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MR. HENDRICKS: Thank you, Your Honor.

CLOSING ARGUMENT

BY MR. HENDRICKS:

May it please the Court, defense counsel, Mr. Guymon, ladies and gentlemen of the jury.

We have finally reached the stage which is called "closing arguments." But instead of argue to you, let's do what's set forth in Isaiah chapter 18. And that says, "Come, let us reason together."

And during this reasoning process we will certainly determine that there is only one individual that should be found guilty of this particular crime. And that's Curtis Downing. You must keep in mind that we're all here because of that one individual, Mr. Downing. And the State has shown, through the introduction of the evidence there is only one man responsible for these actions. Responsible for taking a 16 year-old's innocence, responsible for taking a 16 year-old's sense of security.

Now, you all found out during voir dire that Mr. Downing was presumed innocent at the start of this trial. But as each witness stood up there on the stand and testified to you, all of that stuff was evidence, bits and pieces, one by one. All of that evidence stripped away that presumption of innocence. And now Mr. Downing sits before you today in all his naked guilt.

Now, the State is only required to do two things; we only have two tasks. And in this particular case, two very simple tasks: to show that there was a crime committed, there was, in fact, a sexual assault, and who did it. And we've shown the defendant did that.

Now in defense counsel's opening argument, if you recall, he stated that we don't dispute that a terrible thing happened to those young girls on January 18th, 1993. They're not disputing that a sexual assault took place. What they're disputing is his client did it.

1 Now, what did happen? And I'll run through these facts very quickly
2 because they are not disputed. You heard it through the testimony of the victim and
3 also the other witnesses. January 18th, 1993, evening hours, Angela and Tami were
4 walking home. They walked through Clark High School parking lot, were confronted
5 by a black man dressed in a black beanie, sweat pants, a dark-colored coat, an
6 individual with a beard. He grabbed both of them. He stated to Tami, "Don't look
7 at me or I'll kill you." This was done with a fake Hispanic accent.

8 He pulled their shirts or coats over the girls' head. He tied up after he
9 laid them down on their stomachs, he tied her up, and you saw the shoe lace: it had
10 hair within it and it had knots in it. He tied her hands up, put them over her head,
11 struck her on her back, and you saw pictures of that, marks on her back. Also, she
12 was struck in the stomach.

13 He kissed her breasts, he performed cunnilingus, there was
14 penile/vaginal penetration. Those are the two first counts of sexual assault. The
15 third one: digital penetration. And that's when the defendant attempted to wash
16 away his crime or hide the crime that he had committed. Because he had, in fact,
17 ejaculated inside this young girl.

18 There is an Instruction that says you can believe and convict based only
19 upon the victim's testimony. You can convict this individual just based on what Tami
20 Zold has told us. That evidence alone. But what other corroborating evidence do we
21 have to show that she was not mistaken? Even though it's not necessary, what do
22 we have? We've got the condition of the victim after the fact: distraught, upset,
23 crying, others saw that and others testified to that. What about the dirty clothes on
24 that evening? She left clean, she returned dirty. The pants had mud on them. The
25 pictures had shoes and socks also had mud on those items.

26 The shoe prints in the exact area in which the detectives returned. Saw
27 that area, saw shoe prints, saw that a struggle had, in fact, taken place right in that
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1 particular area. The shoelace, a black shoelace consistent with her black shoes and
2 also a black shoelace in that other shoe, were found at the crime scene exactly as
3 she described it: a shoelace was used to tie her up, hands over the head. And you
4 can have that opportunity to look at that shoelace and see if there is, in fact, blond
5 hair within that shoelace.

6 There was gum found there. Was that significant? Maybe yes, maybe
7 no. No tests were run on that particular item. But it just shows that, in fact,
8 someone was out there.

9 And the ultimate corroborator: the DNA evidence. The strongest
10 evidence that there is.

11 There was also a mark on her back. You saw the photographs. There
12 was a mark on her back when she went to have the sexual assault kit performed on
13 her. There were marks on her wrists consistent with her having been tied up. There
14 was a redness in her vaginal area, a result of some sort of trauma.

