

STATE OF MICHIGAN

IN THE 17TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF KENT

THE PEOPLE OF THE  
STATE OF MICHIGAN,

vs.

File No.: 93-63014-FCA  
93-63014-FCB

DANIEL ARTHUR TURNER and  
STEPHEN DENNIS TURNER

Defendants.

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**PRELIMINARY INSTRUCTIONS TO JURY AND OPENING STATEMENTS**

BEFORE THE HONORABLE DENNIS C. KOLENDA, CIRCUIT JUDGE

Grand Rapids, Michigan - Wednesday, December 1, 1993

APPEARANCES:

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Grand Rapids, Michigan

Wednesday, December 1, 1993

THE COURT: Ms. Hull, will you please swear in both juries.

(Jurors' oath administered)

THE CLERK: Ladies and gentlemen of both juries, will you please all rise and raise your right hands.

Do you solemnly swear or affirm that in this action now before the Court, you will justly decide the questions submitted to you.

That, unless you are discharged by the Court for further deliberation, you will render a true verdict and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the Court.

THE JURIES: We do.

THE CLERK: Be seated, please.

THE COURT: Ladies and gentlemen, over the last three days, you were selected to perform one of the most solemn duties that an American citizen can be called upon to perform. That's not just Fourth of July or Civics class rhetoric, it is, as far as I'm concerned fact. Because what your are going to do over the next couple of weeks is sit in judgment of the criminal guilt or innocence of one of your

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fellow citizens. Each one of these juries is going to decide the criminal guilt or innocence of one individual. That service is as important to the American way of life as is participation in the military.

At the end of the trial, I will give you detailed jury instructions, but I want to give you fairly detailed instructions now as well.

It used to be and, in fact, still is in a good many courts, that instructions were only given at the end of the trial. After you've been here for two weeks, the judge would tell you what you should have been paying attention to and what you could have ignored, what you needed to decide and what you didn't have to decide.

I can tell by the smiles on your face, everyone recognizes that's rather late to be doing that. It's important that it be done at the end so that all those things are fresh in mind, but it's equally important that it be done now so that what's going to happen over the next few weeks will make some sense to you.

It's very important that you not make up your minds about anything until you've heard everything, but nonetheless, if you know what is evidence and what is not evidence, what questions you need to answer and which one's you don't have to concern yourselves with, it makes the receipt of the evidence a lot better because you've got a

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decent framework within which to operate.

A lot of the instructions I give you at the end of the trial will repeat what I'm about to say. The repetition, to the extent that it occurs, is there because the emphasis is warranted. I don't think that anything I say at the end of the trial will contradict what I say now. What I say at the end will be different in the sense that nobody says exactly the same things twice, unless you read them, and I'm not going to do that. But I don't think there will be any substantive changes.

But what I say at the end will, frankly, probably be a lot more detailed and elaborate from what I say now because only at the end of the trial will I know, as do you, what this case is really about and, therefore, what questions really have to be asked. I'm, right now, basing my instructions on some pretty educated guesses, but guesses, nonetheless, as to what will come up and what you'll have to decide. Guesses based upon my experience with matters of this sort.

If, therefore, at the end of the trial, you think I've said something which contradicts what I'm saying now, while I don't think that will happen, if you think that's what happened, then by all means pay attention to what I say at the end and ignore what you think I said earlier which is contrary because, of course, the end is the much more

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educated and if, in fact, there is a disagreement, or you think there is, you should clearly rely upon that which is, by far, the better educated.

I'm also likely to give you instructions during the course of the trial. Now, for some reason, I'm not exactly sure what, everything a judge says to the jury is deemed an instruction, even though sometimes it's telling you what to do, which clearly is an instruction, other times it's simply providing you information.

If I think an explanation of a court procedure or an explanation of a legal term will help you understand what's going on at the moment, I'll step in and do that. I'm not, at that point, going to instruct you on anything, I'm simply explaining something, but those are all considered to be instructions.

What you are to do is take everything I say as a whole and base your decision on that, unless, of course, as I've said, you think I say something later on which contradicts something said earlier, then follow only what's said later.

I'll get into some specifics in a moment, but I want to start off by reminding you that obviously what we're about here is very serious. You can tell that from the energy and care that went into the selecting the juries in this case. You can tell that from the obvious severity of the

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offenses with which we are dealing.

But just because something is very serious doesn't mean that it has to be overly stiff and unpleasant.

So the lawyers' questioning of the witnesses and mine and their conversations with each other will, to the best that we can do it, be conversational and informal. We will do our very best to avoid legal jargon. And as there was during the course of the jury selection, there will probably be an occasional attempt at humor. And as happened during the jury selection, sometimes it will work and sometimes it won't work.

If, in fact, that happens, if people speak in what you think is not the formal way that you expect to talk in a courtroom, or if somebody, frankly, cracks a joke and we all smile or laugh at it, don't take that as any indication that this is other than the very serious matter that it is. Accept the efforts of informality for what they are; an effort to keep all of us comfortable.

Because these are difficult matters and, frankly, if we're as comfortable as we can be, while we heard them all, we tend to hear and analyze better than if people are, frankly, uptight about the matter. Just don't take anything said, as I say, to diminish the significance and seriousness of what we're doing, but let's try to do it in a fashion which makes us as comfortable as we can be.

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There may, as this case develops, ladies and gentlemen, be some publicity about it. We talked about that each day that you've been discharged. And each day as we address or recess for the day, I'll remind you about not paying attention to any publicity.

There may, I have no idea, sometime during the course of this trial be a camera in this courtroom, either from the Grand Rapids Press or one or both of the local television stations. Until a few years ago, cameras were not permitted in courtrooms. As of the last four years, they are now permitted under normal circumstances. There are some restrictions, however, one of which, you will be interested to know, and that is that the cameras can never photograph you. They can photograph me and the lawyers, they can photograph some of the witnesses, but not others, depending upon, for example, a child witness cannot be photographed while testifying, and things of that sort.

I point that out only to forewarn you so that if it happens, it's no big surprise. I think the fear is, is that if you don't know what's coming and you see a camera in the courtroom, everyone is taken aback by it. I assure you, having had some experience now with cameras in courtrooms, that five minutes after we're in here, having seen it for the first time, we'll forget that it's here. It simply, literally melts into the woodwork and does not become



anything of any significance.

There is one thing of significance I want to mention, however, and that is, do not amplify the testimony that someone gives when a camera is here in the belief that it must be important testimony because there is a TV camera in the courtroom to record it.

The cameras come when they are available if, in fact, they do come at all. Their presence is by no means an indication that the TV people think the witness is particularly significant. So there is no reason for you to give added significance to what that witness has to say. And, frankly, even if the TV people think the witness is significant, they're not jurors. They're not a participant in this case. They have no way of knowing, in truth, whether the witness is significant.

So take every witness' testimony for what you think it is worth based upon the evidence in this case. Your evaluation of the witness, your evaluation of the other evidence and how it fits with what a particular witness is saying, but do not allow the presence of news media, if, in fact, it happens that they are here, to be a factor when it comes to analyzing the witnesses testifying.

Every trial, and those of you who have sat on juries will recall, follows a certain procedure, and this trial is going to be no different. Let me outline for you

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briefly what that procedure is, however.

The first thing that will happen is that Mr. Bramble will make an opening statement to you, which is his prediction, as best as he can do it, of what the evidence will be. He is not a witness and, therefore, is not giving you evidence, but he's doing his best to predict for you what it will be to give you a context within which to put things as they occur.

