

STATE OF MICHIGAN

SEVENTEENTH JUDICIAL CIRCUIT COURT (KENT COUNTY)

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THE PEOPLE OF THE  
STATE OF MICHIGAN

-v-

Case No. 93-63014-FCB

**STEPHEN DENNIS TURNER,**

Defendant.

\_\_\_\_\_

**JURY TRIAL  
VOLUME VII of VIII**

BEFORE THE HONORABLE DENNIS C. KOLENDA, CIRCUIT JUDGE

Grand Rapids, Michigan - Friday, December 10, 1993

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STATE APPELLATE  
DEFENDER OFFICE

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1 Grand Rapids, Michigan

2 Friday, December 10, 1993

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5 (At about 9:00 a.m. - The Daniel Turner  
6 jury returned to the courtroom)

7 (At about 9:00 a.m. - The Stephen Turner  
8 jury returned to the courtroom)

9 THE COURT: Mr. Bramble?

10 MR. BRAMBLE: Your Honor, at this time  
11 the State would call Joel Kusmierz.

12 **JOEL KUSMIERZ,**

13 called by the People at 9:00 a.m. and sworn by the  
14 Court, testified:

15 **DIRECT EXAMINATION**

16 **BY MR. BRAMBLE:**

17 Q Are you employed, Mr. Kusmierz, or do you own your  
18 own business?

19 A I'm self-employed, yes.

20 Q Do you own a business with someone else?

21 A Yes, I have a partner.

22 Q What type of business is it?

23 A Environmental Services.

24 Q What do you do?

25 A We engineer and design industrial waste water

1 treatment equipment.

2 Q On or about July 7, 1993, were you living at 4130  
3 Oak Park?

4 A Yes.

5 Q What apartment would that have been?

6 A 205.

7 Q And I'm going to draw your attention back to that  
8 date. Do you recall approximately when you  
9 arrived home on that date?

10 A About 4:30.

11 Q And can you tell the jury what you observed?

12 A Well, I came home at 4:30 and I noticed a little  
13 black girl bouncing a ball on the balcony in front  
14 of my apartment. I entered my apartment. I was  
15 preparing to go to the Michigan athletic club to  
16 go for a work-out.

17 I also noticed that the next-door  
18 neighbors' apartment, their window was open, their  
19 blinds were open, the door was open, and they were  
20 sitting in front of the window.

21 Q So I'm clear, the blinds are open?

22 A Yes.

23 Q And the door is open?

24 A Yes.

25 Q This is Apartment 204?

1 A That is correct.

2 Q Who do you see inside Apartment 204?

3 A The two guys.

4 Q Are these two guys present in the courtroom?

5 A Yes, they are.

6 Q Where are they seated?

7 A Over there at the table.

8 Q Okay. Can you describe what each of them is  
9 wearing?

10 A The only thing that I can remember --

11 Q Let me ask you this. Can you describe what  
12 they're wearing now for identification, please,  
13 here in court?

14 A Yes. The gentleman with the black hair has a blue  
15 sweater on and the other gentleman has a gray suit  
16 on.

17 MR. BRAMBLE: Your Honor, may the record  
18 reflect the identification of both defendants?

19 THE COURT: It may.

20 **BY MR. BRAMBLE:**

21 Q What were they doing inside their apartment?

22 A They appeared to be sitting and watching TV.

23 Q Now, you go inside your apartment?

24 A Yes.

25 Q What do you do?

1 A There I get my work-out clothes ready, gym shorts,  
2 shoes, things like that, and put them in my duffle  
3 bag.

4 Q How long are you in your apartment, approximately?

5 A About ten minutes.

6 Q What do you do then?

7 A I leave, leave my apartment and head down to my  
8 car to leave for the athletic club.

9 Q What do you notice, then, when you leave?

10 A The girl's not there anymore, and the neighbors,  
11 the Apartment 204, the window was, the blinds were  
12 closed and the door was closed.

13 Q Did you go to the athletic club?

14 A Yup.

15 Q What time did you come back home?

16 A My best guess at that point would be somewhere  
17 around seven, 7:30.

18 Q Okay. I'm going to draw your attention to an  
19 exhibit that's marked 13, and it's a lay-out of  
20 Apartment 204. Is your apartment laid out in a  
21 similar manner?

22 A Yes, but only in reverse order. Everything that's  
23 on the right of that is on the left in my  
24 apartment.

25 Q Okay. So everything's kind of flip-flopped?

1 A Yeah.

2 Q The bathroom would be over on this side instead  
3 (indicating)?

4 A Yes, the kitchen, everything.

5 Q The layout is similar and the bedroom is in the  
6 back?

7 A Yes.

8 Q It's just that everything is transposed?

9 A Yes.

10 Q Okay. And there is a window here in front  
11 (indicating)?

12 A Yes.

13 Q Can you tell the jury, can you see from that  
14 window in front, on the balcony outside, all the  
15 way back into everything in the back room?

16 A No, not really, you can't.

17 Q In your apartment, if you had a bed back there,  
18 could you even see it?

19 A No.

20 MR. BRAMBLE: I have nothing further,  
21 your Honor.

22 THE COURT: Mr. Mirque?

23 MR. MIRQUE: Thank you, your Honor.

24

25



**CROSS-EXAMINATION**

**BY MR. MIRQUE:**

1  
2  
3 Q Mr. Kusmierz?