15 Abigail came in and testified, the former girlfriend of the defendant.
16 What type of corroboration did she provide us? She provided us with she was dating
17 Curtis Downing who is, in fact, a black male. Used a Spanish accent, in fact, used
18 it at a drive-through one time trying to fool or have fun with the individuals that
19 worked there. But this Spanish accent, it was done to try and fool the individuals to
20 see whether it was--to take away from the fact that he was black. That worked with
21 Detective Bigham, but it didn't work with the witness and also the victim. They
22 knew it was a fake accent although Detective Bigham had put down in his report it
23 could have been black or Latin.

24 The fact that he enjoyed performing oral sex, which is unusual in a rape
25 case, that this individual did, in fact, before there was penil/vaginal penetration, went
26 down and performed oral sex on Tami Zold.

27 You also heard evidence that he lived in the same area, on O'Bannon,
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1 blocks within Clark High School. He took walks at night. You heard that from his own
2 mother, that he took walks at night in a sweat suit. Abigail also told us that he had
3 a beard. He had a beard for several years, or facial hair, close-cut beard all the way
4 up until the time of mid to late January. Keep in mind this took place January 18th,
5 1993. When asked about that, "I just wanted to change my appearance." Only the
6 victim is needed, ladies and gentlemen. But that's an awful long list of corroborating
7 evidence.

8 These are all uncontested acts. As I pointed out to you, defense
9 counsel stood up and stated, "We don't dispute that these things took place." And
10 as far as the law is concerned, it sets forth a sexual assault as any person--or sexual
11 assault is committed when any person subjects another to sexual penetration against
12 their will. Specifically, as far as sexual penetration, cunnilingus is concerned, it's
13 the placing of the mouth or tongue on the victim's vagina. This penetration can be
14 very slight. And it states, "However slight, if any part of a person's body inserted
15 by that person into the genital opening." And there was testimony of that, ladies and
16 gentlemen.

17 As to Count II, penil and vaginal penetration, otherwise known as
18 intercourse, there was also testimony from the victim that that did, in fact, take
19 place. That was corroborated by the swabs that were taken from her and the DNA
20 evidence to show that it was, in fact, Curtis Downing was the one who forced this
21 upon her.

22 Also, the third count, digital penetration into the vagina of Tami Zold.
23 When did that take place? That took place after when the defendant tried to wash
24 away the crime. But what the defendant wasn't sure of and wasn't knowledgeable
25 of is DNA was still available and he could eventually be prosecuted because of it.

26 You also heard an Instruction regarding this, "Force is not an element."
27 There need not be force to have sexual assault. In this particular case, we do have
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1 it. She was struck in the back. She was struck on her stomach, she was tied up,
2 and there were also threats to her life repeatedly made. Even though it's not
3 necessary, it's still present.

4 Defense counsel is probably going to talk to you a little bit about
5 reasonable doubt. And we discussed what some people thought reasonable doubt
6 was during voir dire. What we did determine is that reasonable doubt is not no
7 doubt. Reasonable doubt is not beyond a shadow of a doubt. Reasonable doubt is
8 this: it is the same exact standard that is used across this country every single day
9 in which cases result in convictions. You cannot speculate. You have to take the
10 evidence which was presented to you during this trial from all the witnesses. And
11 I would urge you to just look at the evidence. My address to you is not evidence.
12 It's just sort of a recap. Mr. Christiansen's address to you is not evidence. What
13 evidence is is what was presented from the stand and what you took down.

14 Doubt must be actual. Actual doubt, it must be reasonable doubt, not
15 just possibility. Once again, you cannot speculate. You must be able to articulate
16 this doubt or tell it to the other jurors during deliberations: why you think the State
17 did not prove this case beyond a reasonable doubt. Keep in mind this case does not
18 have to be perfect; there can be some doubt. The standard is not no doubt.

19 MR. CHRISTIANSEN: Judge, I'm going to object to him trying to quantify
20 reasonable doubt. The jury has been provided an instruction, they can read it.

21 THE COURT: I don't hear quantification. That wouldn't be permitted, but I
22 don't hear that, overruled.

23 MR. HENDRICKS: Thank you, Judge.

24 There are no certainties in life. We may wake up tomorrow, we may not
25 wake up tomorrow. But it's certainly reasonable to believe, if we keep ourselves in
26 good shape that we will, in fact, wake up tomorrow. And that's the type of reason
27 that you must display. I would urge you to look at the evidence, the corroboration,
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1 everything that you heard from that witness stand, look at that stuff and analyze it.
2 Don't look for reasonable doubt. Look at what was presented to you.