It would be nice if we could call one witness to describe the incident which is alleged in perfect chronological order from beginning to end. That would be the most effective way to hear it. But that usually doesn't work. People have to be called to talk about separate incidents, they're not always available to talk about it in perfect chronological order so, frankly, the presentation of proofs can get a little jumbled. We'll do our best to make that as minimal as possible, but it can happen.

At least if you have the lawyers' predictions up front as to what they think the evidence will be, overall, you'll have some idea as to where things fit even though they are not coming in in perfect order.

And whether they, in fact, fit as the lawyers predict, depends upon what the evidence is and your evaluation, but that opening statement can be helpful.

We are going to things a little

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differently in this case because we've got two juries trying two cases, in effect, simultaneously. We will, first of all, have Mr. Bramble address the jury that's trying Mr. Dan Turner's case, and then, and we'll talk about this in a moment, Mr. Turner's counsel can address you now or wait until later, and then, when that's going on, the Stephen Turner jury will be out of the room and then we'll switch places and have the prosecutor and counsels address Mr. Stephen Turner's jury. At that point, the Daniel Turner jury will be out of the room and we talked yesterday as to why we are having two juries.

Once Mr. Bramble has made the opening statements that he is, frankly, required to make, it will be available to the defense lawyers to make opening statements, but they don't have to. Remember, the burden of proof is always on the prosecution, and that means that, while there are always things the prosecution must do, there's not anything the defense has to do. They have the option, if they want to, but that's entirely up to the defense attorney to decide what to do. And that lawyer can wait to make an opening statement until later or to make it immediately after the prosecutor.

But once we've got the opening statements, such as they are going to be, out of the way at the beginning, then the evidence will be presented. Mr. Bramble will call what witnesses he thinks will help you understand this matter

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and will present what exhibits he thinks will help you understand things. And there will be some movement of juries in and out, although, frankly, both of you will be here for most of the evidence, because most of it, but not all of it, applies to both individuals. That doesn't necessarily mean it applies equally, but it will apply to both, so both juries will be here most of the time.

Once the prosecution is finished with each witness, the defense lawyers may cross examine those witnesses. That means to ask them questions to test the truthfulness, accuracy, and completeness of whatever they've said. Remember, a defense lawyer doesn't have to do that, but may if he or she chooses.

Once we've finished with that, the defense may, if it wishes, present evidence, but remember, the defense is not required to do that at all. If they do, however, we'll simply reverse things. The defense lawyer will call the witnesses and ask questions first and then the prosecution will cross examine or question to test the truthfulness, accuracy, and completeness of what's been said.

When all that's done, the lawyers will make closing arguments to you, which are their summations of what they think the evidence has been and how they think you should decide this case, and most important, why they think you should decide it in a particular way.

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Then I will instruct you one more time on what law you are to apply and, at that particular point, you will be free to begin your deliberations.

Once we get into the evidence, ladies and gentlemen, I will allow you to take notes. Some judges do, some judges don't. Given the fact that we've got some built-in complexities here, namely two defendants and two different juries coming in and out of the courtroom, I think it would be potentially helpful for those of you who are comfortable taking notes, to take notes to keep things straight.

Permission to take notes, however, is not a requirement that you do that. Nobody is required to take notes. You decide what is the most effective way for you to sit here as a juror.

There are some people who are very good at taking notes. They can take notes accurately and, at the same time, hear what's also going on while they are writing down notes.

There are other people who aren't good at doing both things, but are very good, frankly, at simply sitting and recalling later on what people have said. So you decide which of those two is going to work the best for you.

If you do decide to take notes, keep a couple things in mind. First of all, be sure that the process of taking notes does not overcome listening to the witnesses.

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Don't be so intent on writing down what somebody just said that you aren't listening carefully to what somebody is saying. And you're going to have to decide if you can do both of those things because some people can, some people can't.

Also keep in mind that just because somebody has written it down in a note doesn't mean that when you get into deliberations, those of you who haven't written it down or remember it differently, have to yield to what's on the page. Just because someone wrote it down doesn't mean it's right, they may have it wrong.

Take into account everything you know and try to resolve the discrepancy between your recollection and their note. If you are satisfied their note is correct then, of course, use the information for whatever you think it's worth. If you're convinced that your memory is right and their memory is wrong, then ignore the note. Don't give in. Just because somebody wrote it down doesn't mean that it is, in fact, gospel so to speak.

We will give you note pads and paper and pens with which to do things. Please always leave them in the jury room when we are not in session here and my staff will collect them and keep them under lock and key so absolutely nobody else sees them, that includes other jurors.

And once the case is over with we will, in fact, collect those notes and have them shredded so that,

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again, those matters are not available. Because, frankly, which notes you take reflects your thought process, to be honest. If you write one thing down and not something else, people might draw conclusions about, you know, how you are thinking, and that's nobody's business. Things that you write down may very well change over time and they might be purely private personal matters. However you doodle or whatever else.

My notes, when I take them, have always got little things in there that I throw in just to keep myself interested. I'm not particularly fond of other people seeing all of that and you might, you know, be the same way. So those notes are all thrown away.

Now it's my responsibility, as I said yesterday, to conduct this trial in as orderly, fair, and efficiently a manner as is possible, to rule on any questions of the law which come up, and surely some will, and then at the end, as well as now, to tell you what law applies in this particular case.

Your job is quite different. Your job is to determine the facts. You are to determine what, if anything, happened, and if something did happen which is a crime, who is responsible for that. That means that you and nobody else is going to assess the credibility of the witnesses here and the weight and persuasiveness of whatever

testimony you believe.

There isn't any magic formula for deciding this. And those of you who have been through the process realize that, I'm sure, fairly well. Just because you are in a courtroom deciding a very serious matter doesn't mean that you are now to analyze things differently than you do in your own private affairs.

As a matter of fact, one of the reasons you are here is to bring your common sense and experiences into the process to be sure that it doesn't become artificially analytical. And the best way to do that is to have jurors who have no experience in this business and no involvement with the particular case come and try the case. So we want you to use your common sense and experiences.

Obviously if, in the course of the trial, you come to realize you know something about this matter, you can't factor that in, but you can take the evidence and apply it to your own experiences to decide whether what's being presented here strikes you as reasonable, credible and persuasive.

When it comes to assessing credibility, there are lots of things to do. Let me remind you of a few of them. These are not dictates that you do it this way, but experience is the cause that these usually are the ways to do it and, if you keep it in mind, it will help you as you look



at each witness.

Observe closely people as they testify. How somebody looks and behaves while they are testifying can reveal something to you about their accuracy and credibility. Outside of this courtroom, when you have to assess somebody, you, for lack of a better term, size them up, all the time. And among the things you do is factor in how they look and behave while they are testifying. We want you to do that here too. Now it may well be that it doesn't help you in a given case. It may help you with the given witness, but it is something to do.

You should also take into account how good of an opportunity the person had to observe whatever they are talking about. The better the chance the person had to see or hear what they're talking about, the more likely they are to be accurate about it.

There is no guarantee that a person who had a good opportunity is, in fact, correct, but it is something to take into account. The less likely they had -- the less of an opportunity they had, the less likely they are to be accurate.

Also consider how good of a memory a person has. A person with a good memory may be someone you want to rely upon more than someone who has a historical bad memory.

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On the other hand, frankly, someone can generally be very good at remembering things and be wrong this time. Conversely, a person can have a lousy memory, but this time happens to be right. So if you are convinced that a person is testifying accurately, then the fact that they've got a bad memory and ordinarily you wouldn't pay a lot of attention to them, there is no reason not to pay attention now. If you are convinced they are telling you the truth, then, in fact, consider that.

