

1 we're doing. And if you draw that analogy to it, and this is like the conclusion of the
2 book. Where both of us, both sides, go back and try to summarize what we believe
3 the evidence showed in the last few days.

4 Mr. Hendricks has got there the common circle of guilt they use every
5 time, with every case, every defendant. And he's got a bunch of lines up here drawn
6 to a picture of Curtis.

7 Before I get to it, I'd like to sincerely thank all of you for your time and
8 attention. I think it's real easy. Nobody wanted to be here, everybody admitted that,
9 everybody wanted to go home, not have three days away from work and family.
10 And you guys have all paid good attention. And Curtis and I do appreciate it.

11 During voir dire and in my opening, I spoke about the presumptions.
12 And as we sit here today, those presumptions still stand. It's your job now to decide
13 if the State has proven its case above and beyond that presumption. That
14 presumption that all of you enjoy as well as Mr. Downing.

15 What do the facts in this case really show? One of the Instructions
16 talks about sympathy, bias, and prejudice. And it says you've got to leave those at
17 the door. When you leave and walk out that door, Stony takes you back to
18 deliberate, you've got to leave those here. And to be honest with you, it's a hard
19 thing to do in a case like this.

20 I would think it's probably the hardest case to do that. To be honest,
21 it was hard for me to sit here for three days, especially the first day, to hear Tami,
22 and Angie, and Tami's mom, Diane Schmidt, stand up and talk about the trauma that
23 they went through back in January of '93.

24 But you, as jurors, have to leave that sympathy here when you go. And
25 you have to out back and discuss and focus on what the evidence did show. And
26 all of you promised me you'd do it in openings and voir dire and I trust you will.

27 Let's talk about the girls. We're talking about 16 year-old girls, barely
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1 16, that go through life-altering events that night. That night they, according to the
2 police officers--and I'm not playing fast and loose with the facts, but according to the
3 police officers, somebody told Detective Bigham the perpetrator was black or Latin.
4 Somebody told him that because he wrote it down.

5 Presumably, somebody told him the perpetrator was white because he
6 wrote that down twice, not just once. Now, he chalks that up to a mistake. After
7 we get a break--you didn't see who was walking him out, did you, at the break? All
8 of a sudden, he figured that out. He figured out also that he hadn't written that
9 whole report. That was cute, too. Because you remember Galey, I think, was the
10 first officer that came in. And he said, "Well, I wrote pages 1 and 3 and the other
11 guy wrote pages 2 and 4." That's a real nice way of making a mistake out of the
12 white male adult thing, it just belies credibility.

13 So, we've got two girls who, for the first time, identified somebody a
14 year later in court in a panel much like this one right here. The only difference is
15 when they identify Curtis he's wearing scrubs, he's in custody, in chains, not sitting
16 with everybody else. A year later, 12 months to a 15 or 16 year-old girl. And both
17 of them were real nice girls. They freely admitted that 12 months out they thought
18 about this a lot. And Tami said, I think, to one of my questions, yeah, she probably
19 had a distorted perception of time.

20 And common sense would dictate that's real nature. The more you
21 think about something traumatic, if anything bad has ever happened to any of you,
22 I'm sure this is the same way. I think back on that and I think, "Man, it sure did
23 seem like a long time, but I bet it was just a few seconds."

24 For 12 months, nobody showed these girls a picture of Curtis Downing,
25 took them to a line-up, allowed them to access weight, height, anything. But four
26 days after the fact, where, according to--and I'm going to mess the names up. I
27 think it was Schell and Petronek, the older detective, that were there, taking the
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1 statements, the girls were calm. The girls were coherent, they were answering the
2 questions. Nobody was hysterical. And what did those girls say? The detectives
3 remembered them saying it, and the girls, you know, heck, to be honest, five years
4 ago, I don't remember what I was saying five years ago. But the girls--and I showed
5 them their statements. They remembered. Angie said in her statement she never
6 saw a face. Tami said in her statement she got a quick glimpse, but probably
7 couldn't recognize.

8 Now, that changed in 12 months. It changed when they walk in and the
9 description was, I believe, by both girls, about six foot, 180 pounds. You guys have
10 all seen Curtis stand up. He's no more six foot and a 180 pounds than Mr. Hendricks
11 is. Well, Mr. Hendricks might have the 180 down.

12 So, we've got descriptions of a white man, a black man, a Latin man,
13 all 180 pounds, not 240, 250, not 6'4". And what do the police do? The girl has
14 been traumatically assaulted on school grounds. What do they do? Well, the catch
15 another person--and it just happens to be Michael--lurking around her apartment the
16 next morning. They have enough evidence to show her a line-up with him, but they
17 don't bring her to him, ID him face to face, put him in a line-up. They don't do any
18 of that.

19 They don't do anything for six months. Then they get Curtis in custody;
20 they don't do anything else for six months. I think Tami had moved. I think she
21 went to Wisconsin. When she moved, they brought her back for the preliminary
22 hearing under the idea that she was going to testify. They both knew what they
23 were going to do when they got there that day. They knew they were there to ID
24 him. They were thinking of it when they walked through the door. So, they walk
25 in. They see the one man that resembles the person that they have described maybe
26 12 months ago. How hard do you think it was to draw the conclusion it was Curtis?
27 They knew he was in custody. They both said that. It just wasn't hard.

