

1 in the air. There was no investigation done as to anybody other than Curtis Downing
2 and it didn't start for six months.

3 The State has not met their burden. They have not proven this case
4 beyond a reasonable doubt. Mr. Downing is entitled to a verdict of not guilty. Thank
5 you.

6 THE COURT: Thank you.

7 Mr. Guymon, when you're ready.

8 CLOSING ARGUMENT

9 BY MR. GUYMON:

10 Shakespear is quoted as once saying, "Oh, what may man within him
11 hide though angle on the outward side." And I start there. I ask you people as
12 common people, people with common sense, as citizens, to use your common sense
13 and not judge the book by its cover. But, rather, by the evidence.

14 The evidence of this case is not that just any old 16 year-old girls were
15 victimized, but that somebody's daughter, somebody's friend became a victim on
16 January 18th, 1993.

17 And for a minute I heard in defense counsel's arguments the fact that
18 perhaps these girls are mistaken, that somehow their identification is wrong, that
19 somehow they've made this up. That because there's been some five years past,
20 that they can't remember. And I ask you to think of your worst nightmare, to think
21 of your greatest fear. And if it involves a person and if you think hard enough, can
22 you see that face? I submit to you that both Angela and Tami saw that face and that
23 became Tami's worst nightmare.

24 She told you that when she saw that face, she wouldn't forget it. She
25 saw that face long enough to know that that face wore a beard. That that was a
26 black male adult, that he had a black beanie on.

27 And it is no coincidence that Abigail Finley walked into this courtroom
28

1 and she identified her lover, her friend, the person whose children she has carried and
2 mothered as having a beard. It is no coincidence that Curtis Downing wore a beard
3 on the night in question.

4 Nor is it a coincidence that when asked of Tami Zold, "What do I look
5 like? Do you know what I look like?" And she wanted to outsmart him for a minute
6 for fear for her life says, "I don't know." But he knows she knows because he's
7 approached her with his face uncovered. And he knows that there was that 10
8 seconds in time. And he says, "You know what I look like." And she says, "Well,
9 then I guess you're right." She's 16 and she's trying to save her life. And so, she
10 wants to outsmart this man for a minute. And she says, "Well, I know you have a
11 beard." Is it a coincidence that he shaved his beard in the latter part of January and
12 changed his appearance?

13 Is it a coincidence that this man frequented Clark High School and the
14 area there? That Ron and Stella, the people in which they stayed with lived in that
15 area? Is it a coincidence that after the heat leaves some three months later, the heat
16 is off, he moves back to Silver Dollar, an area very near Tami Zold? Is it a
17 coincidence or is it evidence?

18 Is it a coincidence that he's identified as wearing a black beanie and
19 some six months later when a search warrant is served at his house he has beanies
20 in his closet and they are black?

21 Is it a coincidence that he spoke with a Spanish accent? And that
22 Abigail Finley distinctively remembers that? And I ask you: why would Abigail say
23 these things under oath? I asked her, "A woman scorned?" Her response, "There's
24 no benefit for me. If he's punished, I support these kids alone." A woman scorned
25 or honest testimony? I asked her as she sat right there, "If there were something
26 good that you could say of him that would exonerate him, would you say it?" She
27 said, "What do you mean?" I said, "If there was a piece of truth out there that you
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1 knew about that would exonerate him, would you tell me?" And her answer, "Yes,
2 if it was true."

3 A coincidence that in his sexual preferences he enjoyed performing
4 cunnilingus? It's no coincidence that she knew that. After all, she was his partner.
5 And is it a coincidence that it happened to Tami Zold?

6 Coincidences. Well, if it's that coincidental, then follow him to
7 Megabucks. Because he happens to be the luckiest guy in this courtroom. So lucky
8 that in 1.5 trillion chances, one time, and he's the one that hits the jackpot.
9 Coincidences or evidence?