4 A Kusmierz.

5 Q Kusmierz. You said you came home at about  
6 4:30 p.m.?

7 A Yes.

8 Q And how did you know that it was 4:30 p.m.?

9 A My clock radio was, the time on my clock radio was  
10 about 4:30.

11 Q Clock radio?

12 A In my car.

13 Q In your car?

14 A Yeah.

15 Q Do you often look at your clock radio in the car?

16 A Many times during the day. The business that I'm  
17 in, I've got to be on time to appointments and  
18 whatnot, and I'm looking at it all the time. I  
19 don't have a wristwatch, so that's really my only  
20 way to know what time it is.

21 Q So you're quite sure it was 4:30?

22 A Yes.

23 Q And this little girl that you saw bouncing a ball,  
24 where was she bouncing this ball?

25 A She was right in front of my apartment.

1 Q Right in front, and your apartment would be this  
2 apartment or this apartment (indicating)?  
3 A To the right of the drive.  
4 Q To the right, right here (indicating). So your  
5 apartment is next to the door?  
6 A Yes.  
7 Q Okay. And she is bouncing it in this area  
8 (indicating)?  
9 A Right, out towards the balcony, in front of their  
10 apartment. The balcony is approximately four foot  
11 off the door, and in front of mine the balcony  
12 jets out about another two feet, three feet, and  
13 she was out towards the railing.  
14 Q Did you say hi to her or anything?  
15 A Yes.  
16 Q Was she wearing a brightly-colored top, outfit?  
17 A To the best of my memory, yeah. She was wearing  
18 some colorful things. Other than that, yeah.  
19 Q Are there any other young black African-American  
20 girls living on that floor?  
21 A I've never noticed any, no.  
22 Q What about on the bottom floor?  
23 A There are some Asians down there. I really never  
24 noticed any other black children, no.  
25 Q Thank you.

1 MS. KRAUSE: Your Honor, I have no  
2 questions for this witness.

3 THE COURT: Anything more, Mr. Bramble?

4 MR. BRAMBLE: Yes, your Honor.

5 **REDIRECT EXAMINATION**

6 **BY MR. BRAMBLE:**

7 Q Mr. Kusmierz, when you left to go work out at the  
8 health club or whatever, was anyone else around  
9 there?

10 A No, there was nobody around.

11 Q Okay.

12 MR. BRAMBLE: Nothing further.

13 THE COURT: Anything more?

14 MR. MIRQUE: No, thank you.

15 MS. KRAUSE: No, your Honor, thank you.

16 THE COURT: Thank you, sir. You're free  
17 to go.

18 Mr. Bramble?

19 MR. BRAMBLE: Your Honor, the State  
20 would rest.

21 THE COURT: Mr. Mirque, recognizing that  
22 no defendant is obligated to produce any evidence  
23 at all, is there any evidence you'd like to  
24 produce on behalf of Mr. Daniel Turner?

25 MR. MIRQUE: Your Honor, before we go

1 into that, I would like to make a Motion for  
2 Directed Verdict involving one count of CSC, the  
3 one count involving --

4 MR. BRAMBLE: I thought we covered this  
5 outside.

6 MR. MIRQUE: We'll deal with that at a  
7 later time, but at this time I'd like to raise  
8 that.

9 THE COURT: All right, it's been raised.

10 MR. MIRQUE: Having made the motion,  
11 your Honor, the defendant rests, Daniel Turner  
12 rests.

13 THE COURT: Miss Krause, recognizing  
14 that, as I said, no defendant is obligated to  
15 produce any evidence at all, is there any you'd  
16 like to produce on behalf of Mr. Stephen Turner?

17 MS. KRAUSE: Thank you, your Honor, no.

18 THE COURT: Ladies and gentlemen, what  
19 those two announcements mean is that the proofs  
20 are closed.

21 Because we have two juries, we're going  
22 to do things a little differently than we normally  
23 do in an effort to make the remainder of the  
24 proceedings, especially, as meaningful and as  
25 efficient as we can.

1           What I'm going to do at this point is  
2 instruct both juries on those items which are  
3 common to both gentlemen's case. Then Mr. Stephen  
4 Turner's jury will be excused for the morning to  
5 return immediately after lunch.

6           I will then with Mr. Daniel Turner's  
7 jury explain to you what are the elements of the  
8 offenses with which he is charged and what the  
9 prosecution has to prove, and then you will hear  
10 argument from the attorneys.

11           Normally, the attorneys argue first and  
12 the judge instructs later. It is, however,  
13 appropriate to do it the other way around, when  
14 that seems to be a more effective way, and I think  
15 it will not only be more efficient because it will  
16 enable common instructions to be given once rather  
17 than take up your time instructing on them twice,  
18 but it I will also help you understand the  
19 argument better to know what it is before you hear  
20 their argument, what the prosecution has to prove,  
21 rather than have me remind you afterwards.

22           And then when the arguments are finished  
23 in front of Mr. Daniel Turner's jury, I'll come  
24 back with just a few minutes more of instructions  
25 on how to go about the deliberation process.

1 That's probably only about five minutes of  
2 additional instructions, and that jury will then  
3 be free to go off and start deliberating.

4 Then we'll bring in Mr. Stephen Turner's  
5 jury, instruct them on the elements of the  
6 offenses with which he's charged, let you hear the  
7 arguments from the lawyers, and be instructed on  
8 how to deliberate.

9 So in one regard we will duplicate  
10 instructions here, but it will only be a total of  
11 ten minutes combined, and then you can go off and  
12 deliberate. And depending on what time of the day  
13 that is, and I hope that will be no later than  
14 mid-afternoon, we can discuss our time schedule  
15 thereafter.