You should also consider whether a person has got some bias or prejudice which gets in the way with their reporting things accurately and truthfully to you.

On top of that, consider whether they've got some interest in the outcome of this case which would cause them, either consciously or unconsciously, to shade the accuracy and truth of what they are telling you. It may not be deliberate, but if they've got an interest in the outcome, that may have an impact on what they say to you.

People, just like you as jurors, are here because you can rise above biases and prejudices and are very often capable of doing that. So just because you conclude someone's got an interest in the outcome, wants it to come out a particular way or has got some bias or prejudice. Doesn't mean that they are not telling you the truth, but it may be something that has a bearing on your assessment of their

credibility and you want to take that into account.

Be very careful that you pay close attention to everything, that you absorb all of the information as best you can, but don't make any decisions until it's time to deliberate, because only during deliberations do you have everything. Only then do you have all of the evidence. Only then do you have all of the arguments from the lawyers for what help that can give you. Only then do you have the law from me in a final form to tell you exactly what it is that you are to decide and not decide.

Let's review a couple of fundamental principles; they were gone over in voir dire thoroughly, but I think it's important to remind people of. Remember, first of all, that very basic to the American system of criminal justice, and a few others in the world, but by no means many, is the presumption that a person is innocent until proven guilty.

That presumption starts at the very beginning of a trial, it lasts through a trial. As a matter of fact, ladies and gentlemen, it lasts through your deliberations. You can say that one or both of these gentlemen is guilty of a criminal offense only if you are satisfied after deliberating that, in fact, the prosecution has proven them guilty.

Anytime before a thorough evaluation of

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the proof during deliberation, you have to say they are not guilty because, until you've actually deliberated and thoroughly analyzed everything, the presumption cannot be said to have been overcome. It can be overcome only if the proof thoroughly analyzed by you during deliberations convinces you that they are guilty.

That proof has to be proof beyond a reasonable doubt. Nothing less will do. We all have heard the words beyond a reasonable doubt and you would think that by now we would have figured out a nice formula for describing it, but there isn't any particularly good verbal way of telling you exactly what a reasonable doubt is. I think everyone knows, after you've been confronted with evidence, and I can give you some help in that regard, but there isn't, as I say, a nice verbal formula.

A reasonable doubt is obviously a doubt that's got to be fair and honest to begin with. If the doubt were other than fair and honest, it would, by definition, not be reasonable. It's got to grow out of the evidence or lack of evidence. If it grows out of something else, it's got no bearing on this particular case.

It can't be imaginary or flimsy, because things which are imaginary and flimsy just don't qualify as reasonable. It can't be fanciful. It can't be based upon

sympathy or prejudice because, again, none of those things are a reasonable way to go about analyzing facts.

A reasonable doubt is, on the other hand, a fair, honest doubt that is, in fact, based upon reason and common sense. I suspect that's where it gets its name. There are two ways to try and narrow it down a little bit.

One is to say it is a state of mind which would cause you to hesitate, were you deciding not this case, but what you consider to be the most important decisions in your own personal life. Kind of transport yourself out of the area to some very, very important decision in your own life and then ask yourself, if I were confronted with this same kind of evidence, would I be comfortable saying, yes, I'm sure I can go ahead, or would I hesitate and say, I'm not so sure. If your not so sure, then there isn't proof beyond a reasonable doubt.

Another way of putting it is to say that a jury is convinced beyond a reasonable doubt if, after looking at all of the evidence, you have a firm conviction that the defendant, whose case you are judging, is guilty. If you have that firm conviction then, in fact, you may say that the presumption of innocence has been overcome and may return a verdict of guilty.

Possibly guilty is clearly not proof beyond a reasonable doubt. Probably guilty is clearly not

proof beyond a reasonable doubt. Probability simply doesn't rise to the level of proof beyond a reasonable doubt. It's got to be that firm conviction, that hesitation, were you making an important decision in your own personal lives.

I've talked a lot about what you are to do in this case; that's analyze the evidence in light of the law. Let's quickly review what is evidence, only two things: what witnesses tell you and what exhibits demonstrate to you. Exhibits are tangible things: charts, photographs, medical records, things of that sort.

A lot else will be presented to you over the course of the next couple of weeks, but it isn't evidence. There's nothing wrong with presenting it, it's the manner by which we get to the evidence. So, it's necessary, but you need to be able to know what's evidence and what's not evidence.

It's been brought out in voir dire, but it needs to be brought out again, that the fact that these gentlemen are on trial is absolutely no evidence against them. A charge is just that, a charge. It's not the least bit probative of the fact that the person is indeed guilty of anything.

The fact that these gentlemen; Mr. Stephen Turner and Mr. Daniel Turner are in custody is -- as is

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apparent, is obviously no evidence against them. Frankly, ladies and gentlemen, they are in custody because the law of this state that says that for crimes of this sort, and there are several, these are no means the only two, a bond is not even allowed.

So it's simply a matter that the law says they couldn't be released, they have to be in custody until this matter is resolved, and that's why they're here with deputies with them at all times. So don't read anything into that. Don't conclude that some judge somewhere has said, well, there must be something to this because a very high bond or no bond was set. The judge doesn't have any authority to set the bond in the first place.

And, also, don't let the presence of security officers and the guard in the courtroom cloud your evaluation of anything. The moment a person is in custody, the law says that there has to be a deputy with them, and we have two individuals in custody, so we have two deputies.

Other things which are not to influence your decision in the least are sympathy, prejudice, and public opinion. We're not here to decide this case based upon how you think people outside this courtroom in general want cases like this decided. We're not here to further some public policy, to send messages to anyone, ladies and gentlemen.

What we are here to do, you and I in this

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particular matter, as well as all of the other participants, is see to it that this case is evaluated fairly and impartially, which means that the decision is made, did something happen, and if it was criminal, who's responsible for it, not, what should be decided for the benefit of somebody else down the road, or what should be decided to keep the public satisfied.

The question simply is, is what did indeed happen here. And that means evaluate the evidence in this case without concern for sympathy, prejudice, public opinion, or some objective of public policy.

Remember that the questions put to the witnesses aren't evidence because questions come from people who aren't witnesses. The lawyers weren't witnesses to this matter, so they can't testify to anything because they don't know first hand. And the law requires that you have first-hand knowledge before you can give testimony here. But we have to have questions in order to have answers, so we're going to get a lot of questions.

Don't, however, ever assume that because a question accepts something as fact, that it is fact. If the witness confirms it, and you believe the witness then, of course, you've got evidence to that effect. But don't let questions lead you to conclude that something is a particular way. Make sure that the evidence leads you to that

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conclusion.

During the course of this trial, ladies and gentlemen, I may ask some questions myself. Some judges do it more than others, I don't do it much. When I do it, it will be simply to clear up something that I think was left kind of hanging, confused. If I do it, it's not because I think it's particularly important at that point, it's because I simply think there was something that was left unsaid or confused so that it is given to you for whatever you think it's worth.

Don't take an answer that comes from one of my questions and think it's particularly significant because the judge asked the question. You decide, based on the whole case, whether it's significant. Who asked the question is not a reason to think something is particularly important or particularly unimportant.

In the course of this case, as you saw a couple of times already, it's going to be necessary for the lawyers and me to take up matters outside of your hearing. We will do that, most often, like we did the last couple of days, simply having the lawyers come up here and talk to me very privately. If it's going to take any length of time, we'll have you leave the courtroom and we'll use the courtroom to talk about it.

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It's real obvious, ladies and gentlemen, that when we're doing that, we don't want you to hear what we are talking about. There is no point, you know, hiding that that's what's going on. But that's not because we're trying to hide or keep evidence from you.

