

1 THE COURT: Go ahead.

2 Do you need something, Pete?

3 MR. CHRISTIANSEN: No, Judge.

4 MR. GUYMON: I think he was going to invoke the exclusionary rule.

5 MR. CHRISTIANSEN: I was, Judge.

6 MR. GUYMON: The Judge did it for you.

7 MR. CHRISTIANSEN: All right, thank you.

8 OPENING STATEMENT

9 BY MR. GUYMON:

10 Good afternoon. On behalf of the State of Nevada, I have the
11 opportunity now to give an opening statement. But before I begin, I think I can, for
12 both sides, both the defense and the prosecution, thank you for your attentiveness
13 in voir dire. I believe it's the slowest process we have in this trial. And, as the Court
14 has indicated from here forward, we should be able to move fairly quickly despite the
15 seriousness of this case.

16 I liken an opening statement to a table of contents where oftentimes you
17 may see a book, or maybe even a movie, you may see the movie or the book by it's
18 cover, or by its teasers, but you still don't know where the movie truly begins and
19 where it finishes.

20 I wish now to go through each witness as though they were a different
21 chapter in the book and lay the case out for you in its chronological order so in the
22 event that a witness cannot appear in he or she's chronological order, you'll
23 understand where that person fits in the big picture, in the totality of this case.

24 As you know, there are three counts of sexual assault in this case.
25 They all involve the same victim, Tami Zold. There are three separate acts, sexual
26 acts, that were perpetrated upon her. There is the sexual act of oral sex, there's
27 sexual penetration, penile/vaginal penetration, and there is digital penetration in this

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1 case. And that's why there are three separate charges.

2 I begin with where this case started. Tami Zold, 16 years old, Angela
3 Vaughan, 16 years old, Tara Annunziato, A-n-n-u-n-z-l-a-t-o, age 16. The three of
4 them friends, companions to one another. The all live in the general vicinity of Clark
5 High School. And on this particular evening at about 8:30, on January 18th, 1993,
6 Tami Zold and Angela Vaughan were living together at Tami's old mother's house,
7 Dianne Schmidt. Tara had come over and visited that evening as was kind of her
8 practice. These girls would get together as teen aged girls do and they'd talk
9 amongst themselves.

10 And it came time for Tara to go home. It was about 8:30. And she
11 lived within walking distance of Tami Zold's house and the home in which Angela
12 Vaughan was staying. And so, Angela and Tami walked Tara home. And as they
13 did, they walked from Tami Zold's house which is at the 4200 block of Silver Dollar.
14 Silver Dollar is a street not very far from Clark High School.

15 And these three girls traveled across Clark High School and over to
16 Tara's apartment was, where Tara stayed with her family. It was about 8:30. And
17 I believe Tara, Angela, and Tami will each indicate to you in testimony that it took
18 them about 15 to, say, 20 minutes to walk on over to Tara's house and say goodbye
19 to each other.

20 Once they got to the apartment complex, they talked with one another
21 for a little while and then Angela and Tami left, saying goodnight to Tara.

22 Tara will tell you from the witness stand, I believe, that Tara said she
23 found it very unusual that Tami Zold didn't call her that night about 20 minutes later.
24 Tara will tell you that it was Tami's practice, anytime Tami dropped Tara off that
25 Tami, upon getting home, would call Tara and say, "I got home safely."

26 Likewise, when Tara would walk Tami home, when Tara would get
27 home, she would call Tami. This was a practice these girls were engaged in. It's

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Mother gone?

1 something they did regularly. And on this occasion, Tara didn't hear from Tami.

2 And so, Tara, later that night, tried to call Tami's residence. Tara had
3 no idea what fate would have for Tami or what had happened. But Tara will tell you
4 that Tami's phone went unanswered that night.

5 Unbeknownst to Tara, Angela and Tami returned back as though they
6 were walking to that apartment on Silver Dollar, and they, again, walked across the
7 parking lots of Clark High School. They will tell you a little bit about the lighting of
8 Clark High School. But they'll certainly tell you that it was light enough in the
9 parking lot to see where they were going. It was light enough not to bump into each
10 other, or bump into things.

11 That there were street lights in the parking lot area and along the streets
12 of Arville and Pennwood are street lights as many of our streets have here in Las
13 Vegas. And they will tell you that there was illumination from those lights as well
14 as illumination from the school, the lighting that's on the campus there.

15 And from a distance Angela and Tami saw a black male adult that was
16 fairly large in his frame and in his stature. And this black male adult was wearing
17 sweat pants, a jacket, and a beanie, a ski cap that was pulled down to about his
18 eyelids. And from a distance Angela said to Tami, "That man looks scary." And
19 Tami responds, "Oh, ignore him. He's just out walking." "He's just a jogger," or
20 something like that.

