

1 THE COURT: Mr. Christiansen, do you care to make a statement now, or  
2 reserve it?

3 MR. CHRISTIANSEN: I'll make it now, Your Honor.

4 THE COURT: Thank you.

5 OPENING STATEMENT

6 BY MR. CHRISTIANSEN:

7 Good afternoon. I trust everybody had a decent lunch break. There is  
8 no doubt that the evidence in this case is going show that Ms. Zold, a very young  
9 girl, according to Mr. Guymon, and a nice girl, went through a traumatic experience  
10 in January of 1993, some five years ago. She's going to come in here, I imagine,  
11 quite a bit different than she appeared then. A girl of 16 and five years, she'd be 21  
12 now, 20, 21, it would have a marked difference in appearance.

13 It's a sad case and nobody, not me, nor Mr. Downing is going to do  
14 anything all week to present any evidence to you that it's not a sad case. But the  
15 fact that Tami Zold suffered the offenses as Mr. Guymon has described them does  
16 not make Mr. Downing guilty of those offenses.

17 In voir dire, the process we did this morning, the long boring one, we  
18 talked a lot about your ability to wait until all the evidence was in. That's what all  
19 of you promised to do in this case. Not to say to yourself, "Well, that Gary Guymon  
20 guy, he makes a good argument. This guy has got to be guilty." That's not your job.  
21 It's not what you promised the Judge, me, and Mr. Guymon that you would do.

22 The evidence is going to show, in this case, that Tami Zold was a 16  
23 year-old girl who suffered a traumatic experience, a life-altering experience. And then  
24 for a period of a year didn't see the person she came to accuse of this crime. A year  
25 for a 16 year-old girl.

26 Now, remember the evidence will show, and I think Ms. Zold is going  
27 to freely admit that it was dark that night and she was scared. And then for a period

1 of 12 months she doesn't see the person she eventually identifies.

2           And the reason she doesn't see that person is because the photo  
3 identification, the line-up Mr. Guymon talked to you about that I think Detective Fox  
4 is probably going to be the individual to discuss, contained pictures of six individuals,  
5 one of whom was found lurking around Ms. Zold's apartment two or three days--I'm  
6 not exactly sure--after the event in question. That person is Michael Downing, Mr.  
7 Downing's brother. He is a large, black man with a beard. Ms. Zold was never taken  
8 to view him in person. She was never shown a big blow-up. What she was shown  
9 was a little tiny booking photo is what they call it. And I'm sure Mr. Guymon is  
10 going to introduce that and let you all take a look at it.

11           And remember: the obligation is on the State, these two gentlemen right  
12 here, to prove that Curtis Downing committed the crimes in question beyond a  
13 reasonable doubt. There is no obligation on my part or Mr. Downing's part to prove  
14 anything. It's their job. And all of you promised you'd make them do their job. Mr.  
15 Hendricks said it ad nauseam.

16           The events in question, that being the traumatic experience suffered by  
17 Ms. Zold, Angela Vaughan, the same scared little girl, 16 years old, combined with  
18 the facts of how that parking lot was that night: dark. And the amount of time that  
19 they're both going to, I believe, say that they got a look at their assailant which is a  
20 split second. Combined with the year--or well over six months at least--period of  
21 time before Ms. Zold sees a picture of Mr. Downing will create an inference for you  
22 that what she says she saw a year later she can't say that's the case. She can't say  
23 it beyond a reasonable doubt. The eyewitness identification in this case is suspect.

24           There will be police officers that testify and probably every one of those  
25 officers is going to be forthright enough to say the longer you go before you get an  
26 identification, the more suspect that identification is. I don't suspect any of them to  
27 mislead any of you on that case.

28

1                   So, then you fall in the case onto the DNA testing. Now, believe me,  
2 I'm not expert in DNA. I don't pretend to be. I'm not going to stand and try to argue  
3 what I think the DNA lady from Cellmark is going to have to admit when I question  
4 her. She's going to have to admit that there's some peculiarities about this particular  
5 testing and some specific to Mr. Downing. And I believe she's going to testify  
6 honestly about that. But her opinion is going to be, well, you know, it's Curtis  
7 Downing that that's what I matched up, the semen with the blood, Mr. Guymon told  
8 you.

9                   What she's not going to have to say is did she test Michael Downing's  
10 DNA? And that's just one of the things that I'm going to try and point out when she  
11 testifies.

12                   All of you promised you'd wait until this case was done before making  
13 up your mind. It's a case that, believe me, I know when you're listening to Gary  
14 Guymon argue, you're thinking, well, man it seems like a slam dunk case. Why are  
15 we here? You're here because in this country you have a right to be presumed  
16 innocent until the contrary is proven beyond a reasonable doubt. It can't be proven  
17 now, after you've heard us argue. It can't be proven when the State rests their case.  
18 It can't even be proven until we're done arguing, the Judge has instructed you on the  
19 law and you guys go back.

20                   It's your obligation as jurors to wait until that point in time and then  
21 examine the testimony as a whole with your common sense. In light of lives  
22 experience as each one of you individually has perceived them.

23                   When you do that at the end of the case in three or four days, it's my  
24 position you're going to find reasonable doubt, doubt with the testing, doubt with the  
25 identification, reasonable doubt that it was Curtis Downing that committed the  
26 crimes in question. When you find the reasonable doubt, you're going to have an  
27 obligation to come back in here and return a verdict of not guilty. And I'm confident