When we are talking among ourselves, we are going to violate that rule that I talked about at the very beginning of the trial, which is, avoid legal jargon. When we are talking among ourselves, we are, in fact, talking points of law and we have our own jargon. We say things that mean one thing to us as lawyers but, frankly, mean exactly the opposite to you. And you are the one's who are using the language right. You know, we've got some old vestige for some reason that hangs onto a phrase that gives it a very unique meaning.

If every time we had a legal discussion and held it in front of you, I would have to act as the interpreter to be sure that you were not misunderstanding something we were saying. That would make things complicated in the least, it would also protract things immeasurably.

So to avoid me having to play the role of interpreter and taking the time of explaining all of our legal terms so that we won't confuse you, we simply conduct those discussions privately. But so as to avoid protracting things even more, we don't like to shuttle the juries in and out of

the courtroom to do that. If at all possible, we simply come up here and talk and we talk in a way that you can't hear us.

When we are doing that, don't speculate what we are talking about, just take it as an opportunity to relax for the moment and think about something else. Because at that point, for your purposes, nothing of any significance is going on.

The lawyers talked about objections that they are going to have to make. A lot of people are disappointed by what happens in the courtroom. They think these trials are to be conducted like they happen on television. Well, as we all know, those are done for dramatic effect. As a judge, I'm dying for one of those cases where the whole case comes in in 15 minutes. You know, but that just isn't going to happen. So the way you see it here is not the way it happens on television or in the movies. And, frankly, that disappoints some people.

One thing will happen just the way you expect it, however. And that's the lawyers standing up and objecting. These lawyers, as am I, are trained in a very elaborate set of rules of evidence. And it is there ethical obligation, when they think one of those rules is being violated, or might be violated, to bring that to my attention so I can resolve the issue. They do that by standing up and saying, I object, your Honor, or words to that effect. You've

seen Perry Mason or, you know, other people do that on television. That's a very real part of the case.

Since they are doing their duty, it's obvious, I think, that nobody should ever hold against them the fact that they are standing up and objecting. They are not trying to keep things from you. Quite the contrary; they are trying to see to it that the rules are followed because the rules are designed to see to it that what you get is good, worthwhile information.

I'm obviously going to have to rule and one lawyer is going to prevail and another is not. In other words, one's going to win and one's going to lose. Don't read anything into that either. Because, frankly, they might be right, the one who loses, the one I disagree with. It just so happens I'm the final word on the subject, otherwise the proceeding would never get anywhere. So we have to have somebody who says this is the way it is. But just because I say that doesn't mean I'm necessarily right. So you shouldn't conclude the judge was right and one lawyer was wrong and therefore that you should hold it against that lawyer.

Again, when this process is going on, and this much of the process will usually take place in front of you, again, simply recognize it as an opportunity to tune us out for a moment because that discussion over the evidence is of no bearing on what you are deciding.

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If I decide to let the evidence in, if I overrule the objection and say the witness may answer the question or the exhibit may be presented, then you have something to deal with. Don't, however, enhance the value of that evidence again because you think it's especially important that the judge said that the jury may consider it.

And if I exclude something, don't speculate as to what it would have been. Speculation is almost always wrong. And, frankly, even if you guessed right, there was a reason why it was excluded; one of the rules wasn't being honored in that regard. And as I said, those rules are designed to see to it that you get good evidence and information to use. And so, if it's excluded, it's only because there is a very good reason that it shouldn't be here, and if it shouldn't be here, then you shouldn't be factoring it in anyway.

So, again, just don't pay attention to that whole process. When we're finished and the witness either answers the question or we move on to the next question, then you pay attention because, of course, it's what the witness is saying or what the exhibit produces that is significant.

Now, ladies and gentlemen, I want to spend a couple of minutes talking with you about the crimes which are alleged here so you have some idea of what it is the

prosecution has to prove and what it is that you have to decide before this matter can be considered finished.

The first things I'm going to talk about are the charges that are made against Mr. Daniel Turner because he's charged as a principal. By that, I mean it is alleged that he is the person that actually, himself, did these various things. You have to be convinced, beyond a reasonable doubt, that he did them, but the allegation is that he did them.

Mr. Stephen Turner is charged as an aider and abetter. Under the law of Michigan, in terms of ultimate responsibility, there is no difference. There is a difference, however, in terms of definition. The aider and abetter is the one who helps somebody who actually does it.

So I want to talk, first of all, about the charges that are made against Mr. Daniel Turner because these are charges where it is said he did these things.

Before I do that, however, I want to talk to you in general about cases involving allegations of criminal sexual conduct. They are difficult cases all the way around. It's important for you to know, not only what must be proven, but what does not have to be proven.

For example, and those of you who have perhaps been on such a case before will remember some of this, but remember, don't rely upon what you learned in another

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case. That other case is over and done with. It is finished. The only concern is what you hear and learn in this particular case.

It is not necessary, as has been pointed out, in any case alleging criminal sexual conduct, for the prosecution to present any evidence other than the testimony of the person who says that they were, in fact, assaulted.

It used to be that you could not prove a case of this sort, you, meaning the prosecution, without having at least two witnesses to say things. One to say it and one to back it up. Well, that hasn't been the law in this state in 20 years.

If you believe a complaint; that is, a person on who's behalf the charge has been brought, that even though there is nothing else which backs up what they say, that is enough, if you are satisfied beyond a reasonable doubt that they are telling you the truth, to return a guilty verdict. That the law doesn't require corroboration doesn't mean that you can't look for it.

If, in fact, you listen to a witness and what he or she says just doesn't convince you, then you can, of course, look to the rest of the evidence to see if it corroborates it. And if, in fact, other things then lead you to believe that that witness is telling you the truth, then you can obviously conclude that they are because of the

corroboration, but you don't have to have.

If after a witness has testified you just say, I'm convinced, based upon my assessment of what that witness says, that they are telling you the truth about what happened, then you don't need to have anything else. You may look for it if you want to to help resolve doubts that you might have, but there simply is no legal requirement that there be two witnesses to matters of this particular sort is what it really boils down to.

It's not necessary, as has been pointed out, for the prosecution to prove that the complainant, in this case, Lakeysha Cage resisted. Again, it's not been the law of this state for 20 years that in order to prove an allegation of sexual abuse, the prosecution has to prove that the person resisted. You simply don't have to fight back.

If, in fact, sexual abuse is occurring, it shouldn't be happening, period, and there is no requirement that anyone increased the risk themselves potentially by fighting back. So resistance doesn't have to be proven in the least.

The prosecution does not have to prove that there was a lack of consent. If an adult is involved, obviously there has to be a lack of consent, because if an adult consents to sexual activity, it's not a crime. However, if the person who was involved in sexual activity is under the



age of 13, then it doesn't matter whether they consented or not. For obvious reasons, the law doesn't recognize their consent as the least bit valid. So the issue of consent is, frankly, not an issue in this particular case.

Similarly, the prosecution doesn't have to prove a completed sex act. By that, I mean it doesn't have to prove, you know, a climax or ejaculation, to put it bluntly. If those things happened, it may help you analyze the case, but that's not what's required. The crime here is penetrating certain parts of another person's body and doing certain things. The law believes that those acts are so inheritably offensive that they constitute the crime if they're done under circumstances as are alleged here. Whether or not it turns out that they ultimately are for purposes of sexual arousal, or gratification, or whether or not they indeed have that effect.

Now let's talk about what has to be proven. We've talked about all the things that don't have to be proven, and given the nature of the allegations here, the charges are relatively simple, at least in terms of legal components. Whether the evidence is simple or not is, of course, for you to decide.