1 The girls remember today a hundred percent. But imagine what it was
2 like to walk into that courtroom and not--I think Mr. Hendricks said, tried so hard to
3 forget and they were having to remember that day. And seeing the only guy that fit
4 the description, seeing him and saying, "That's him." And now they've had to think
5 about if for four years with only that face in their heads. Sure, they're 100 percent
6 today. The truth is they were not a 100 percent. One of them didn't even see the
7 face. The other one couldn't identify it four days out. Not the hour of, not the night
8 of, but four days out. That's just the truth. That's not me beating up on what those
9 girls said. I think everybody will agree I didn't do that. That's just what they testified
10 to.

11 So, then we got the police. In their infinite wisdom, they don't take a
12 shoe print. They all say it was everybody else's job. And the one guys job it was
13 can't testify, unfortunately, he's very ill. But they all admit, maybe they should have,
14 but they don't.

15 Galey has got the girls, in his mind, walking the other way. I don't
16 know if you guys caught that. Galey has got the girls walking south towards Spring
17 Mountain. He doesn't even know what happened. Bigham has got them in a whole
18 separate part of the school where they're stopped. He doesn't know what happened.
19 Schell, I don't even know if she knows the victim's name in this case. She waits
20 two days to go get the victim's clothes. And Fox, he gets a maybe ID on a person
21 in a line-up. It happens to be Curtis' brother. But he doesn't think that's enough to
22 follow up at all for six months.

23 They got a stale identification. Let's see, which one is--we've got Tami,
24 she couldn't describe him four days out, Angie, she never saw a face four days out.
25 A lot of people live in that area, including Michael who they found lurking around her
26 apartment the next day. Didn't do a line up. Damon, who knows what that--how
27 that somehow points to Mr. Downing in this case is beyond me. Where is the nexus

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1 between Damon and Curtis Downing?

2 Descriptions: white, black, Latino, 180 pounds, six foot, 5'11", not
3 6'4", not 250.

4 So, now they leave us with the DNA evidence. You know, the clothes,
5 what do they have on the clothes? I guess the fact that six months later, after the
6 fact, there's beanie caps in Curtis Downing's's closet somehow means he did
7 something six months before. I hope they don't search my closet tomorrow because
8 I might have done something six months before, too. I've got beanie caps in there.

9 MR. GUYMON: Judge, I'm going to object to him testifying to what he's got
10 in his closet. I don't think it's relevant.

11 THE COURT: Overruled.

12 MR. CHRISTIANSEN: The car, nobody IDs the car as Mr. Downing's. His
13 mom, she's a nice lady. I heard her call Mr. Hendricks "son" a couple of times today.
14 The accent: Mrs. Downing testified the only person in her family she ever heard use
15 an accent were Michael and the oldest son.

16 Well, Mr. Downing shaved at some point in time. And Abigail, Abigail
17 Finley, his ex-girlfriend, mother of his children, who, probably with good reason, has
18 some axes to grind. She's taking care of three kids by herself. She's a nice lady, a
19 nice girl. But how she remembers Curtis shaved in January of 1993, five years ago,
20 is beyond me.

21 So, the only thing, the only arrow we've got around here is the DNA.
22 Now, the DNA expert was probably about 1.5 trillion times smarter than me. And
23 I'll be real honest about that. But in the course of your lives I'd like you to think
24 about how many times you've heard experts say: alcohol is going to kill you. And
25 then five, ten years later, you're supposed to have a glass of wine every night.
26 You're going to live through it. How many times have you heard experts say: there's
27 no way to fool this test, polygraph test, whatever the test is, nothing in particular,

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1 just pick a test, some type of scientific method that somebody, at some point, said
2 was foolproof. Because that's what that woman said this morning: they're never
3 wrong. That's what she said. She's never wrong. People are wrong. She could be
4 wrong.

5 And the chain of custody of this thing, the nurse couldn't testify as to
6 how Tami Zold's serology kit or rape kit got sealed up, the items in there. The doctor
7 couldn't testify to it. The doctor was probably hustling to get back to the hospital
8 to treat some more people.

9 The only evidence the State presented that was credible is--comes from
10 somebody that says, "I just can't be wrong. I'm God. I can't be wrong." One in 1.5
11 trillion? I won't--1.5 people on the planet. I asked her about her data base whether
12 it had an accurate representation of African Americans in the data base. "Well, I
13 think so. We had--" what did she call that guy--population genealogist, or something
14 like that--that "we tested it and he told us it's okay." Where was he?

15 The DNA testing is not foolproof. Rebecca Schell stated when I asked
16 her a question, that on October the 29th, she had the results from the DNA test.
17 And yet nobody else can say that they had the results until, I think it was November
18 the 16th when Ms. Weber this morning did. Now, if Ms. Weber doesn't have the
19 results November the 16th, how does Rebecca Schell have them in October? She
20 had it in her affidavit. And I asked her about it and she said she did.

21 The truth of the matter is that in this country everybody, including Mr.
22 Downing, is afforded the protection of guilt beyond a reasonable doubt and the
23 presumption of innocence. That's with him as we sit here right now. And when you
24 leave here, that's when you decide if the State has done their job and overcome that
25 burden.

26 I'll submit to you that when you look back at this--their tattered-up circle
27 of guilt, and go through all of these things, they don't all point anywhere except up
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