16 These instructions are going to, in  
17 large part, repeat what I said earlier. It's  
18 important, however, that they be repeated for two  
19 reasons.

20 First of all, what I said earlier was a  
21 long two weeks ago, and, frankly, memories can  
22 fade in that period of time.

23 In addition to that, they are very  
24 fundamental principles of American law, and they  
25 are simply important enough to bear the emphasis

1 that comes from repetition.

2 As I cautioned you last week, if you  
3 think that something I am saying in instructions  
4 today contradicts what I said when you were  
5 preliminarily instructed last week, ignore what  
6 you recall I said last week and rely upon that  
7 different thing which you think I'm saying today.

8 I, frankly, don't think there will be  
9 any contradictions. There will be variations,  
10 because nobody says anything exactly the same way  
11 twice or not very often, and, frankly, I've had a  
12 bit more time to think about it. I know a bit  
13 more about the case, and therefore can be a bit  
14 more elaborate to you, but it will be more  
15 elaborate, not contrary.

16 But, as I said, if you hear otherwise,  
17 if you think what you recall, as I said, last time  
18 isn't what I'm saying this time, forget the last  
19 time and pay attention this time. Otherwise, it's  
20 important that you take all the instructions as a  
21 whole, because it's only as a whole that they  
22 state the law.

23 Don't pick out one or two that sounds  
24 particularly interesting or that you find  
25 particularly persuasive, for whatever reason, and

1 not pay attention to the others, because context  
2 in so many things is everything, and something can  
3 mean one thing in context and mean something else  
4 in another. So don't lift it out of that context.

5 Remember that the decisions that you two  
6 juries are going to reach in these cases, whatever  
7 those decisions are, are not to be influenced in  
8 the least by sympathy for anybody, by prejudice  
9 against anybody, by what you think to be the  
10 desires of public opinion, or by what you think to  
11 be the appropriate way to further some public  
12 policy, however appropriate that policy may be.

13 The only thing which is to be done in  
14 these cases, and remember there are, in effect,  
15 two of them just being tried simultaneously, is to  
16 decide as a matter of fact, compatible with the  
17 law you hear from me, what if anything happened in  
18 your judgment back on July 7, 1993.

19 That's all that you are to decide, and  
20 sympathy, prejudice, concerns for public opinion,  
21 concerns for public policy, are all considerations  
22 that are separate and apart from what should be  
23 considered here.

24 You took an oath at the very beginning  
25 of this case. That oath, let me remind you, while



1 it was short contained the essence of everything  
2 I'm going to talk about today. That is your  
3 solemn promise that you will decide this matter  
4 based only on the evidence that you heard in this  
5 courtroom and only on the law that you hear from  
6 me.

7 Obviously, it follows that you also  
8 solemnly promise that since those are the only  
9 things that you would decide the case on, you  
10 won't decide them based on anything else.

11 Remember that absolutely basic to the  
12 American system of criminal justice, and it's one  
13 of those things that distinguishes us from most  
14 other places in the world, is the principle that  
15 every person accused of a crime, no matter who  
16 that person is and no matter what the crime  
17 alleged is, is indeed presumed to be innocent of  
18 that crime.

19 That presumption started at the very  
20 beginning of the trial, I cautioned you to keep it  
21 foremost in your minds throughout the trial. I  
22 remind you that it is still very much in place,  
23 and is to remain foremost in your minds unless and  
24 until you are satisfied after deliberating, that  
25 means after reviewing all of the evidence

1 carefully in light of the law, that the  
2 prosecution has overcome that presumption.

3 If you are satisfied after deliberating  
4 that the presumption has been overcome, then for  
5 the first time you may say that in fact the  
6 presumption has been overcome and return a guilty  
7 verdict.

8 If, however, after deliberating you are  
9 not sure that the presumption's been overcome,  
10 then it very much remains in place and requires a  
11 not guilty verdict.

12 The burden of overcoming that  
13 presumption of innocence lies exclusively on the  
14 prosecution. It's been there throughout the  
15 trial, and that's where it is to stay throughout  
16 your deliberations.

17 At no time does the law ever shift that  
18 burden to the defendant. A good illustration of  
19 that was the questions I just put to the defense  
20 lawyers a moment ago in the preface that was very  
21 deliberate, to remind everybody that there simply  
22 is no obligation on the part of a defendant to  
23 produce any evidence.

24 A defendant doesn't have to prove his  
25 innocence. A defendant doesn't have to produce

1 any evidence.

2 Remember that the fact that Mr. Stephen  
3 Turner and Mr. Daniel Turner are on trial here is  
4 absolutely no evidence against either of them. A  
5 charge is simply that, an allegation of name,  
6 date, place, et cetera, but it doesn't constitute  
7 any evidence whatsoever.

8 The fact that there are multiple charges  
9 against each individual doesn't constitute any  
10 evidence at all. A charge is, if you want to look  
11 at it this way, the legal equivalent of zero, and,  
12 therefore, one times zero is zero, a hundred times  
13 zero is still zero. The number of charges, the  
14 existence of charges, is of simply no  
15 significance.

16 It's important that you bear in mind  
17 what is the burden on the prosecution, because it  
18 is a very high burden and it's absolutely  
19 essential that you not dilute the burden. It is,  
20 however, required in fairness that you not enhance  
21 the burden, either.

22 A reasonable doubt is a fair, honest  
23 doubt that grows out of the evidence in a case or  
24 the lack of evidence, and the conclusions that  
25 follow from that evidence or lack of evidence.