Mr. Daniel Turner is charged, among other things, with Criminal Sexual Conduct in the First Degree. In order to convict him of that offense, the prosecution has to

prove to your satisfaction, beyond a reasonable doubt, that he did two things: that he engaged in sexual penetration, and I'll describe that for you in a moment, with a person who was 12 or younger at the time. That's all that has to be proven to prove Criminal Sexual Conduct in the First Degree. A lot more would have to be proven if the person were older. But if you are satisfied that the person is 12 or younger, the act of sexual penetration with a person of that age is, itself, Criminal Sexual Conduct in the First Degree.

Now, sexual penetration can mean any entry, however slight it is, into the genital or anal openings of another person by any part of another person's body or by any object.

For example, the traditional, you know, sexual intercourse of the penis entering the vagina is obviously sexual penetration. So is a finger doing the same thing, so is a pencil, because that is an actual entry into a genital opening by another person's body or something that that other person is using.

It's also sexual penetration, for purposes of this law, for one person to place their mouth on the vagina of another individual. So if either of those two things happened, then sexual penetration has occurred. The actual entry into a genital opening by Mr. Daniel Turner, or by some object that he was using, or the placement by him of his mouth

on the vagina of Miss Cage. Either of those two things is sexual penetration.

And then if one of those two things is proven to your satisfaction, then you have to decide whether she was 12 or younger at the time. If both of those things are then established, the crime occurred and you may say guilty. If you have a reasonable doubt as to one, or another, or both then, of course, you have to say not guilty.

Mr. Daniel Turner is also charged with Criminal Sexual Conduct in the Second Degree. That's similar, but different. The age component is the same, but the nature of the physical act is different. Criminal Sexual Conduct in the Second Degree does not require proof of penetration. What it requires is proof of sexual contact, which is defined as touching someone else's breast, buttocks, genital area, or groin area, under circumstances where that could be construed for reasons of sexual arousal or gratification. Or it's having the other person touch the defendant in that way.

So if you are satisfied that Mr. Daniel Turner touched Lakeysha Cage on the breasts, in the genital area, on the buttocks, or in the groin area, and that it was done in a way that could be construed to be for sexual arousal or gratification, that is Criminal Sexual Contact.

If you are convinced that he had her touch him in some of those areas, under circumstances that could be

construed to be for arousal or gratification then, of course, that likewise is sexual contact. And then the age component is the second factor here.

Just keep in mind for right now as you hear the evidence, that what you need to decide to resolve the allegations of Criminal Sexual Conduct is, was there sexual penetration, and/or was there sexual contact, and was the person who says that happened to her 12 or younger at the time that that happened.

MR. MIRQUE: Your Honor?

THE COURT: Yes?

MR. MIRQUE: May I approach?

THE COURT: Yes.

(Side bar had at 4:10 p.m.)

THE COURT: Ladies and gentlemen, because of the number of cases we have here, I've got to be careful.

Mr. Daniel Turner is charged with Criminal Sexual Conduct in the First Degree. By the end of the trial, you may well have the alternative of considering second degree, which is why I am describing both to you. But he is charged with Criminal Sexual Conduct in the First Degree. He is charged with two incidents of it. And under Michigan Law, even if there were two penetrations moments apart, as long -- for each separate penetration, if you find there were separate ones, you may return separate verdicts.

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So for purposes of what's charged, you have to find either -- you have to find penetration and being under age, and if you are not satisfied that there is penetration, but are convinced beyond a reasonable doubt that there was contact, then that's Criminal Sexual Conduct in the Second Degree, and we'll talk more about that later on. But right now, as far as he's concerned, the offense of Criminal Sexual Conduct in the First Degree is indeed what is charged.

He is also charged with what we refer to as Child Enticement. It's commonly called Kidnapping, but that really is an inappropriate term because kidnapping has various connotations which aren't part of the charge in this particular case.

And again, we will talk about this in greater detail later on, but basically I want you to keep in mind that the prosecution has to prove these things in order to prove Child Enticement:

Number one, that Mr. Turner led a child, took or carried away a child, or decoyed or enticed a child, in particular, Lakeysa Cage, that she was under 14 at the time, this is where we have a different age limit. That this was done maliciously, forcibly and fraudulently, which means with some force, and that he knew it was wrong to do it, and that he didn't have permission from the parents to do it, and

that it was done for purposes of detaining the child or concealing the child, either one, from either or both of her parents or legal guardians.

Now, again, we'll talk about that later on. But what you need to ask yourself as the evidence is presented is, is it proven that he led her away, or carried her away, or decoyed or enticed her to come with him to some place; was she under 14 at the time; and was this done maliciously, forcibly or fraudulently; and was the whole point of it to, at least for the time being, detain or conceal her from her parents.

That's what Mr. Daniel Turner is accused of, and so those are things that you are going to have to ask yourself when the evidence is completed. Has the prosecution proven it? It's charged both. If you're not satisfied beyond a reasonable doubt that both have been proven then, of course, you have to find him not guilty.

If you are satisfied that one has been proven, but have a doubt as to the others then, of course, you are -- can return a verdict of guilty of one and not guilty of the other. It's not an all or nothing proposition. You evaluate the evidence as best as you see it.

And then, as I recall, Mr. Stephen Turner is accused of Aiding and Abetting his brother in the Commission of Criminal Sexual Conduct in the First Degree, and

is there a count to second degree as well, Ms. Krause?

MS. KRAUSE: Yes, your Honor.

THE COURT: Now in order to be an aider and abetter, ladies and gentlemen, the prosecution, first of all, has to prove that somebody committed a crime.

In this case, that means they have to prove that Mr. Daniel Turner committed the offense of Criminal Sexual Conduct in the First Degree or Second Degree. And then they've got to prove, in order for you to convict Mr. Stephen Turner, that he helped, under certain circumstances.

Aiding and abetting means helping somebody in some way commit a crime. It doesn't have to be a lot of help so long as they did something which assisted that other person in completing the crime.

Now merely being present while another person commits a crime is no crime. Not helping a victim, not stopping a crime is no crime. It may not be the nicest thing in the world to do, but it's not a crime. A person can be guilty of a crime only if what they did affirmatively assisted the other person to commit the crime.

As I said, there is no particular assist that has to be given, but you have to decide that they did something, which in a very real way, assisted the commission of the crime.

You know the typical things, it probably

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won't occur in this case, so that's some of the reasons why I'll give the examples to give you a feel for it, you know, acting as a lookout, watching to see if the police or someone are coming is an assist to a person who is, in fact, engaging in a crime. Holding down someone while someone else commits a crime can be aiding and abetting.

Simply encouraging the person on, even though you don't do anything physical, but you egg them on, or encourage them to do it or help them plan. All of those things, while they aren't actually committing the ultimate crime, are assisting enough to make the person who assisted equally guilty with the person who actually carries out the crime, provided that the person who helped meant for his help to be of some assistance.

Now if you help someone unwittingly, by accident, not knowing that you are helping them, that's no crime, even though you did, in fact, help. You have to help and you have to have help with the specific intent that your assistance would indeed aid them in carrying out their particular crime.

And if those things are proven, number one, that Mr. Daniel Turner did, in fact, commit one of those Criminal Sexual Conduct offenses that we're talking about, and that Mr. Stephen Turner did help him, and that he intended to help him, actually help him, then the crime of Aiding and



Abetting Criminal Sexual Conduct in the First or Second Degrees has happened, depending upon whichever offense you think has, in fact, happened.