21 Angela and Tami continued to walk across the parking lot where the
22 lights are. And the black male adult continues to walk forward and towards Angela
23 and Tami. And Angela will tell you that she became increasingly more concerned.
24 Tami, carefree, 16, didn't give it much--didn't pay it much attention, nor much mind.

25 But, at some point in time as the black male adult approaches closer,
26 Tami and Angela begin to veer off in a different direction so as to not be walking
27 directly towards this man with the beanie. And as they turn their direction, so also

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1 does the assailant. He continues to walk directly at them. And Tami and Angela are
2 focused now on the assailant.

3 And the assailant gets within feet of the two girls and he grabs both
4 these girls by the arms and he says, "Don't look at me. And do what I tell you to
5 do." The assailant quickly walks Angela and Tami back into the school ground area,
6 out of the parking lot area, across the grass, and behind some bushes. Not far from
7 one of the hallways there in Clark High School.

8 He places Angela and Tami's jackets above their heads and over their
9 eyes so that they can't see their assailant. The assailant orders both girls down to
10 the ground and into the mud. You'll learn that evening, earlier, it had been raining
11 and the ground was quite wet. There was a lot of precipitation in the air. You'll see
12 pictures of all the rain and how wet it was.

13 And he orders them down into this mud and he puts them both on the
14 ground on their stomachs. They'll tell you that just before they were grabbed, both
15 Angela and Tami were able to see their assailant. They knew that their assailant had
16 a beard on January 18th, 1993. They know their assailant was a black male adult
17 wearing white sweat pants, a dark jacket, a black beanie. And they will tell you that
18 he was a large man. And that despite the fact that he appeared to be black, he spoke
19 English, but with a Spanish accent. They will both tell you that they thought this
20 accent was used so as to disguise or muffle his voice. While lying on the ground on
21 their stomachs, they both listened to this man's voice, this Spanish--this feigned
22 Spanish accent.

23 Angela and Tami will tell you that they were lying close enough to one
24 another that they could hear one another, they could hear the breathing of each
25 other, and the sighs, and the crying, and the emotion.

26 The defendant choose Tami Zold to perpetrate the sexual acts on. He
27 quickly told them to shut up, not to look at him, not to say a word, and to do as he

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1 told them to do. And he takes Tami Zold's shoelaces out of her shoes and he ties
2 up her hands above her head now. Her face is covered with her jacket. And he
3 strikes her in the back. And then he rolls her over and he strikes her in the stomach
4 because she's offering some resistance. And she quickly learns that the more
5 resistance she offers, the more heightened is the harm that's perpetrated on her.
6 And she saw this man coming and she knows that he is far bigger than she at age
7 16. And she begins now to comply with his demands because she has no choice.

8 And the assailant takes off her shoes, having taken the laces out of one
9 of them. And takes off her socks and takes off her pants and her underwear. He
10 begins to fondle her breasts and then he kisses her breasts. He then puts his mouth
11 to her vaginal area and begins to perform oral sex on her.

12 At some point in time, Tami Zold tries to scoot back, I believe she says
13 was her words, "I scooted back." He persisted. After what seemed to be a long
14 time, Tami Zold said at that point in time the defendant got up on top of her. And
15 he penetrated her forcefully with his penis inside of her vagina. She'll tell you that
16 he was there for quite some time. And that she thought he ejaculated.

17 Angela Vaughan will tell you that while these acts were being
18 committed, she could hear deep breathing. At one point in time, she could hear her
19 friend get struck at the hands of the assailant. And she could hear noises. She could
20 hear the crying of her girlfriend, Tami Zold.

21 Tami Zold will tell you that at the completion of these sex acts her
22 assailant had her get up. He helps her up because her hands are now tied. She has
23 her top on--I should tell you she wasn't wearing a bra that night--and so her bra was
24 never removed. But her pants and panties are off and her assailant walks her a short
25 distance away from where she once laid in the dirt, and takes her over to the rain
26 gutter where rain water was coming down, out of the gutter.

27 And the assailant seats her down next to that rain water and he

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1 "washes her out," to use her expression. He takes the water from this rain water as
2 though it were a douche, perhaps, and tries to clear the evidence from her vaginal
3 cavity. He uses his fingers to do that. And thus, the third penetration that I
4 mentioned. I told you this was a case involving one count of sexual assault, of oral
5 sex, penile/vaginal penetration being the second, a digital penetration as the assailant
6 places his fingers up inside Tami Zold's vagina area to clean out any evidence that
7 might be there.