1                   Something which is an imaginary doubt,  
2                   or a flimsy, fanciful doubt obviously can't be  
3                   considered a reasonable doubt. A doubt which is  
4                   based upon sympathy is not a reasonable doubt,  
5                   either, because remember, sympathy or prejudice  
6                   are to have no role in your decision here.

7                   A reasonable doubt is exactly what its  
8                   name implies, a fair, honest doubt that's based  
9                   upon reason and common sense. That's why you're  
10                  here, to bring your common sense and your  
11                  experiences in life, and your ideas and knowledge  
12                  based on experience of what's reasonable to  
13                  determine whether there is or is not a reasonable  
14                  doubt.

15                  One way of quantifying the concept, to  
16                  some extent, is to say, as I think I said at the  
17                  beginning of the trial, a reasonable doubt is a  
18                  state of mind which would cause you to hesitate in  
19                  coming to a conclusion where you are deciding not  
20                  this matter, but what you deem to be among the  
21                  most important decisions in your own life.

22                  And every one of us has our own ideas as  
23                  to what are the most important things we decide.  
24                  Kind of transport yourself into that process.  
25                  Look at the evidence here in relation to that

1 process, and if you say, "I would hesitate to come  
2 to a conclusion," then you have a reasonable  
3 doubt.

4 If, on the other hand, you would say, "I  
5 wouldn't hesitate," think about it carefully,  
6 which doesn't mean you have to jump to the  
7 conclusion, but that you're comfortable with it,  
8 then in fact the burden of proof has been overcome  
9 and the prosecution has proven its case beyond a  
10 reasonable doubt.

11 Another way of putting it is to say that  
12 the evidence in this case has to leave you with a  
13 firm conviction that the defendant whose case you  
14 are trying is in fact guilty. If you're left with  
15 that firm conviction, then you may return a  
16 verdict of guilt.

17 Remember, proving that somebody might  
18 have done it or probably did it isn't good  
19 enough. You have to be satisfied, you have to  
20 have a firm conviction that in fact a crime was  
21 committed.

22 Remember that in this process there's no  
23 magic formula, no other way of going about the  
24 decisions which you are to make. We simply want  
25 you to evaluate everything that you've seen and

1 heard in this particular case in light of your  
2 experiences and in light of your common sense, and  
3 in that fashion come to a conclusion.

4 Remember that it obviously follows from  
5 everything I've said, you are not to consider  
6 that. The only things you are to consider, and  
7 this will be said several times, already has been,  
8 is the evidence in this case consists of only two  
9 things: The testimony that witnesses have given  
10 you and whatever information is revealed to you by  
11 the various exhibits which have been presented.

12 There is one other form of evidence, and  
13 that is the stipulations of the lawyers.  
14 Remember, we had a couple times in the course of  
15 the trial that they agreed as to some fact, and  
16 therefore that eliminated the need for a witness  
17 to testify to it.

18 So if the lawyers stood up in front of  
19 you and said, "We agree that something is a fact,"  
20 you may accept it as fact.

21 In addition to that, the evidence is  
22 what the witnesses did indeed say, of course, as  
23 long as you believed it and were persuaded that it  
24 had some weight, and, of course, whatever you  
25 learned from the exhibits.

1           Everything else that was presented in  
2 the course of this trial is not evidence. It had  
3 its place, which was why it was presented, but it  
4 wasn't evidence. And it's important that I remind  
5 you what are those things that aren't evidence so  
6 that they do not become a factor in your  
7 deliberations.

8           My rulings on the lawyers' objections to  
9 evidence were not themselves evidence. So don't  
10 allow those rulings in any fashion whatsoever to  
11 play a part in your decision. Don't allow my  
12 rulings to diminish the significance of evidence  
13 in your eyes or enhance it.

14           You determine, based upon the evidence  
15 in this case, whether it's important or not  
16 important, whether you believe it or don't believe  
17 it, whether it persuades you of something or  
18 doesn't persuade you, but don't factor into that  
19 anything you think I was saying about it, because  
20 anything I said about it was of a legal nature,  
21 not a factual nature. And, of course, you're  
22 evaluating it from a factual point of view.

23           Any comments that I made in the course  
24 of the trial or anything that I did during the  
25 course of the trial was not intended in the least

1 to suggest to you how I think you ought decide  
2 this case. It's none of my business to make that  
3 kind of decision.

4 I haven't made one, so there was nothing  
5 to telegraph to you, but if you in fact think I  
6 was by body language or whatever, please ignore it  
7 because that wasn't being done. And if it was, it  
8 was grossly improper. It's entirely your decision  
9 to decide factually what happened here.

10 The same is true with regard to the  
11 questions and arguments made by the lawyers and to  
12 be made by the lawyers. Questions aren't  
13 evidence. They are the vehicles to which we get  
14 to evidence. The answers are the evidence.

15 So don't ever conclude that a fact is  
16 what was assumed by a question unless there is  
17 some evidence to back that up.

18 Similarly, the lawyers' arguments are  
19 not evidence for the simple reason that they're  
20 not witnesses to anything.

21 I know all of these lawyers. I know  
22 that none of them would do anything in the least  
23 to mislead you, but, frankly, they're human like  
24 the rest of us, and they may have heard or  
25 remembered the evidence differently than did you.



1 They may have a different interpretation of it  
2 than do you.

3 Give respectful consideration to what  
4 they have to say, because it's important to help  
5 you pull things together, but remember in the end  
6 it's your decision.

7 If you remember the evidence, if you  
8 interpret it differently or remember that it was  
9 different or give it a different weight or  
10 emphasis than do the lawyers, of course, that's  
11 your decision. Make the decisions. They're  
12 simply attempting to help you in that regard.