Then we'll talk a lot more about these things later on. The instructions will be fitted much more to the particulars once we get to the particulars. We'll give you some written copies of things to keep track of. Don't work real hard, in the course of hearing the evidence to see where these things fit in, because that would be coming to the decision too soon. But I want to give you a background at least as to what has to be proven and what doesn't have to be proven so that the evidence might make some more sense as we go along.

Mr. Bramble, are you ready to address Mr. Daniel Turner's jury?

MR. BRAMBLE: Yes, your Honor.

THE COURT: Ladies and gentlemen, then what we are going to do is have Mr. Bramble and Mr. Mirque, if he wishes at this point, address, give an opening statement to the jury that will be trying Mr. Daniel Turner's case.

Mr. Stephen Turner's jury can go home for the day because it's going to be, I suspect, after five o'clock and we won't want to keep you at that point.

Please remember, don't read any publicity, don't talk to anyone about the case and be back here ready to

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go at ten o'clock tomorrow morning. And we'll have you hear comparable opening statements, but related only to the case you're going to try, and then by about eleven o'clock, I'm sure we will be getting to the proofs. And I assure you, once we get started on a full day, as we will have tomorrow, things move fairly expeditiously. You may not think so after the last few days, but once we get the witnesses and get a whole day, uninterrupted, we can get a lot done. I think we'll start moving fairly quickly.

So I'm going to make sure that Ms. Hull knows that Mr. Stephen Turner's jury can go. Just be back in your jury room at ten o'clock tomorrow morning. We'll set a different time for Mr. Daniel Turner's jury, but you need not concern yourself with that.

(Stephen Turner's jury exits courtroom)

THE COURT: Mr. Bramble?

MR. BRAMBLE: Thank you, your Honor.

Ladies and gentlemen of the jury, as the Judge indicated, this is the stage of trial known as opening statement. It is the time where, again, as the Judge indicated, I get a chance to tell you what I have to demonstrate and what witnesses I'm going bring forth to demonstrate or present to you, evidence that pertains to the elements of the offenses the Judge just read to you.

I ask you to kind of listen closely to

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this. I know you've had to sit and listen for a long time, but I still believe that you can listen closely because the number of witnesses -- there will come a point, I'm sure, when I'll have to take witnesses out of order or going to be some type of delay, and especially when we are working with two juries, I think that may take place and, therefore, I'll give you some indication as to what witnesses are going to come forward, and what they're going to say and how you are going to be applying evidence in this matter.

We discussed a lot about -- we talked a lot about criminal sexual conduct, and I think we did discuss as much the one charge of child enticement. We talked a lot about child enticement, kidnapping, but basically it's just as the name gives it. It's a taking, leading, carrying away, enticing a child away. The child has to be less than 14 years of age. The defendant must have done it maliciously, fraudulently and with the intent to detain or conceal from the parent.

Again, that detaining or concealing does not have to be permanent, but just at that time the intent was there.

The other two charges, the First Degree Criminal Sexual Conduct, counts, again, two elements that the Judge described, which is why I won't go over them again now.

The witnesses that are going to come

forward, the first witness is going to be Lakeysha Cage. You've heard us talk about her and discuss her and so on and so forth. She's going to come forward. She is a ten-year-old little girl.

Lakeysha will testify that she was living over at 4130 Oak Park. That's an apartment complex, I believe, and the Judge indicated, I'm not sure whether it was to this jury or the other one, is over in the area about as far as Grand Rapids goes before you meet up with Kentwood. She is living there with her mother and stepfather.

And on July 7th, 1993, she is doing what she probably does on many other occasions at that time; she's out playing. This particular time she happens to be out playing on the steps. And she'll testify what she is playing with. She has some rubber bands, and she has some sticks, and she'll testify she was trying to build something. I can't remember whether it would be a boat, or a car or something, but she's trying to make something out of these. It happens to be right near apartment 204 where the defendant, Daniel Turner resides.

She will testify that the defendant comes out -- out of his apartment, comes over to her, grabs her and drags her into his apartment. And she will testify, once inside the apartment, eventually the defendant brings in back -- her back, rather, to the back, the very back of the

apartment. And it's the back bedroom. And there's a cot, there are other things, and she will testify during this time period the defendant removes her clothing. During this time period, the defendant also gets on top -- or climbs on top of her.

You will also hear testimony that the defendant removes articles of his clothing. You will also hear testimony that, at some point, the defendant places his penis in her mouth, the sexual penetration that the Judge talked about. And also placed his mouth on her vagina.

Her testimony will include other factors as well. She will testify that, in fact, the defendant had some woman's clothing on. And that he had it on. She will identify some clothing. She will also identify or state to you that he had her try on some things. And try on some of these clothes.

She will further testify that during the time she was held inside the apartment there, she had -- or he has her, and she's telling him certain things. Telling him, geez, my mother is going to be home at this time. And the defendant will say he doesn't care and he keeps her there.

And at this time, at one point, he also pulls her onto his lap and he's touching her breast, touching her chest area of this ten-year-old. He's done that also back into the back room. But she'll also testify that at the time

he pulls her onto his lap, he has her play a video game. And you are going to find out it's a strip poker game. She described this all to the police as well. She described his clothing to the police as well.

One of the first things she'll testify, and what she told him was, it was the man with the lipstick on. The man with the lipstick on is the defendant, Daniel Turner. A portion, you'll hear testimony that following this, once this all comes out, Lakeysha eventually leaves his apartment. And before leaving, the defendant says, don't tell anyone and don't go home, or I'll kill you. And she's scared.

You are going to hear testimony, there is a point where people are trying to talk to her and get her out of some bushes she's hiding behind. She finally comes out of the bushes and describes what has taken place. She describes it very briefly.

You will hear testimony from Lakeysha's mother because Lakeysha describes this and this information goes to her mother. And once she's onto this information, I think she does what almost any mother would do and, that is, she goes right over to apartment 204.

And if you recall Mr. Mirque talking to you on -- during voir dire, he talked about someone's bluff being called, someone being confronted. Well, the purpose of

Mrs. Marble going over there is to confront the defendant, and she does go over there, and she does confront him. And she confronts him in front of a number of witnesses, who will also come in here to testify.

And she tells him and asks him, Why did you mess with my daughter? She confronts him, she calls his bluff. Why did you mess with my daughter? And yeah, I think you're going to hear testimony that she does also say, Why did you fuck with my daughter? Why did you touch my daughter?

And the testimony is going to be that the defendant's response at this time, is to put his hands together and darn near go down to his knees, and his response to Lakeysha's mother is, I don't know why I did it. I don't know why I did it. Let me explain.

You are also going to hear testimony of -- that following this, the police were called. And the police gained control of this because the victim's stepfather was quite upset at this time as well. They secure and gain control of the situation. They go inside the apartment and they talk to the defendant. And the first thing the defendant says to the officer is, You might as well arrest me. The officer says, well why? He says, Well, you know what she's accusing me of.

Following the defendants being removed from the scene, several things happened. Number one, a search

warrant is obtained and they go inside this apartment. And the things Lakeysha described, the things she described are, in fact, seen, the women's clothing. And, again, as I indicated all during voir dire, I ask you not to be sidetracked, because I think there is going to be some effort to have that done.

Don't be sidetracked on this issue of cross-dressing or whatever. The purpose of that testimony is to demonstrate to you that when Lakeysha tells the police, she tells these people about these factors, about the dresses, about the bras with pads in them that the defendant has on and she has to try on, they're there and they were found with this search warrant.