3 Now, in defense--in rape cases there are a couple different defenses.
4 The first one is consent. The victim wanted it. She wanted to have these sexual
5 acts performed on her. And that's usually what happens when there's DNA present.
6 An individual says, "Yes, there was consent because there's DNA. There's evidence
7 it was found inside of her."

8 The other defense is one I like to call "the shoddy defense," where some
9 other dude did it. And you saw that in some of the cross examination. Someone--
10 defense counsel trying to hint to the fact that it was the brother, some other
11 individual involved in this. And you can certainly anticipate that that's going to be
12 brought out, that maybe it was the brother. But don't speculate. Where does the
13 evidence point?

14 Or there's another defense. Things were contaminated or this was just
15 one big police conspiracy, one big cover-up, one big arrow pointing to Curtis
16 Downing.

17 Now, will consent work? Because that DNA evidence is so powerful
18 that Mr. Downing was present on that night. Do you think Tami Zold would have
19 consented to that particular sexual act that took place in the mud on a cold, rainy
20 night? You saw her clothing; it was very muddy. Do you think she consented to
21 being tied up, having those marks on her wrists, struck in the back, and also struck
22 in the stomach, to have her head covered? There's an instruction as far as common
23 sense is concerned. "You must not leave your common sense outside of the
24 courtroom." That's why you were chosen as jurors because you displayed that
25 during voir dire.

26 And, additionally, she consented to these sexual acts while her friend
27 was lying next to her. Please use your common sense.

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1 "Some other guy did it," once again, I'm going to anticipate that
2 defense counsel will stand up and say, "There's reasonable doubt because it could
3 have been Michael." We found out, as far as the DNA is concerned that no two
4 individuals, even brothers, unless they're identical twins, would have those same
5 DNA results. It could not have been Michael. You heard that they look different.
6 They were different sizes. One is shorter than the other, one much heavier than the
7 other. Defense counsel is going to try and explain away the science that put his
8 client there. And that's in regards to the DNA. And, ladies and gentlemen, guilt
9 always has an excuse. Don't be fooled.

10 Now, how do we know that the defendant was, in fact, the perpetrator?
11 Let's start at the top. A little circle we have there is area. What points to Curtis
12 Downing as being the individual that was, in fact, the perpetrator? Well, when we
13 look at the area, ladies and gentlemen, the particular crime scene, you heard
14 testimony from the witnesses that show that he lived within blocks, blocks of that
15 area, also took brisk walks at night in that area. In the evening hours, you even
16 heard that from the mother, you also heard that from the ex-girlfriend.

17 As far as the second circle is concerned--and certainly that area is going
18 to point just to one individual. Damon. And what was so unusual about that is the
19 perpetrator, in fact, knew an individual by the name of Damon. Damon just, by
20 coincidence, just happened to be a friend of both of those girls. And Damon was
21 stated during that attack. Once again, the defendant lived in that area and walked
22 around in that area. Gives you some idea that maybe this individual had been
23 watching her and just waited for his chance.

24 As far as the description is concerned in that third circle. What
25 description do we have? We have a description of a black male, approximately six
26 feet tall, around 180 pounds at the time. Keep in mind this was five years ago. And
27 one thing that they were very certain of: this individual had a beard. And that's
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1 going to point to one particular individual.

2 The clothes. The sweats that you heard from the mother, from the
3 girlfriend, that he did, in fact, own a bunch of sweats and used to wear them as he
4 walked at night. Also, as far as the clothes are concerned, you saw a couple black
5 beanies which both victims described the perpetrator was wearing on that particular
6 evening. And also, those beanies were found during a search warrant in his home
7 on June 30th, 1993, just five months later.

8 You heard the girls talk about a car that was in that particular area. A
9 two-door blue car with the windows steamed up or fogged up. Mom told you that
10 Curtis had access to that car because the other two cars were broken down. What
11 type of car did the two girls say they saw? A blue car. A two-door car that was in
12 the parking lot of Clark High School on that particular evening.