8 The defendant then walks Tami Zold back over to where her girlfriend
9 lies and puts her back on the ground. Her jacket is still over her head and says,
10 "Don't look at me. And this is because you girls hang out with Damon," is the
11 pronunciation that he uses.

12 During the assault, you'll learn that the assailant says, "I've been
13 watching you for some time. I know who you are, I know who you live--where you
14 live. And I know your friend, Damon"

15 It is no surprise that Tami Zold had a friend name Damon. A young man
16 she ran around with. He was a Latin male. The assailant knew that Damon was a
17 Latin male. And the assailant uses Damon as the excuse, telling Tami Zold, "I did
18 this to you because Tami Zold did this to--excuse me--because Damon did this to my
19 sister. And now my sister is crazy." Well, Tami Zold knew nothing of that kind of
20 conduct on behalf of Damon. But she certainly knew a Damon. And she knew that
21 her assailant knew where she lived and who she ran around with.

22 The evidence will show that the assailant said, "Count to a hundred
23 before you get up. Keep your jackets over your head and don't look at me." And
24 before he left, he said, "Do you know what I look like?" to Tami. And Tami says,
25 "Well, no." And the assailant says, "Yes, you do." And she says, "Well, I know you
26 have a beard, but that's all I know." She's fearful to say, "I know who you are; I
27 know what you look like." But she tells him, "I know you have a beard." And the
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1 assailant says, "Maybe that's too much, maybe I should kill you." Tami Zold was left
2 to tell her story.

3 You'll learn that after counting to 10, both girls, one to another, say,
4 "Did you count to 10?" And the other girl says, "Yes." And Angela Vaughan takes
5 the jacket off her head. And the first thing she sees is her girlfriend now seated there
6 in the mud, crying, weeping. And they embrace.

7 At the conclusion of that embrace--or during that embrace, the first
8 thing that Tami Zold says is, "I've been raped." And she begins to tell you girlfriend
9 weepingly, what has happened. And her girlfriend notices that one of her shoes are
10 off and that her shoelaces are sitting there in the dirt. Quickly, Tami Zold puts her
11 shoes on and off they go, home. And they walk home.

12 And Tami Zold, for that short walk, is left asking herself, "Do I tell my
13 mother? Because if I tell my mother, then my mother will make me call the police.
14 And this man knows where I live and if I call the police, he will kill me. That's his
15 promise to me." And she doesn't know what to tell her mother.

16 Well, sure enough, her mother is there at the house when she gets back,
17 on Silver Dollar. And her mother begins to inquire. "You girls left here in clean
18 clothes. You didn't look all torn up and tattered and dirty. What happened?" Tami
19 Zold has got a big decision here and she says, "I got in a fight." "Mom, I got in a
20 fight."

21 Now, you'll learn that her mother is a mother, like many of you, been
22 her mother for 16 years and she knows her daughter. And so, she begins to ask,
23 "Tell me, tell me what happened." It's not long and the girls break down and Tami
24 Zold says, "Mom, I was raped." And she gives a description. And she gives her
25 account of what happened.

26 And Diane Schmidt, being older and far more mature than these two
27 girls, say, "You're not showering, you're not going to the bathroom, you're not
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1 cleaning up. You're coming with me and we're going to the hospital. We're going
2 to UMC right now."

3 Diane Schmidt knew something that the girls didn't. And that was that
4 perhaps there was evidence of this sexual assault that could be preserved and be
5 brought forward into a court someday, some five years later.

6 Well, ultimately, a pelvic examination, a sexual assault kit is done, a full
7 exam on Tami Zold. Who goes to the hospital and she sits there now. And she
8 submits to this examination done by Nurse Perry then, now Spear, as I told you. And
9 Nurse Spear talks to Tami and says, "What happened?" And Tami gives her account
10 of oral sex, penile/vaginal penetration and digital penetration.

11 And she goes right through the account, telling the nurse as the nurse
12 documents it and as the nurse documents the scars on her wrists where she was tied
13 up. And the mark on her back where she got struck. And photographs are taken
14 showing these things so that you people will have them to see.

15 More importantly, Angela Vaughan's [sic] underwear, her panties, are
16 collected and they're placed in what we call a sexual assault kit, a kit that the nurse
17 prepares there at the hospital. And a Dr. Fisher comes into the room where Nurse
18 Spear is and performs what we call a pelvic examination where swabs are placed in
19 the vaginal area of Tami Zold and evidence is collected.