13 I said there were three kinds, as it  
14 turns out, of forms of evidence: Witness  
15 testimony, exhibits, and stipulations from  
16 lawyers.

17 There are in a different sense two kinds  
18 of evidence, and only two kinds. One is called  
19 direct evidence, one is called circumstantial, and  
20 I want to remind you what those are because most  
21 cases tend to have both, and there are some  
22 misperceptions, frankly, as to the significance of  
23 one or the other.

24 Direct evidence is what a witness or an  
25 exhibit shows to you in and of itself. If a

1 witness comes in here and says, "I saw or heard  
2 something happen," that's direct evidence.

3 If you believe the witness and think  
4 that they're being honest with you and accurate,  
5 then you have direct evidence that whatever  
6 they're describing did in fact happen.

7 Circumstantial evidence is getting to  
8 the same conclusion but indirectly. The person  
9 didn't see or hear the ultimate thing, but they  
10 saw or heard some circumstance which when you add  
11 to the other circumstances leads to the same  
12 conclusion.

13 Let me give you an example. I'm  
14 surprised the example isn't much more timely than  
15 it is, given the time of year. Usually by now we  
16 have a lot of snow, and snow plays prominently in  
17 this example.

18 Let's assume that some morning you come  
19 downstairs, work your way into the kitchen for a  
20 cup of coffee, or whatever you start the day with,  
21 and as you came downstairs you noticed that there  
22 was one of those pristine blankets of snow that we  
23 sometimes get, and it had snowed during the  
24 night. There was a blanket of snow over  
25 everything, and there was not a mark in the snow

1 and nobody outside, as best you could see.

2 You go in the kitchen. You can't see  
3 the front yard anymore, what we're talking about.  
4 Someone who lives with you comes downstairs and  
5 says, "Ma, dad," whatever the case is, "I just saw  
6 a person walk across the front yard."

7 You didn't see the person walk across  
8 the front yard, but the person reporting it to you  
9 did, and if you believe them, you now have every  
10 right to conclude that a person just walked across  
11 your front yard. Even though you didn't see it,  
12 you may draw that conclusion.

13 Let's assume, however, that instead of  
14 this other person coming down and saying they saw  
15 someone walk across the front yard, they say, "Did  
16 you notice the footprints in the snow outside?"

17 They didn't see anybody walk across the  
18 yard. However, by giving you evidence of  
19 something they did see, a circumstance, namely  
20 footprints in the snow, which you add to something  
21 which you saw, no footprints in the snow, the  
22 conclusion becomes almost inevitable that somebody  
23 just walked across your front yard.

24 Nobody, neither you nor the person  
25 you're talking to, saw that. But by adding up the

1 circumstances, you can come just as validly to the  
2 conclusion that someone walked across your front  
3 yard as if you'd seen it or if the person who was  
4 talking to you reported having seen it.

5 So the person coming downstairs and  
6 saying, "I saw the person go across the front  
7 yard," is direct evidence of that. The person  
8 coming downstairs and saying, "There are  
9 footprints in the snow," is circumstantial  
10 evidence of that when added to the circumstance  
11 that you know, which is that a moment ago there  
12 weren't any footprints in the snow.

13 Either form of evidence gets you quite  
14 validly to exactly the same conclusion, as I've  
15 said, that there was just somebody walking across  
16 the yard.

17 The law doesn't distinguish the  
18 significance of direct versus circumstantial  
19 evidence. Some people think that one's better  
20 than the other, that one's less than the other.

21 That's not the case. It may be, in any  
22 given case it may be that you find the  
23 circumstantial evidence in the case less  
24 persuasive than the direct, or vice versa, that  
25 you find the direct less persuasive than the

1 circumstantial.

2 But if you do, that should be only  
3 because of all the evidence in the case, not  
4 because you've labeled them one or the other and  
5 dealt with the stereotype, so to speak, that,  
6 "Well, one's this kind, one's the other," and  
7 therefore I'm going to give more weight to one  
8 than the other.

9 What the law says you're supposed to do  
10 is take all the evidence in the case, the direct  
11 evidence, the circumstantial evidence, add it all  
12 together, and ask yourselves, does it prove what  
13 needs to be proven in this particular case.

14 Now, remember, as I said many times, you  
15 are the sole judges of the facts of this case.  
16 That means that it's up to you and nobody else to  
17 decide what happened, which necessarily means it's  
18 up to you to decide what you believe of the  
19 testimony that's been presented to you, all of it,  
20 none of it, some of it, and it's up to you to  
21 decide of that which you do believe, whatever  
22 quantity that is, what it persuades you of in  
23 terms of the conclusions that have to be drawn  
24 here.

25 It's especially important that you

1 perform your job consciously and diligently,  
2 because no one's going to second-guess you.  
3 That's why we call you the sole and exclusive  
4 judges of the facts.

5 When it comes to making that assessment  
6 of people's credibility, I would suggest that you  
7 take into account what you recall of their  
8 demeanor. By that I mean how they appeared while  
9 they were testifying. That may tell you something  
10 about their credibility and their accuracy.

11 Also, consider how good of an  
12 opportunity the person had to observe whatever it  
13 is that they're talking about. Consider the  
14 person's level of intelligence and the person's  
15 age, for that may tell you about their credibility  
16 and accuracy.

17 Consider whether the person's got some  
18 bias or prejudice which might get in the way,  
19 consciously or unconsciously of them reporting  
20 honestly and accurately to you what in fact they  
21 did see.

