

1 THE COURT: Mr. Lukens, you may give
2 your final summation.

3 MR. LUKENS: Thank you, your Honor.

4 MR. LUKENS: For this portion of the
5 time I'm going to have an opportunity to speak with
6 you for the last time, those things which I say to
7 you may seem a little disjointed.

8 The reason for that is because my
9 portion when I speak with you is called rebuttal.
10 It's not a prepared argument, it's not something
11 that is prepared beforehand because I know what it
12 is that I am going to say to you.

13 I may say those things only in response
14 to that which Mr. Cichoski has said and the points
15 that he raised.

16 And so for that reason, what I say to
17 you may be a little disjointed. And I beg you to
18 bear with me.

19 The Judge has told you that this phase
20 of the trial is an argument phase. It should not
21 be. This really isn't argument. Rather than to
22 argue what I'd like to do is say come now and let
23 us reason together. Now let us reason through the
24 testimony, let us reason through the exhibits, and
25 see if we cannot find the truth.

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1 I'm going to read what has been said.

2 You see very shortly, you're going to
3 enter something that I deem to be almost a temple.
4 It's a temple of justice. It's a room in which I
5 have never been. It's a room where you as 12
6 people enter and you leave behind and you set
7 outside the door all the sympathies, all the
8 passions, all the prejudices, and you go into that
9 room in search of only two things: Truth and
10 justice. And that's it.

11 You are here today for only one reason,
12 and that's because what that man did in the early
13 morning hours of January 21, 1993. Because of his
14 actions we are here.

15 The Judge told you at the beginning of
16 this trial that one of the foundations of our
17 system of justice is the presumption of innocence.
18 It's a presumption that means that the law presumes
19 him to be innocent and it treats him as an innocent
20 man until his guilt is proven. Doesn't ever mean
21 that he didn't do it. Simply means he's presumed
22 innocent. He starts with that in his corner.

23 But as every little piece of evidence
24 comes in, as every word about an Hispanic accent,
25 as every little piece of DNA shows up on an

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1 autorad, that presumption is stripped away from
2 this man until when all the evidence is now in, he
3 sits here before you in all of the guilt.

4 This system, what we have here is a
5 sterile courtroom. I wear a coat and tie. I try
6 my best to speak politely. Yes, your Honor. And
7 yet at the same time we try to recreate a woman's
8 bedroom at 5:00 in the morning in the darkness of
9 the night with the terror that's awaiting, have
10 somebody on her with a gun, with a flashlight.

11 Because that's what it was about. It
12 was about that terror in the night.

13 Does it not occasionally bother you to
14 have an attorney stand before you and say, gee, it
15 wasn't a crime out of one side; but from the other
16 side, but if it was, he didn't do it. Or, a
17 defendant to present to you an alibi, I wasn't
18 there; but if I was, it was concensual?

19 One of the philosophers at one time
20 wrote, and he said, he who is bent on doing evil
21 and deception can never want occasion.

22 The one thing that you can count on that
23 is consistent is that those who do evil do evil and
24 do evil and those who deceive will deceive and
25 deceive and deceive.

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1 How do you think it was that I knew to
2 to have a plain gray envelope marked and put into
3 evidence before there was one word of testimony.
4 Because that man sat there and heard the evidence
5 coming in and come in and come in. No longer was
6 there a question of identification.

7 He then said, there are only two
8 possible defenses. It wasn't me or it was
9 consensual.

10 And so he had to explain the science
11 that put him there. The science that put his penis
12 in Christy's vagina and his palm print on the
13 window sill, he had to explain that to you.

14 And deception never wants for an
15 opportunity. Was it not interesting that he could
16 describe to you in detail the furniture, the wicker
17 basket, the phone on the stand. Why did he do
18 that? He did that because he wanted you to know
19 that he had been there on a consensual and regular
20 basis and he was observant.

21 He was very good at describing to you
22 those things of which there were photographs and
23 which were documented. And yet when it came to
24 describing those things for which there was no
25 documentation, nothing written down, scars on the

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1 body, anything, anything at all, not a woman who
2 you had made love to three times and you've got a
3 string of I don't know, I don't know, I don't
4 know.

5 I felt almost like it was the Abbott and
6 Costello re-run of Who's on first. I don't know.
7 Convenient memory.

8 One of the things that you see the Judge
9 at first did not allow the evidence in is Christy
10 Childs had marks on her wrists. Those were the
11 only physical scars or marks left behind by him
12 when he did this.

13 And then when he took the witness stand
14 and said no, it was consensual, you got to see a
15 little bit, just a little bit of what this crime
16 does to somebody. The way into which it reaches
17 and touches a woman's soul. Christy's wrists are
18 no longer red, the nightmares will go on forever.

19 And the assault went on into this
20 courtroom, it continued. Many saw through him as
21 he sat there and watched him. Did you notice his
22 demeanor when someone that he told you that he at
23 least knew well enough to have sex with, did you
24 watch his demeanor as she testified, as she tried
25 to remember what for so long she's tried to

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1 forget? Did you watch him? That's evidence.
2 That's demeanor.

