7 a deadly weapon. In order to find somebody guilty
8 of robbery, you have to believe that the money was
9 taken by force or fear of force.

10 What I remember the testimony to be on
11 the stand is that, He fumbled through my purse.
12 Did you look at the wallet afterwards? No, I
13 didn't look at the wallet afterwards.

14 I don't know how she knows that the
15 money was gone. I don't remember hearing when that
16 happened, how that accountability came in. And she
17 checked it? I didn't look at the wallet.

18 Sexual assault with use of a deadly
19 weapon. There's been no testimony from the stand
20 that there was ever a gun pointed at Christy or
21 leaning up against her body or anything like that
22 during the sexual assault -- or during a robbery.

23 One of these, I think it's Count No.
24 III, says that -- accuses Mr. Downing of inserting
25 his tongue into the vagina of Christy Childs.

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1 You've heard no testimony whatsoever
2 that a tongue was inserted into a vagina. You've
3 heard testimony about kissing on breasts and going
4 down the body and placing mouth on vagina, you've
5 heard no testimony about tongue being inserted into
6 a vagina.

7 Whatever the law is, whatever did or did
8 not happen, a terrible thing happened to Christy
9 Childs on January 21, 1993. A terrible thing. But
10 the question is, who committed that crime?

11 Ladies and gentlemen, I want to look at
12 the evidence so that we can decide who committed
13 this crime. Now this crime happened, like we've
14 been saying an awful lot, on January 21, 1993.
15 That is two and a half years ago. Two a half
16 years. That is a long time to remember what you
17 were doing, what you did, what you remember taking
18 place.

19 And as your mind searches back and tries
20 to remember what happened two and a half years ago,
21 things might start to change. The story might get
22 better, story might get worse as you think what
23 happened two and a half years ago. But
24 fortunately, some of this information was written
25 down right at the time, right at the time that it

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1 happened.

2 Detective Fox took a report. He took a
3 report within an hour of what happened to Christy.
4 And Detective Fox is a police officer with the Las
5 Vegas Metropolitan Police Department. It's his job
6 to get it right, it's his job to find the right
7 man. It's his job to fill out these reports and do
8 it to the best -- to his best possible ability.

9 And what did Officer Fox tell us that he
10 put down in his report one hour after this
11 happened? He talked about the build of the
12 individual in this case. He said that this was a
13 heavy, a heavy person. He could have marked thin,
14 he could have marked medium, he could have marked
15 muscular. Heavy.

16 You heard testimony from Christy that
17 the person that she remembers feeling on top of her
18 was heavy and flabby. A flabby individual.

19 He asked her what hand does he use?
20 What hand did he use? He's right-handed.
21 Right-handed. I don't know if you've noticed
22 Curtis taking notes at all during the trial or not,
23 you heard his mother tell you, he's left-handed and *Downing*
24 he's used his left hand his whole life.

25 What's the hair style of this

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Perpetrator

1 individual, the person who did this to you, one
2 hour after it happened? This person has curly
3 hair. He could have marked Afro. He could have
4 marked Gerri-curl. He marked curly hair.

5 What were the speech characteristics --

6 MR. LUKENS: Excuse me, may we approach
7 the bench, please?

8 (Thereupon, Counsel approached the
9 bench, and after a discussion out of the
10 hearing of the Reporter, the following
11 proceedings were had:)

12 MR. CICHOSKI: So Officer Fox got his
13 information directly from Christy Childs within an
14 hour after this happened.

15 What did Christy say about the speech
16 characteristics of this individual? She said that
17 this person had an Hispanic accent and that it was
18 high pitched. A high-pitched Hispanic accent.

19 You heard Curtis take the stand. You
20 heard Curtis testify. You heard Curtis' voice.

21 She told Detective Fox that he had a
22 droopy eye, this person had a droopy right eye.
23 She says it's his right eye that was droopy, it had
24 a sty in it, it was significantly smaller than the
25 other one.

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1 When I was in the bathroom, she
2 testified, and we flipped the light on, I got a
3 look at this person. He's standing there right
4 there in front of me. I'm looking directly at
5 him. One of the first things I notice is this eye,
6 this droopy eye.

7 Abigail Findley sat up here and told
8 you, oh, yeah, Curtis, he has a droopy eye,
9 especially when he gets tired or angry or mean,
10 something like that. Curtis has sat through a
11 five-day trial.

12 In fact, ladies and gentlemen, what this
13 whole trial boils down to is you have two very
14 different stories on the stand. Curtis isn't
15 telling you that Christy was not raped on January
16 21 of 1993. He has pled not guilty to raping her.