22 Also consider whether any witness has  
23 got some interest in the outcome of this case  
24 which again might color their testimony,  
25 consciously or unconsciously. Give them some

1 reason whether they know about it or not to  
2 testify other than honestly and accurately here.

3 Also, consider whether given your  
4 experiences of human nature what someone has said  
5 to you strikes you as reasonable. Just because  
6 somebody said something doesn't mean you have to  
7 believe it, if in the context of all the evidence  
8 in this case it doesn't strike you as honest, or  
9 simply because given what you know about human  
10 nature it doesn't strike you as a reasonable kind  
11 of thing.

12 You should also consider whether there  
13 was any conflict in the testimony, conflict right  
14 here in the courtroom, or conflict between what  
15 somebody said in the courtroom and elsewhere.

16 Just because there were variations, if  
17 there were variations in what witnesses said,  
18 doesn't automatically mean that there is something  
19 unpersuasive or incredible about it, but it may.  
20 That's for you to decide.

21 Variations in testimony have a whole  
22 host of explanations. One may be that someone was  
23 saying exactly the same thing but using different  
24 words. It may be that they misunderstood a  
25 question and thought they were being asked two

1 different things so that they gave you what were  
2 two different answers, not they were being  
3 inaccurate or dishonest, but because they in fact  
4 thought someone was asking them something  
5 different.

6 It may be that their memory has simply  
7 gotten better over time, but it may also be that  
8 they're memory's gotten worse over time.

9 It may be that there was some bias or  
10 prejudice or some interest in the outcome at one  
11 point that no longer exists, or there is one now  
12 that didn't exist then that may affect their  
13 testimony.

14 It may simply be that for no reason  
15 other than human nature they're right one time and  
16 wrong another time. That's for you to decide, in  
17 terms of what it says about someone's accuracy and  
18 honesty. It may be, however, that the variations  
19 are proof of inaccuracy that causes you to have  
20 real concerns about what's being said or is in  
21 fact evidence of dishonesty.

22 It's for you to decide what it is. But  
23 those are among the factors which you should  
24 consider.

25 If you decide, ladies and gentlemen,



1 that somebody has testified falsely or  
2 inaccurately, you may for that reason alone  
3 disregard everything that that witness has said.  
4 You may simply say, "I don't have any confidence  
5 in what they said because of those things that I  
6 know they were wrong about, and therefore I'm not  
7 going to pay any attention to what they've said."

8 You may, however, if you think it  
9 appropriate in light of all the evidence here,  
10 conclude that someone was dishonest or inaccurate  
11 about some things, but was, of course, honest and  
12 correct about other things.

13 And if that's the way you see it, then  
14 obviously what you do is disregard what you don't  
15 believe and don't find to be accurate, and pay  
16 attention and utilize, if you think appropriate,  
17 that portion of their testimony that you find  
18 truthful and accurate.

19 Now, I have been very careful to use the  
20 words "truthful and accurate," because a person  
21 can be honest and at the same time inaccurate.  
22 And you have to decide whether you're dealing with  
23 someone who's lying to you, for what this may tell  
24 about their testimony, someone who's deliberately  
25 deceiving you or somebody who thinks they're being

1 accurate but aren't.

2 Honesty is subjective, accuracy is  
3 objective. You simply factor all of that in and  
4 decide whether what you believe of the evidence  
5 that was presented here persuades you of guilt  
6 beyond a reasonable doubt.

7 You don't have to believe it all. It's  
8 not a situation where you have to believe it all  
9 to come to a conclusion of guilt beyond a  
10 reasonable doubt, but you do have to be convinced  
11 beyond a reasonable doubt by some of the evidence  
12 here that one or both of these gentlemen is guilty  
13 of the offenses with which they're charged.

14 If after evaluating all the evidence you  
15 simply can't decide what you believe and can't,  
16 obviously, make up your mind as to what happened,  
17 then that's, by definition, a reasonable doubt, so  
18 long as the reasons for it are honest and in the  
19 evidence or lack of evidence.

20 And, of course, the defendants are  
21 always entitled to the benefit of doubt. That's  
22 the essence of what it means to require proof  
23 beyond a reasonable doubt, to overcome the  
24 presumption of innocence.

25 The fact that several of the witnesses

1 here were police officers or employees of the  
2 government, I think we had some civilian employees  
3 of the police department, is not to be a factor  
4 used by you to give their evidence any greater  
5 weight than you give the evidence of other  
6 witnesses, but neither is it a reason to give  
7 their evidence any lesser weight.

8 You simply evaluate government agents,  
9 be they deputized police officers or civilian  
10 employees, by the same standards you evaluate the  
11 testimony of everybody else.

12 I think it also came out in the course  
13 of this trial that at various points, in  
14 preparation for this case, the lawyers spoke to  
15 some of the witnesses.

16 Some jurors tend to think that's  
17 inappropriate. That's why we point it out,  
18 because, in fact, it's just the opposite. It's  
19 not only not inappropriate, it's very helpful to  
20 talk to people to make sure that their testimony  
21 is going to focus on what's appropriate, and it  
22 moves trials along faster than putting people on  
23 the witness stand that you've never talked to and  
24 say, "Tell me what you know."

25 Frankly, a lawyer is acting

1 appropriately when they do that, so don't ever  
2 factor that into this case in any fashion at all.

3 We had some witnesses, ladies and  
4 gentlemen, who were allowed to give their opinions  
5 as experts, as I recall, someone from the YWCA, a  
6 couple nurses, a doctor or two.