10 Reasonable doubt? "A reasonable doubt is one based on reason.
11 Doubt, to be reasonable, must be actual, not mere possibility or speculation." Is it
12 possible that you put a dollar into the Megabucks and there's one chance in 1.5
13 trillion pulls that you're going to hit it? Is it reasonable to believe that you're the one
14 that's going to hit that on that one time? And if it's so reasonable, then why do
15 people jump up and down and act so surprised when they hit it, when they hit that
16 jackpot, that big score? Or is that a mere possibility? Certainly it's a mere
17 possibility; somebody's got to be the big winner. Is it reasonable?

18 What I heard from defense counsel as he stood here is I heard the police
19 were on trial. There was an awful lot of criticism of Kerry Petronek, a good old guy
20 that served his time for many years, a Sergeant Schell, a Bigam, a Galey, crime
21 scene analysts. They were put on trial. Galey can't remember after five years and
22 after countless investigations, the direction that these girls walked that night. Does
23 it matter? Perhaps if we shift the blame on the police, you people will forget about
24 the evidence.

25 It's no surprise that the police in every case get put on trial. There is
26 never a perfect investigation. There is never a perfect case. And there will never be
27 perfect police work because police work is done by human beings who are doing the

1 best they can, honest individuals, trying, day in and day out to keep this community
2 safe and to solve crimes. And there are countless crimes that go unsolved. And
3 there's countless cases that they have to work on.

4 What if--what if Richard Hague took a shoe impression? What were we
5 going to know from that? We might know the size. And then what do we hear?
6 "Well, he always wore shoes that were bigger than his feet, actually." We'd hear
7 another excuse. Guilt always has an explanation, I think Mr. Hendricks said. What
8 good was that shoe impression going to do? Is a shoe impression more telling than
9 DNA evidence? Could taking a shoe impression, could doing a physical line-up, could
10 doing a second photographic line-up, could writing the most perfect report in the
11 world change the semen that would found in Tami Zold's vagina? Could it? Would
12 it?

13 I submit to you it wouldn't. You heard defense counsel tell you that the
14 girls could have been wrong. They could have been wrong in their identification.
15 Were they? A beanie? A beard? A black man? Large? And while counsel wanted
16 to put size on his client and testifying--or telling you that he weighed to 260, I think
17 the evidence established, through Abigail, the woman that knew him, the woman
18 that slept with him, the woman who felt his caress and his body against hers, that
19 he tried to keep his weight right at 200 pounds.

20 And so while counsel may try to put size on his client in closing
21 arguments, Abigail knew best. And she told you of his size. And the girls told you
22 of his size. They said he was about six foot, about 180 pounds. And I asked them,
23 "How much do I weight?" And she said, "About 160." Well, you people be the
24 judge of that. Did their estimation, Tami Zold's estimation of Curtis Downing's
25 weight change the semen that was found in her subsequently?

26 Do you honestly think, in that moment, that she could say, "Wait, stand
27 still, I need to know your weight. I know something ugly is going to happen to me,
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1 but I need to know your weight." She did the best she could. Remember, this is a
2 crime of violence where she is doing all she can to save her life. Would a physical
3 line-up have changed the semen found in her?

4 Where's the corruption? Where's the problem? Where's the guilt? Do
5 you think for a minute that Nurse Stein had any interest whatsoever in the results of
6 the DNA tests? When she drew that blood, do you think for a minute she cared one
7 way or another what would be done with that blood, how it would be used? And,
8 ultimately, whether it would come back and solve the crime? Or did she simply
9 perform her job? And I think you saw her demeanor. As sick as she was, she says,
10 "Listen, this is our protocol; this is how I do it, this is how it's done. And I took vials
11 from a sealed container and I drew blood properly."

12 And the nurse and the doc, what did they say? They said, "We
13 collected evidence. We put it in a sealed box. We sealed it up, we taped it, we
14 signed it, we were deliberate in how we conducted our sexual assault evaluation.
15 And we preserve evidence appropriately."

16 And they sent it off to Linda Errichetto. And Linda Errichetto, while
17 those boxes were separated, sits down in a sterile environment and looks first,
18 months earlier, before Curtis Downing's blood is ever even drawn, she looks at Tami
19 Zold's swabs, her slides, her panties, painstakingly, and finds semen. Oh, Tami Zold
20 must be telling us the truth. There is semen inside of her. These things happened.
21 And this crime is real. And you people begin to realize how prevalent this crime is.