17 Who raped her? Why are these stories so
18 different? You remember Carol Peterson when she
19 was up on the stand? She's the nurse. She talked
20 about the rape kit, she talked about the importance
21 of doing this rape kit right and how she asked
22 certain questions during in rape kit about what
23 happened to her.

24 One of those questions that she asked,
25 which you have in your exhibit, that's the State's

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1 Exhibit No. 26. is this whole medical report,
2 somewhere here, somewhere here in the middle it
3 says medical history and assault information. And
4 Carol Peterson filled this out.

5 And one of those areas she said, Was a
6 condom used during the assault? And she marked
7 Yes, a condom was used. Concenting intercourse
8 within the last 72 hours? Yes. Was a condom
9 used? No.

10 Ladies and gentlemen, you have heard
11 absolutely no testimony from Christy Childs as to
12 who that sexual intercourse was with within the 72
13 hours before she was raped. You've heard Curtis
14 Downing tell you that he had concensual sexual
15 intercourse with Christy Childs without a condom.

16 Now does Curtis remember the exact day?
17 Does he remember, well, of course it was January
18 20th, or the 19th or the 18th or something like
19 that? No, he doesn't. He doesn't go back home on
20 his calendar and put a little gold star every time
21 he sleeps with somebody.

22 All he knows is that he had concensual
23 intercourse with Christy.

24 Now you remember that Melissa Webber,
25 the DNA -- one of the DNA gals, she was here in the

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1 morning, Wednesday morning. And we went over some
2 of these audioradiographs with her. And this is
3 State's Exhibit 8-A. This is the audioradiograph
4 which shows the semen sample that was obtained from
5 the vaginal swab from Christy Childs.

6 Here is Curtis Downing and his blood
7 sample, and you see how dark those are; and here's
8 the vaginal swab which matches Curtis, and see how
9 light they are.

10 When Melissa Webber was asked, Why are
11 those so light, her response is, Well, we didn't
12 get very much. Well, how much do you need in order
13 to get any reading at all? Millions. You need
14 millions of pieces of DNA just to get a reading.

15 Well, she was asked, What happens if
16 semen stays within the vaginal cavity? And she
17 told you that it breaks down, the bacteria breaks
18 it down and it gets weaker and weaker. And after
19 three or four days, she can't get a reading.

20 Now you heard Charlotte Words say, Well,
21 after after a day we can't get a reading. Then
22 Melissa Webber comes in the next day and says after
23 three or four days we can't get a reading.

24 Melissa was the DNA expert, the one who
25 does this stuff, the one who got up here and drew

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1 all the pictures and showed us how it all
2 happened. She also has that degree in forensic
3 science, I think her Bachelors in forensic science
4 where she studied about preserving evidence and
5 using it.

6 Is it logical that Curtis could have had
7 sexual intercourse with Christy and that the semen
8 was still in there? Christy says her attacker used
9 a condom. She remembers. Two things Christy said
10 over and over again in her testimony, "I'm very
11 observant" and "I don't remember." I believe that
12 Christy was very observant at the time, but after
13 two and a half years may not remember some of the
14 specifics.

15 She remembers having the condom, there
16 was a condom. This person had a condom on. The
17 question is, does a condom leave millions of pieces
18 of DNA, enough to get a reading?

19 You'll also notice when you look at this
20 report on the page right after the one where she
21 talks about having had concensual intercourse in
22 the last 72 hours, there is a report from the
23 doctor who examined her, who physically examined
24 her vaginal cavity and he said that he didn't find
25 any pooling of secretions or fluid in the vagina.

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1 Why is that significant? There wasn't
2 much there. Christy told you that when she was in
3 there washing herself, that she was taking pains
4 not to do a good job. She didn't want to do a good
5 job so there would still be something there.

6 You've heard testimony from Tammy Zold
7 that she was taken over to a rain gutter and
8 physically washed out. And yet if you look at the
9 audioradiograph of Tammy Zold, those lines coming
10 from the vaginal swab are very, very, dark, meaning
11 there was a lot of DNA in those samples.

12 I want to say something about Tammy
13 Zold. Tammy Zold, the Judge has instructed you the
14 evidence you've heard from her cannot be used to
15 say that Curtis is a bad person or that Curtis is
16 the one who committed this crime.