7 Ordinarily, as I told you when we were  
8 talking about what hearsay is, witnesses can only  
9 testify to what they've actually seen or heard,  
10 and they can't draw any conclusions for you. They  
11 report what they saw and heard, and they leave it  
12 up to you to draw the conclusions.

13 People who qualify as experts are  
14 different. They are allowed to base opinions  
15 which no other witness can give in a courtroom not  
16 only on what they've seen or heard, but what  
17 they've heard from other people. As long as in  
18 their normal occupation, whatever it is, they rely  
19 upon information from others, they can come into a  
20 courtroom and rely upon information from others.

21 Just because a person is labeled an  
22 expert, however, doesn't mean that you have to  
23 roll over and play dead, so to speak, and accept  
24 what they've had to say. You evaluate their  
25 testimony like everyone else, adding into your

1 evaluation their level of expertise.

2 If you don't think an expert knows what  
3 he or she's talking about, then you say so. You  
4 don't have to accept what they've had to say. If  
5 you think they've got a bias or prejudice which  
6 has gotten in the way, didn't observe whatever  
7 they're talking about accurately enough, didn't  
8 study it closely enough, aren't well-enough versed  
9 in a particular discipline, then, of course, you  
10 don't have to pay attention to what they've had to  
11 say.

12 If, on the other hand, you're satisfied  
13 that they've got the background and knew what they  
14 were talking about, then, of course, you rely on  
15 their opinion to whatever degree it happens to  
16 persuade you.

17 Every defendant in a criminal case,  
18 ladies and gentlemen, has an absolute right not to  
19 testify in that case. That's one of America's  
20 most cherished rights, although, frankly, it's one  
21 that's most often misunderstood.

22 An absolutely necessary corollary to  
23 that right is that if a person chooses to exercise  
24 it, no jury or judge can draw any conclusion the  
25 least bit adverse to them from their exercise of

1 that right. Frankly, there would be no such thing  
2 as a right to remain silent, if when you did it,  
3 somebody can draw any adverse conclusions.

4 So the simple fact is, because both  
5 Mr. Turners elected to utilize that right, which  
6 was entirely their right, that fact is not to be  
7 considered against them in any way whatsoever. It  
8 simply would be grossly inappropriate to do so  
9 because of the significance of the right.

10 Now, throughout these initial  
11 instructions, ladies and gentlemen, I have told  
12 you a lot of things that you're not to factor  
13 in: Questions versus answers, sympathy,  
14 prejudice, public opinion, arguments by the  
15 lawyers, statements by me, and other things.

16 There's one more thing I wanted to talk  
17 to you about in that regard. It was alluded to in  
18 the jury selection process last week.

19 Your decisions in this case, whatever  
20 those decisions are, are not to be influenced in  
21 the least by considerations of penalty. You are  
22 not to think at all about what penalties might be  
23 imposed on the defendant whose case you're trying  
24 as the result of a verdict by you.

25 You decide, as a matter of fact, if they

1 committed a crime and what that crime is. If you  
2 decide that you're convinced beyond a reasonable  
3 doubt that they have, you simply say so, and then  
4 it becomes my responsibility, as a matter of law,  
5 to assess under the law what penalty should be  
6 imposed, and I accept that responsibility  
7 willingly.

8 So don't you let it be a consideration  
9 at all. You simply decide what if anything has  
10 been proven beyond a reasonable doubt to have  
11 happened, and if you conclude that what happened  
12 was a crime by the defendant in whose case you're  
13 trying, you may say so. Don't worry about the  
14 consequences thereafter. That's my job.

15 Now what we're going to do is, ladies  
16 and gentlemen, as I said, is excuse, frankly, for  
17 the rest of the morning Mr. Stephen Turner's  
18 jury.

19 Please be back at 1:00, if you can, so  
20 that we can hopefully get started with what  
21 instructions pertain only to his case and the  
22 arguments that pertain to his case, so that I hope  
23 by mid-afternoon you would be able to deliberate  
24 this case with, therefore, a fair amount of time  
25 left in the day to deliberate.

1                   And we'll decide at that point, you will  
2 decide, as a matter of fact, how late you want to  
3 go.

4                   Mr. Daniel Turner's jury can also go to  
5 your jury room. Let's take a little break. We  
6 haven't been in here that long, but the next part  
7 of the case, the lawyers' arguments and the rest  
8 of my instructions, really should come together to  
9 be most useful.

10                   And, frankly, that, if we don't take a  
11 break, will probably take us through the next  
12 hour-and-a-half, two hours, and somewhere along  
13 the line someone is going to need a break. So  
14 let's factor that in right now, and in fifteen  
15 minutes we'll be back for the continuation of the  
16 case against Mr. Daniel Turner.

17                   Mr. Stephen Turner's jury is excused  
18 until 1:00.

19                   (At about 9:40 a.m. - The Daniel Turner  
20 jury left the courtroom)

21                   (At about 9:40 a.m. - The Stephen Turner  
22 jury left the courtroom)

23                   THE COURT: Prior to coming into the  
24 courtroom this morning, the Court advised counsel  
25 that it would deem a Motion for Directed Verdict



1 made at this time to have been properly made  
2 immediately at the conclusion of the prosecutor's  
3 proofs so that nobody would waive anything.

4 But expecting, frankly, that our final  
5 witness would be on the witness stand as short as  
6 he was, and that we wanted to get to some  
7 instructions here, I wanted to avoid jerking the  
8 jury in and out; by "jerk," I mean physically  
9 moving them back and forth for short periods of  
10 time.