And when Lakeysha tells everyone that, geez, it was the man with the lipstick on, you are going to hear testimony that, when the police arrived there, the officer looks at him and isn't sure whether he's got a cut lip or whatever and tells him, you might want to wipe his lip. Then he takes a tissue, wipes off the lipstick and throws it on the floor. And that's in the back seat. The police will also testify that he also had on some type of mascara on as well.

There will be further testimony that Lakeysha is, during all of this initial turmoil, interviewed and some statements were made -- taken from her, she is



brought down to the hospital. And it is that during that time that she is once again -- a nurse interviews her, it's part of the treatment, diagnosis of the patient, she talks to her, obtains a medical history, and she describes essentially what she is going to describe to you as well.

And you will also hear testimony from Dr. Stephen Perry and the testimony from the nurse at that time, and there's going to be, in fact, lipstick stains or marks on her shirt as well.

And you will hear testimony from Dr. Perry that he obtains history from her as well and that the attempt is going to be to conduct an examination. And Lakeysha, again this is going to be a full examination, of her vaginal area and so on. Lakeysha is upset enough that the doctor brings the mother in and Mrs. Marble attempts to talk to her and convinces her to do this. Lakeysha is too upset and the doctor makes the decision or tells her the decision is this: we can either force her and stick these cold gadgets up her vagina or we can sedate her to the extent we knock her out, or we can forego the whole the exam and, in fact, that -- the mother made the decision that she wasn't going to put her daughter out and she wasn't going to have someone hold her down.

Now, you are going to hear further testimony that, in fact, approximately two weeks later, she

is, in fact, examined. And she describes, again, this incident to the nurse at the Child Assessment Center. She describes the same acts she will tell you as well. She is examined there. The doctor takes a history, he examines her. He examines her vaginal area. This is two weeks later. And then he's going to tell you that basically the examination is normal. It is normal but, in fact, from the history described, again, there not being any penetration, and Dr. Perry is going to testify that she didn't describe any penetration, but merely his mouth being on the vagina and the oral sexual act.

And Dr. Perry is also going to testify that, in fact, during this history -- in this taking of this history, that she describes either being urinated on or something else. Was it urination or ejaculation, she wasn't exactly sure.

Finally, you are going to also hear testimony concerning some of the other items taken from the apartment. And, again, that is pursuant to this search warrant.

Lakeysha told us she sat on this man's lap and he felt her chest and made her play a video game or a couple video games, one of them being a Pacman and one of them being a video Strip Poker. In fact, the police go seize some of these disks, place them in and actually do, eventually,

unlock and get into these games and the system and, in fact, the video Strip Poker is identified on the disk, and you will be able to see a video tape or a copy of what exactly this video game is all about. And, in fact, it is a video of a strip poker game.

Ladies and gentlemen of the Jury, when the facts come out to you, when the testimony comes out, I ask you to compare that with the elements of the offense, the facts, the evidence, the proof will indicate that the defendant is guilty as charged. On behalf of Lakeysha and on behalf of the People of the State of Michigan, I'll ask that your verdict reflect that as well. Thank you.

THE COURT: Mr. Mirque, would you like to address the jury now or reserve an opening statement until later?

MR. MIRQUE: I'm not quite sure whether the jury wants to stay beyond five o'clock.

THE COURT: Well, we have twenty-five minutes from now.

MR. MIRQUE: Okay. Ladies and gentlemen, it's been a while since you first heard my name, but my name is Robert Mirque. I represent Mr. Daniel Turner, the accused in this case.

What Mr. Bramble has told you and what the Judge has told you is not evidence but, rather, it's what he

hopes the evidence is going to show. That's the nature of an opening statement.

During the course of the trial, my opening statement is what I confidently expect is going to be proven in this case. What I expect to prove from the witnesses, the testimony that they provide, the documentation, the medical test, the physical evidence is that Daniel Turner did not do these acts.

My opening statement is simply not evidence, but I confidently expect to prove through the testimony.

In Kent County and in a lot of areas around this State, it's an election year made a lot of promises are made by politicians. Politicians are going to promise you the sun, and the stars and the moon to get your vote. You know that they don't have to deliver on those promises until after your vote. That's not the case here. I have to deliver before your vote. I have to deliver. I have to be very conscious of what I expect to prove I am going to prove. If I tell you that I expect to prove that Lakeysha Cage made up this story to simply get herself out of a jamb, I am aware that if I don't follow up on what I promised, you'll render a very harsh judgment on me.

The evidence is going to show is that Lakeysha Cage was gold by her folks to stay in the immediate

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vicinity of the apartment, don't go anywhere or you're going to get in trouble. The evidence is going to show, also, is that Lakeysha Cage did not, she simply did not go through with that instruction and follow it as her parents desired but, rather, she -- she went into the Turners' apartment. There is no dispute that she was in the Turners' apartment.

The evidence is going to show at that time Turners were quite an oddity in the neighborhood. They were not closet cross dressers. They were very open about their transgender issues. As a matter of fact, the evidence is going to show that the father has said, if you go down there, I'll tell you what's going to happen if you go into that guy's apartment.

A Mr. Joel Kumarez, who the prosecution is going to call, which is also a neighbor to Mr. Turner, walked quite a bit along what I hope I'll be able to portray to you as an apartment structure where there's a long balcony with a number of doors to each apartment and then the lower part where an equal number of apartments exist. The Turners lived in the upstairs apartments, Mr. Kumarez lived in the upstairs apartments, the Cages live in the upstairs apartments, of the little girl's family lives in the upstairs apartment. And Mr. Kumarez is going to tell you that the Turners were quite open about their apartment, the blinds were open, the door was open, and anybody walking through this corridor amongst the

apartments could look in and know exactly the layout of the apartment and what the Turners were doing, what they were wearing, what they were watching on TV, et cetera.

Mr. Kumarez is going to say that Lakeysha Cage is going to say something just like that. Lakeysha Cage says, at the preliminary examinations, and I hope she is going to say it again today, or tomorrow, that her and her sister were so pre-occupied, so curious about Mr. Turner and his brother, that she went to the extent of bringing along a camera to take pictures of the two of them through the windows. She was curious about them, very curious about these two individuals.

The evidence is going to show --

Mr. Bramble has already told you that they had a video game. You know kids with video games. She's curious about these two, and they have a video game, she goes in, she plays the games, and that's what's going to be shown.

Now, Lakeysha Cage realizes that she's caught. She's in trouble. So, the evidence is going to show that Lakeysha Cage made up a story, and I'm going to use this blackboard to show what I'd like to call the categories of the witnesses.

We have witnesses who will tell you about the event, the story. We have Lakeysha Cage (diagraming). The first person that Lakeysha talks to is her mom. Her mom then goes to find the Turners. The first person to be a

recorded version of the story, you'll hear him, is Officer Barr. Mr. Michael Barr.

Now, Lakeysha Cage says, or what she's going to say is that she was dragged from the apartment -- or into the apartment. I'm sorry. She's going to say that Mr. Turner put his penis into her mouth. Well, when she speaks to Officer Barr, Officer Barr is going to ask Lakeysha, Did Mr. Turner, with his penis, penetrate your vagina?

Officer Barr is going to tell you that Lakeysha was a little bit quizzical about that word, vagina. So, Officer Barr or --

I'm sorry, it wasn't Officer Barr, but it was, rather, Lakeysha's mom. Lakeysha's mom stepped in to translate. Lakeysha's mom said, your Cat, and immediately Lakeysha understood what she meant. Lakeysha said, Yes. Mr. Turner penetrated my vagina. Vaginal penetration.