3 You saw her struggle and try to remember
4 something that she really wanted to forget and yet
5 you saw this man struggle and try to remember
6 something that he really wanted to remember. Which
7 one was deceiving you? Deception never wants for
8 an excuse.

9 Which one said, I don't know, I don't
10 know, I don't know? Particularly when it was so
11 convenient, but can remember a wicker basket and a
12 placement of a telephone because they're in
13 photographs.

14 You saw something classic that most
15 juries in a sexual assault case don't see. During
16 voir dire I asked you, I asked most of the jurors,
17 would you expect two people who have gone through
18 the same thing to act in the same way? And you saw
19 two young women who went through basically the same
20 ordeal of terror in the night and you saw the way
21 that they responded on the witness stand. Because
22 there is no set way, there's no way that a rape
23 victim is going to act. Most juries don't get to
24 see that.

25 The reason why you did in this case is

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1 because, as counsel for the defense argued all of a
2 sudden at the end, gee, it was somebody else, it is
3 the issue of identity.

4 Assume for the moment that there was
5 absolutely no DNA evidence in this case. None.
6 Assume for the moment that we were not fortunate in
7 this case, as you heard the fingerprint evidence, 8
8 to 10 percent, that's only -- that in 8 to 10
9 percent that's when we get fingerprints.

10 So assume that that was not here, that
11 none of this scientific evidence is available to
12 us. All we have is Christy Childs and Tammy Zold.
13 And of that, only one of them can sit on the
14 witness stand and can look at him in the face and
15 say That's the man that raped me. Tammy Zold. For
16 we don't know who raped Christy yet.

17 They both know that it was a black
18 male. We have a difference. Let's deal with that
19 difference first. Tammy said he had a beard.
20 Christy says no beard.

21 You know, the instructions say that
22 you're allowed to draw inferences from the facts.
23 And even though you don't know something, you can
24 infer something. I bet that you probably could
25 without too much trouble infer that Mr. Curtis

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1 Downing shaved his beard sometime around the 19th
2 of January, from the time he assaulted Tammy until
3 the time that he sexually assaulted Christy.

4 Physical appearances, let's just say
5 similar.

6 Now, let's talk about the manner of the
7 assault. What acts were done. Tammy: Kissed
8 breasts, vagina, sexual intercourse. Same thing
9 here. Still just a little bit, just some
10 similarity.

11 Let's look at some other factors. In
12 other words, did this rapist leave his signature on
13 his work? How about the victims' eyes? Covered
14 the eyes. With Tammy? Check.

15 Tape. Freedom of movement with hands.
16 Tied. With Christy? Check. We're getting a
17 little closer. A little closer.

18 You heard the evidence. You know what's
19 coming next. Speech. Accent. With Christy?
20 Check.

21 Then what happens? The most significant
22 little trademark of all. Could it be that this is
23 a trademark by one who is familiar with the
24 criminal justice system and knows that semen leaves
25 its ever-present trail behind? Douche. Without

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1 regard to whether it was successful or not, you
2 take somebody who you have just sexually assaulted
3 and take them over to the rain spicket to have them
4 douche. And was that done in Christy's case?

5 Check.

6 Now this Christy Childs is not
7 describing a person here who she had consensual sex
8 with, she's describing her rapist during all of
9 this.

10 But yet Christy Childs, when she goes to
11 the hospital, and Mr. Cichoski when he questions
12 her skillfully and the nurse, did you impress upon
13 her the importance of telling the truth and giving
14 the best answer, and then he talks to you of the
15 consensual sex where she says yes, 72 hours,
16 perhaps Mr. Cichoski should count the hours.

17 Christy Childs, in an effort to be even
18 more truthful goes back beyond 72 hours, which is
19 three days, she goes all the way back four days
20 because she says yes, I had consensual sex four
21 days ago.

22 And so Mr. Cichoski says the reason she
23 didn't say that is because she didn't want her
24 boyfriend to know that she's having consensual sex
25 with Curtis.

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1 Well, ladies and gentlemen, if that is,
2 in fact, the case, if she knew Curtis, why didn't
3 she simply name Curtis as her rapist? She had to
4 live this nightmare for months, knowing that the
5 man that raped her was still out there.

6 Do you see the illogic in
7 Mr. Cichoski's argument? The evidence in this
8 case is just overwhelming, from the big things that
9 are scientifically irrefutable to the littlest,
10 tiniest of things. The 357 magnum which happened
11 to be a revolver which just happens to be the kind
12 of gun that Christy Childs said the man had that is
13 hidden in the trunk of his wife's car because it's
14 against the law for an ex-felon to have a gun.

15 And if you're going to have a gun and
16 hide it, where would you like to hide it? How
17 about the trunk of your wife's car?

18 It's not a big thing, and I don't ask
19 you to convict Curtis Downing because there were
20 some 357 rounds in the trunk of his wife's -- I'm
21 sorry, not his wife, but I don't think it's his
22 ex-girlfriend, either. I think probably the mother
23 of his children. The mother of his children's
24 car.

25 But it's just one more little thing

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