20 Unbeknownst to Dr. Fisher, on those swabs was found by an analyst,
21 Analyst Linda Errichetto, sperm. What Dr. Fisher knows when he performs his
22 examination is that the vaginal area of Tami Zold is red, there is red--some redness
23 there and some inflammation that is sexual [sic] with sexual penetration--that is
24 consistent with force.

25 Dr. Fisher can't tell you whether or not that was non-consensual or
26 consensual penetration because he says there's no way to tell one way or another
27 whether it's sexual--consensual or non-consensual. But he can tell you that this is

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1 certainly consistent with sexual penetration. And he notes his findings. And
2 ultimately, Tami Zold is released after the doctor does his examination and after the
3 police get an account of what's happened.

4 And after getting the account, Detective Galey and Detective Bigham
5 take that account there at the hospital. And so, now, Tami has had to talk to a
6 number of people. She's released. And Detectives Galey and Bigham go over to the
7 school grounds in order to try to find this area where this assault took place so that
8 they may be able to find some evidence as well and bring it to court.

9 Ultimately, they're not able to find the area, the bushes that these two
10 girls laid down in. So, they go back and they get Angela Vaughan. And they say,
11 "Angela, we just interviewed you and you just told us about this. Come with us and
12 show us the area, if you will." And so, Angela takes them over, takes the police over
13 to the area.

14 And sure enough, as she walks up to the very area she says that this
15 is where her girlfriend was accosted and attacked, there lies the shoelaces in the
16 mud. And so, those shoelaces are photographed there in the school ground area and
17 they're preserved.

18 You'll learn that the school police, Rebecca Scheel, became involved in
19 this case. She's now a sergeant. She became involved because this is a case that
20 happened on the school grounds.

21 You'll quickly learn that the assailant was not identified that night, nor
22 was he named. Tami Zold did not know this person by name. But she believed that
23 she could identify him again. And so, the case remains open.

24 Detective Petronek does a taped interview of the girls in this case and
25 collects information, trying to collect information on what the assailant looks like so
26 that ultimately the assailant can be found and can be brought to court.

27 And the girls, again, give a description of a man with a beard, a close
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1 tight beard, clean shaven, big man, a black male adult using a Spanish accent,
2 speaking English.

3 Ultimately, a photographic line-up is put together, some 10 days later.
4 Detective Fox puts together that photographic line-up. And he puts in that
5 photographic line-up five--excuse me--six black male adults, all who have beards.
6 And he takes the photographic line-up over to Angela Vaughan first, I believe, and
7 asks Angela Vaughan, "Can you pick anybody out?" And she says, "You know, I'm
8 not sure. I don't know. I don't recognize anybody in this photographic line-up."

9 And then he takes it to Tami Zold. And he asked Tami Zold, "Tami Zold,
10 do you recognize anybody in this photographic line-up?" Tami Zold says, "You know
11 what? Number 2 looks an awful lot like the assailant, but it's not him." Number 2
12 she says.

13 You will learn that number 2 is none other than Michael Downing, the
14 defendant's brother. We'll learn that Curtis Downing and Michael Downing were no
15 strangers to Clark High School and that area. Their sister, Lori Downing, lived right
16 there on Silver Dollar, very near Tami Zold.

17 And you will learn that Mike Downing had been in the area on the 18th
18 and the 19th. He had been identified as a person there. And that's why his picture
19 appeared as a possible suspect in this case.

20 You'll learn that Curtis Downing's picture wasn't in this photographic
21 line-up. And the best Tami Zold could do at that point in time was say, "My assailant
22 is not in there, but he looks like number 2." Brothers.

23 Well, this case remained open even longer. Because no one had been
24 yet identified. You will learn that after a big break in this case sometime in June of
25 the same year, 1983 [sic], Curtis Downing's blood is obtained by the police. They
26 get his blood and his blood is now preserved.

27 Well, prior to ever getting Curtis Downing's blood, Linda Errichetto had
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1 analyzed the vaginal swabs of Tami Zold as I indicated to you. She had analyzed
2 those vaginal swabs and she analyzed the panties that Tami Zold wore that night.
3 And she identified sperm inside the vaginal cavity of Tami Zold. And on that swab,
4 that preserved swab from the sexual assault kit. And she found sperm on the
5 panties. But, of course, Linda Errichetto didn't know whose sperm that was at that
6 point in time. But she knows that there is sperm and that there's evidence of this
7 sexual assault.

8 Well, now, with Curtis Downing's blood, perhaps the case can go
9 forward. And, in fact, that's what happened. It's Nurse Stein that drew the blood
10 after having contact with the defendant.