13 Accent. It's unusual for a black man. Both victims testified that they,
14 in fact, heard the individual speak in a Spanish accent. And how was that
15 corroborated? Abigail came in and confirmed that he did, in fact, speak in that
16 Spanish accent.

17 Why is the shaving important? Because of when it took place. An
18 individual that wore a beard for three years prior up until that time, at least facial hair,
19 comes home--because if you'll recall what the victim stated as the defendant said it
20 to her, "Do you know what I look like?" "Well, I know you have a beard." So, he
21 goes home and after three years of facial hair, decides to change his appearance,
22 alter his appearance.

23 Tami Zold.. What did she say? "I'm 100 percent sure." She ID'd this
24 individual one year later after the fact, after giving a description to the police officer
25 saying she could probably identify this person if she saw him again. One hundred
26 percent sure. And she stated, "I can't forget a face like that." She was able to
27 identify this individual in a courtroom with other African American individuals one

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1 year later even without the facial hair.

2 Angela Vaughn, her identification 100 percent sure. She also IDd the
3 defendant at a preliminary hearing. Even after he had changed his appearance one
4 year later. Keep in mind there was also a line-up shown to both these young ladies
5 and either one or the other had identified number two as looking similar, but the
6 perpetrator was not in that particular line-up. And who did they say looked similar?
7 It was Michael Downing. Well, of course he's going to look similar because it's his
8 brother. But they stated that individual was not within that line-up.

9 Last, but not least, the DNA evidence. As far as the banding patterns
10 are concerned, that pattern only concerns, that particular pattern that she testified
11 to only occurs, the chances of that occurring are one in 1.5 trillion. So, the chances
12 of that particular banding pattern that showed up in this particular case identifying
13 that individual as the perpetrator is only going to occur one in 1.5 trillion times. As
14 far as Hispanics it gets even larger: one in 1.61 trillion. Think about that for a minute.
15 What is a trillion? Do we even know what a trillion is? A million? More than that.
16 A billion? Much more than that. A trillion. I guess the only time you ever hear that
17 is when we're talking about the national debt. And certainly no one knows how big
18 a number that is.

19 Ladies and gentlemen, to whom does all this evidence point to? It
20 points to one individual and only one individual. And I would submit to you, ladies
21 and gentlemen, that that individual is present in the courtroom here today. And that
22 individual's name is Curtis Downing.

23 Now, what does this particular crime do to a victim? Keep in mind,
24 ladies and gentlemen, when these victims and witnesses are testifying, this is five
25 years after the fact. And they're trying so hard to remember what they have tried
26 so hard to forget. The scratches and the red marks have disappeared from her wrists
27 and have disappeared from her back. They have all faded. But what has not faded

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1 is the nightmare that occurred on January 18th, 1993.

2 Just to sum up, I'm going to read you a little quote. "In every
3 civilization, no matter how lofty, the jungle never entirely disappears." Sexual assault
4 is an ugly crime because it violates the body and desecrates the spirit at the same
5 time. In this case, the defendant acted as if this world were her personal jungle and
6 Tami Zold was his chose prey.

7 The rapist uses sex as a weapon to degrade his victim. A victim of rape
8 never recovers. She is always re-living the experience and serving her time. Sexual
9 assault is probably one of the most misunderstood and under reported crimes. We
10 are finally seeing it for what it is: not a crime of lust, but a crime of power and
11 violence. Not a crime of sex, but a crime of aggregation and degradation. Our
12 society no long sides with the rapist rather than the victim. We have finally started
13 to understand this terrible crime.

14 Ladies and gentlemen, please tell this defendant that his actions will not
15 be tolerated within this community by finding him guilty of all three counts of sexual
16 assault. Thank you.

17 THE COURT: Thank you.

18 Mr. Christiansen, when things are set up the way you would like, and
19 when you're ready.

20 MR. CHRISTIANSEN: I'll leave that there for right now, Your Honor, if you
21 don't mind.

22 THE COURT: Okay.

23 CLOSING ARGUMENT

24 BY MR. CHRISTIANSEN:

25 Judge Sobel, Curtis, counsel, ladies and gentlemen of the jury. In
26 opening statements, Mr. Guymon told you that--or likened the opening to a table of
27 contents of a book. That's kind of a cute way of getting you comfortable with what
28