Upon hearing that, the mother goes ballistic. Lakeysha Cage knows she's in trouble. Officer Barr is going to question her a little bit, and she's going to say, I was not out in the apartment. Daniel Turner knocked me out. Knocked out. I hit my head. Lakeysha Cage is going to tell you that.

The next person that Lakeysha Cage talks to is Officer Messman. This time, however, vaginal penetration is gone. It's no longer vaginal, rather she

describes what happened in the apartment as being he ejaculated upon in the back room and so forth, be dragged, describing a man with lipstick, and so forth.

I want you to pay very close attention, and I do encourage you to take notes. You're going to hear a lot of versions of the same story. The next person is Sergeant Carrier, and again the story changes slightly. Next you are going to hear, in the sequence of who she is telling the story to, is the people at St. Mary's.

The first thing that's done at St. Mary's is a nurse is taking a history and physical. The nurse is going to tell you that she wanted the basic gist of the story to present to the doctor just for his familiarity. The first thing that Lakeysha Cage tells that nurse, and the nurse is going to say, that two men dragged her into the apartment, not one, but now it's two.

I'm not going to go into every detail of how the story changed. You're going to hear a lot of different things that change. But, there are some major inconsistencies in the story that you're going to hear. It's nit-picking, it's major inconsistencies.

The next group of people is what I refer to as the medical people. Lakeysha Cage is going to say that she was dragged, that she was knocked out. Well, Dr. Perry and his staff are going to say, no bruises, no abrasions,



nothing external to indicate trauma. Lakeysha Cage is going to tell you that she was dragged over the floor, dragged along the balcony, and knocked out, held down, banged against the head. Dr. Perry is going to tell you, I don't see this stuff. I don't see it. Lakeysha Cage is going to say that while Daniel Turner held her in the front room -- oh, I'm sorry, in the back room, he straddled her and he ejaculated on her stomach, on the abdomen and in the mouth.

The medical team is going to do something that, I don't know if you've ever seen done before in the movies, but they take this light called a Woods light. What it does is it determines whether or not there is any presence of sperm or semen. Quite simply, they just run it down her entire body, it's called the Woods light. You're going to see on a medical document, Woods light, negative. That's how, medically, they'll see it. Nothing. The medical people are going to say that there was no indication of sperm on her on either the stomach nor the vaginal area.

Furthermore, the medical team takes, routinely, oral swabs, saliva smears. The medical team is going to tell you that there's nothing on those tests to indicate sperm or semen. Nothing. As a matter of fact, the conclusion is of the entire medical exam that has been done by St. Mary's, Dr. Perry is going to tell you that the victim is surprisingly calm, given the nature of the alleged incident.

How does he know that? Well, he observed her, he's gotten some history from the nurses, and on those medical charts you'll see, the nurses described Lakeysha Cage in the waiting room laughing, having a good time. The medical experts do not match anything of what she's claiming.

Now, I know the Judge and the prosecutor don't have to add any corroborative evidence to prove the event happened. But remember what we talked about in our voir dire. Remember that when you're looking at a kid who is going to tell a story, one of the ways to do it is just simply line up the people who she told the story to. She told the Officer Barr, she told Officer Messman, she told Sergeant Carrier, she told Detective Vazquez the story, she told the people at St. Mary's a story.

Now, bits and pieces are consistent because she wants to keep the lie going, but not this consistent. Vaginal penetration changing to oral penetration, not being passed out, knocked out, being held physically with your hand up against her neck, against the wall enough so that she says she passed out. There's another little interesting twist about the entire story. Lakeysha Cage is going to tell you that prior to leaving that Daniel Turner was taking a picture of her with a knife in her hand against Stephen Turner, making -- this is hard to explain, making her appear threatening to Stephen and that if she told anybody about the

event, they would release this picture to the police and that they would accuse her of having threatened Stephen Turner.

She's going to say that her picture was taken, events happened. There's no picture. The police are going to tell you that they recovered a camera, but unfortunately the police destroyed the film. There's no way we can prove it, whether it happened or didn't. Another fanciful story, I submit.

One other thing about this medical part is that Lakeysha Cage is going to tell you that throughout the entire course of the episode, Daniel Turner is wearing lipstick. Mr. Bramble said that Officer, I believe it was Messman, noticed that Daniel had a cut on his lip. He asked him to use this tissue and to simply wipe it off, and then it was tossed aside, but it was gathered as evidence. You'll find out that on that tissue is some lipstick. You'll find that out. What you'll also find out from the medical is that there is no lipstick on her. There is no lipstick on her breast, there's no lipstick on her vaginal, there's no lipstick on the shirt collar. The evidence is going to show that what's on that shirt collar is jelly.

There is no evidence other than the first version of the story that this is an alleged incident. That's the evidence that we're going to use to prove this case, ladies and gentlemen. The evidence such that the medical

team's posture, their opinion just doesn't coincide with anything she says, not even one of the versions. There's too many inconsistencies. We're going to point those out. We will work long and hard to point those inconsistencies out, and when we have them all lined up, we're going to ask you whether or not that happened. If you still can't come to a conclusion, we're going to ask you to look at the medical records. We're going to ask you to see whether or not -- no bruises, no abrasions would coincide with being knocked out, being dragged, et cetera, we're going to ask you whether or not the Woods exam matches up with her story of whether semen on the abdomen, the vagina, and we're going to ask you whether or not the mouth on her vagina with no lipstick findings matches up with her story. We're going to ask you to use your common sense.

What we're asking you to do, ladies and gentlemen, is look at the lack of evidence. The lack of evidence. I'm asking you to use your common sense as parents, your common sense as evaluators of children, problem solving, psychological data, anything you bring into this room, your jury deliberation room, hold on to common sense. And what Mr. Turner proposes to you, ladies and gentlemen, is that the evidence the prosecutor hopes is going to prove in this case, proves the opposite, proves that Mr. Turner did not do it.

We don't carry the burden of proof in this

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case, ladies and gentlemen. We can simply sit back and let this unfold and for you to guess that it didn't happen. We're going to take the events and we're going to use this evidence to prove it didn't happen. We're going to come out strong and we're going to prove that. There's too much not in evidence, too much lack of evidence to say that it did happen. That's what we hope to convince you of, and we're going to ask you to return a verdict of not guilty.

THE COURT: Ladies and gentlemen, we've started, but we've got a long way to go, so obviously it's much too soon to come to any conclusions. So please do not talk with anybody about the particulars of this case, other than if you want to identify what kind of case you are sitting on so that you avoid coming to any, even tentative conclusions.

Also, please be very careful not to read anything in the paper, or listen to anything on television, or on the radio which either is this case or sounds like it. And the safe thing to do is, if it sounds like this case, ignore it. Even if it isn't this one, it has no bearing on this matter, but will be tempting to draw some conclusions from what you hear about other cases.

Please reconvene in your jury room at 11:00 tomorrow. We will start all other times earlier, but since, as you know, Mr. Stephen Turner's jury needs to hear

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opening statements, that will probably take us 45 minutes or so, as did these, but we should start the proofs at eleven o'clock.

Have a good evening and we'll see you tomorrow.

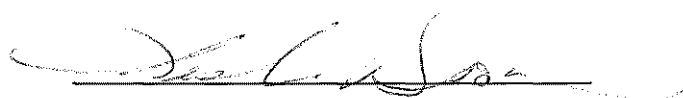
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STATE OF MICHIGAN)

) SS

COUNTY OF KENT )

I, Leslie Brown, CSR, do hereby certify this to be a true, accurate, and complete transcript in the aforementioned case on the aforementioned date, comprised of Pages 1 through 62, inclusive.



Leslie Brown CSR

Court Reporter

Hall of Justice

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