11 And it is Linda Errichetto who takes those samples from Tami Zold and
12 the known blood of the defendant and sends it off to Cellmark Diagnostic Center, a
13 group in Maryland that does nothing but DNA. And you'll learn from Melissa Weber
14 that their lab does nothing but DNA work. That is all they do. You'll learn that
15 Cellmark does both paternity DNA work as well as what we call "forensic DNA
16 work," or criminal DNA work.

17 In the DNA work that they do for parental purposes they are able to
18 determine who the father is to a child. The mother, of course, being known. The
19 father, oftentimes, or sometimes, unknown. They're able to take DNA and
20 conclusively say that this is the father of this child. And likewise, they can identify
21 the mother if the mother is unknown to a child.

22 You'll learn that Cellmark has done work for war dead, for instance, the
23 Gulf War where you have body parts and they want to match a body part, an arm or
24 a leg, to a corpse, a body, a frame, they're able to do that through DNA work.

25 You'll learn that through DNA work suspects are able to be excluded or
26 included. In this particular case, Melissa Weber will tell you that she analyzed that
27 sperm found in the vaginal swabs of Tami Zold and the sperm found from the
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1 underwear and she was able to identify that this is, number one: sperm, but more
2 importantly, that there was DNA associated with that sperm. And she will be able
3 to tell you whose sperm that is. Because she had the known blood of Curtis
4 Downing.

5 And she will tell you that the known blood of Curtis Downing is a match
6 to the sperm found on the vaginal swab of Tami Zold, that he is identified in a ratio
7 of something like 1 to 1.7 trillion other black male adults. She'll tell you what that
8 means is that if you lined up 1.6 or 1.7 trillion, I believe is the number she'll say,
9 black male adults, only one of them would have that DNA. She will identify that the
10 donor of that sperm is one person and one person only, that this is a match, that it
11 is Curtis Downing.

12 You will learn that Melissa Weber doesn't know who Tami Zold is; she's
13 never met her; she has no interest in who she identifies in this case and in this
14 courtroom, but that there was a match.

15 Well, you'll also learn that Tami Zold doesn't know Melissa Weber. But
16 you'll learn that about a year after this case happened, Tami Zold's case finally comes
17 to court for the first time. It's 1994 now, in the month of January. And she attends
18 court where there are a number of individuals in the courtroom. They're all seated
19 in a given area. I believe she'll tell you there is about five or six black male adults
20 among those persons. And immediately upon walking into court, she says, "That's
21 the man." And she identifies Curtis Downing. Now having seen him for the first
22 time one year later. She will tell you that you don't forget the face of your assailant.

23 You will learn that he didn't have a beard on that occasion, on that day
24 when he was in court. But, nonetheless, she could identify him. And she'll say: the
25 eyes, the nose, his size. That's him.

26 You will learn that Angela Vaughan was also at those proceedings. And
27 Angela Vaughan also identified the defendant. And I believe it is Angela that will tell
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1 you that no sooner did she and Tami begin to look at the defendant, but that the
2 defendant immediately, staringly, looked directly at Tami Zold as though he would
3 intimidate her yet again, to silence her, and not testify.

4 You will learn that both these girls have identified the defendant in
5 court, that he is identified by his victim, and by the victim's friend, and by DNA.

6 You will learn, or hear from an Abigail Finley who will tell you that the
7 man that she had been in a relationship with for some three years was Curtis
8 Downing, that he would speak sometimes with a Spanish accent as though it was
9 for fun. She will tell you that in January, 1983 [sic], this man, Curtis Downing, wore
10 a beard. It was a close-shaven beard, tight to his face, just as Tami Zold described.

11 And Abigail Finley will tell you that she came home in about the middle
12 or latter part of January and to her surprise, her man, the person that she had had
13 children with and the person that she was sleeping with has now shaved his beard
14 and she thought that was odd because she had a relationship with this man where
15 he'd say, "Honey, what do you think if I was to shave my beard?" But, to her
16 surprise, it's gone. And so she says, "Why did you shave your beard?" And he says,
17 "Well, just wanted to change my appearance." Remember: Downing's assailant [sic]
18 knew he wore a beard and if he changed it, took it off, perhaps he wouldn't be
19 identified.

20 Ladies and gentlemen, the evidence is overwhelming in this case. The
21 defendant is made through a DNA match. And I use that word specifically. Five
22 letter, it is a match, the assailant, the semen found in Tami Zold is that of the
23 defendant's. This was not consensual sex. She was bound with rope and laid in the
24 mud and forced to engage in this sexual conduct.

25 Tami identifies him as does Angela Vaughan. And in the end, I believe
26 you'll understand the crime of sexual assault just a little better. I only ask that your
27 verdict be just and that you find him guilty. Thank you.