22 And she prepares a swab, a slide, and she sets it aside because she has
23 nothing else to analyze it against. And then she prepares a swab of Curtis Downing's
24 known blood.

25 And now that he's been developed as a suspect, and now that a beanie
26 has been found at his very residence, and now that we know that he wears a beard,
27 the evidence begins to tighten up. And the case begins to take shape and it begins
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1 to be solved.

2 And, ultimately, it is sent to Cellmark Diagnostics, a private lab who, in
3 its 10 years of operation believe it was, has had two erroneous tests, two erroneous
4 matches, none since 1989 and never has this particular scientist, Melissa Weber, had
5 an erroneous match. Never has there been someone come into court and contested
6 her findings from the defense team.

7 Cellmark Diagnostics, the very center that is hired by defense teams to
8 offer consultation and offered by the prosecution. And for a minute, the line of
9 questioning was, "Tell me something. The government is paying you, Mr. Guymon
10 has a deep pocket. You're working for him and so you're going to give him that
11 information, aren't you? You're going to provide him with what you want," as
12 though there for a second, the prosecution is on trial.

13 So, we've tried the girls on their memory. We've tried the police. And
14 now we're going to try our last shot. We're going to try a shot at the integrity of the
15 prosecution.

16 What did she say? The science exact--is exact; it hasn't changed. That
17 money doesn't affect those auto rads. When you see them, the dollar signs don't
18 cause those marks to shifts. Those shifts are there, they are secure. And you people
19 saw them. You saw one auto rad where she said Curtis Downing couldn't be
20 excluded. You saw a second; Curtis Downing couldn't be excluded. You saw a
21 third. And, darn it, we're trying to exclude him because DNA does both exclusion and
22 inclusion and Curtis Downing couldn't be excluded. And you saw a fourth. And
23 Curtis Downing couldn't be excluded. And you saw a fifth and Curtis Downing
24 couldn't be excluded.

25 "Well, tell me something, Ms. Weber, there is an inference that perhaps
26 this is his brother. They come from the same parents, although they're not identical
27 twins." "Mr. Prosecutor, then let me tell you something. I would see different bands.

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1 I would see bands that would distinguish the two because brothers are not the same.
2 Only 50 percent of the bands would be the same."

3 Can money change that fact? Can perfect police work change that fact?
4 Or is it a fact that the guilty sets in this courtroom today?

5 One in 1.5 trillion chance. Is that a reasonable doubt? I think I've said
6 enough. I conclude by asking you: if not this case, then which case? When will we
7 believe two young girls who are subject to a violent attack and forced to lay in the
8 mud, one unclothed, hands bound, penetrated in a despicable fashion?

9 Washed with gutter water as though that would hide the evidence. And
10 when Melissa Weber was asked, "Would that alter your findings? Would that
11 somehow change the auto rad?" Because that's the last hope. The answer is no.
12 She told you there was no contamination here, there's no second person. This was
13 not anyone else other than Curtis Downing. And she told you that to a reasonable
14 degree of certainty within her medical--excuse me--scientific community.

15 If not this case, then which case? I ask you to take those jury verdicts,
16 look at them. There are six. There are three for guilty and there are three for not
17 guilty. I ask that you return a verdict that returns the integrity of this young girl. That
18 tells her that yes, you believe in evidence. Yes, you believe in DNA. Yes, you
19 believe that the police are doing the best job that they can, but they're not perfect.
20 But they're doing the best they can. And yes, Mr. Downing, you are the donor, the
21 sole donor, the only individual accountable for the sperm that was found in her vagina
22 that night. Thank you.

23 THE COURT: Thank you. If you'd swear in the folks who are going to oversee
24 the deliberations.

25 (Whereupon the Clerk swore the bailiff and matrons to take charge of the jury)

26 (At the hour of 2:20 p.m., the jury retired to commence deliberations)

27 (Court recessed until the following day)