17 Whatever may have happened to Tammy Zold
18 is to be decided -- that's to be decided another
19 day. You can't use that evidence to say that
20 Curtis is a bad person or that Curtis did this
21 one. You have to look at this evidence, and what
22 does this evidence show? What does it show?

23 Ladies and gentlemen, there's a little
24 bit of testimony of different people that I should
25 talk about. There was Abbigail Findley who came up

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1 here and sat on the stand. Now Abbigail is Curtis'
2 ex-girlfriend. He lived with her for three years,
3 he had two children by her.

4 She found out that Curtis is out there
5 sleeping with other women, and that upset her. She
6 doesn't like that. She found out that Curtis has
7 been accused of the crime of sexual assault. That
8 upset her. She doesn't like that.

9 So she gets on the stand as a witness
10 for the State and says Curtis wandered off at
11 night, Curtis spoke in a fake Hispanic accent. And
12 Curtis did all these things that Curtis says he
13 didn't do. She's mad at Curtis. She admits it.

14 Curtis' mother gets on the stand, says
15 some things, too. What's her penchant? This is my
16 baby boy. The instructions say if you do not
17 believe, you know, part of a witness's testimony,
18 you can throw out the whole thing. Maybe they both
19 should be thrown out.

20 But there's definite penchant there on
21 the side of Abbigail, on the side of mom.

22 You heard Lynn, Lynn used to be married
23 to Curtis' brother.

24 Ladies and gentlemen, again what this
25 case boils down to is who is telling us the truth.

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1 I believe that I've showed you through the evidence
2 that it is --

3 MR. LUKENS: Your Honor, I'm going to
4 object. We may not inject our personal beliefs
5 into this case. That's improper in argument--

6 MR. CICHOSKI: I'll rephrase my
7 statement, your Honor.

8 THE COURT: Correct. In other words, a
9 personal belief of the attorneys is not to be
10 considered by you. They can only tell you what the
11 evidence shows, not what their personal belief is.
12 That's improper argument.

13 So you disregard that statement by
14 Mr. Cichoski as to what his personal belief may
15 be.

16 MR. CICHOSKI: Ladies and gentlemen, the
17 evidence shows that Curtis' story is possible. If
18 Curtis did have consensual sexual relations with
19 Christy Childs, that it is possible that Curtis'
20 semen was still in Christy's vaginal cavity when
21 she went to the hospital on January 21 and was
22 examined by the doctor there.

23 Why would Christy get on the stand and
24 say that she doesn't know Curtis, that she's never
25 seen him before, that she's never had sexual

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1 relations with him? Why would she do that?

2 You've heard testimony from the stand
3 that she had a boyfriend. Her boyfriend called her
4 on the phone, her boyfriend says something about
5 being late. You heard her testify that she now
6 lives with her boyfriend.

7 On January 21, Christy Childs was
8 raped. They're out there looking for an attacker.
9 In the course of their investigation, they come up
10 with a palm print, a palm print which Miss Monroe
11 says comes from, if you are coming inside, you put
12 your hand here as you come in. Or, maybe somebody
13 leaning on it.

14 But they find this palm print, it
15 eventually gets matched up to Curtis Downing.
16 Christy has a choice. Christy can say well, it's
17 not Curtis because I know Curtis, I've slept with
18 Curtis, I've had him in my apartment. No big
19 deal.

20 Or she can say yeah, that could be the
21 guy. And then the semen comes back, the DNA
22 evidence which says that Curtis Downing did, in
23 fact, have sexual relations with her, and then what
24 does she tell her boyfriend, her family, her
25 friends?

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1 No, it's not true? Must be the
2 attacker. Don't know him. Never seen him. You
3 notice the way she was up here talking about her
4 attacker, this heavy set curly-haired droopy eye,
5 high-pitched Hispanic man.

6 She was very emotional, extremely
7 emotional, cried a lot, could hardly hear what she
8 was saying. When she was asked about Curtis, her
9 demeanor changed. She looked at him, the crying
10 stopped, she said no, I don't know.

11 Ladies and gentlemen, in order to find
12 Curtis Downing guilty, you must find that he
13 committed -- that Curtis Downing committed these
14 acts, not somebody else, beyond a reasonable
15 doubt.

16 Beyond a reasonable doubt is the highest
17 standard of proof that the law can require. And
18 there's a reason for that, there's a reason why
19 that's the highest standard of proof. Because we
20 do not want to convict innocent people of heinous
21 crimes.

22 Curtis did not do this. Don't convict
23 Curtis for something he didn't do. We need to find
24 the right man.

25 Thank you.

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