11 And further anticipating that there was  
12 not going to be any presentation of evidence by  
13 the defense, I was satisfied that making a motion  
14 now prejudiced nobody, because if it's granted  
15 now, we simply send the jury home, or if it's  
16 granted as to some offenses but not others, since  
17 the jury hasn't been told anything about the  
18 offenses they are to consider yet, we can tailor  
19 the instructions to the consequences of the  
20 motion.

21 Mr. Mirque?

22 MR. MIRQUE: Thank you, your Honor. I'm  
23 sorry, I wasn't aware of that discussion on the  
24 directed verdict. I was downstairs in  
25 Judge Smolenski's courtroom. I caught the tail

1 end of the pre-trial discussions.

2 THE COURT: Actually, you were walking  
3 right past me in the hall and I mentioned to them  
4 to you, but you must have been thinking about  
5 something else.

6 MR. MIRQUE: I was thinking about what I  
7 was going to be doing over the next hour or so.

8 I make a directed verdict motion as to  
9 one count of the CSC First, and because the counts  
10 are in fact specific, I'm going to have to say  
11 that it's either Count Two or Three, the one  
12 dealing with Mr. Turner's mouth on the alleged  
13 victim's genitals.

14 It became quite clear during the direct  
15 examination by Mr. Bramble whether or not the man  
16 with the lipstick did anything beside touching her  
17 with his hand. He went on to ask, "Did he touch  
18 you with any other part of the body? Did he do  
19 anything with his mouth?" The answer was, "No."

20 "The man with the lipstick on, did he  
21 ever touch you on your private part with his  
22 mouth?" Again, "No."

23 I think it was asked one more time on  
24 direct, and that was revisited again on redirect,  
25 again, with the same result.

1 Miss Cage did not come forward with any  
2 proclamation of such a statement, and we think  
3 that, on that basis, a directed verdict at least  
4 as to that count would be warranted.

5 THE COURT: Mr. Bramble?

6 MR. BRAMBLE: Your Honor, I don't  
7 dispute the testimony just summarized by  
8 Mr. Mirque. However, I point the Court to the  
9 court rule which I had all the prior consistent  
10 statements of Lakeysha Cage in.

11 That testimony included the taped  
12 interview by Detective Vazquez, wherein in that  
13 taped interview Lakeysha Cage describes the  
14 defendant placing his mouth on her vagina, and in  
15 the interview with Leslie Vandenhout at St. Mary's  
16 Hospital, she again describes the defendant  
17 placing his mouth to her vagina.

18 At the Child's Assessment Center, some  
19 couple weeks after this incident, she again  
20 describes the defendant licking her vagina.

21 That testimony is substantive evidence  
22 for this jury to consider, and therefore it is  
23 substantive evidence on that issue and on that  
24 count, and, therefore, I think pursuant to People  
25 versus Hampton, we have met our burden regarding

1 the directed verdict motion.

2 THE COURT: The Court agrees with  
3 Mr. Bramble. The substantive evidence in this  
4 case consists of more than the statements by  
5 Lakeysha under oath in this courtroom, but do  
6 include a variety of other statements by her.

7 In some of those statements she does  
8 testify to multiple acts of penetration.  
9 Therefore, there is in front of this jury evidence  
10 that would warrant multiple convictions for that  
11 offense.

12 Of course, if the jury chooses, which  
13 would not be unreasonable, to rely on what was  
14 said here as opposed to what was said elsewhere,  
15 they will not find multiple acts of penetration,  
16 even if they find that criminal behavior occurred,  
17 but they can reasonably find multiple acts based  
18 on all the evidence. Therefore, the motion is  
19 denied.

20 Miss Krause?

21 MS. KRAUSE: Thank you, your Honor.

22 On behalf of Stephen Turner, I would  
23 move for directed verdict as to the first count  
24 against Stephen Turner, which is aiding and  
25 abetting criminal sexual conduct in the first

1 degree.

2 In viewing in the light most favorable  
3 to the prosecution in this case, I think what  
4 we're left with -- Lakeysha's testimony has been  
5 pretty consistent both in substantive evidence,  
6 what Mr. Bramble has tried to introduce in prior  
7 statements, and the testimony elicited from  
8 Lakeysha during the trial -- is that during most  
9 of the actions alleged to have been committed by  
10 Dan, Stephen Turner was either not in the room or  
11 not in the apartment.

12 And I went through with Lakeysha those  
13 things item by item, act by act.

14 She was -- she indicates that when she  
15 is first abducted, it was by Daniel, not by  
16 Stephen. She's taken to the apartment by Daniel,  
17 not by Stephen. The first act committed in the  
18 living room is by Daniel, not by Stephen.  
19 Stephen's not even in the room.

20 He then leaves the apartment, according  
21 to Lakeysha. When Stephen is out of the  
22 apartment, she says that Dan takes her back to the  
23 back bedroom where other acts occur, and again she  
24 was very clear and very specific that Stephen was  
25 not present and did not assist in those actions.

1                   She indicates then that Stephen comes  
2 into the back bedroom and is asked by his brother  
3 Daniel to assist, and that Stephen refuses to  
4 assist.

5                   There are other acts committed by Dan,  
6 according to Lakeysha, as far as trying on  
7 clothes. Again, she said Stephen did not do  
8 that. Another act in the living room while  
9 playing video games. Again, she said Stephen did  
10 not do that and Stephen was not in the room.

11                   And, basically, that leaves for the  
12 prosecutor to argue that Stephen aided and abetted  
13 Daniel by the taking of the photograph.

14                   The photograph was alleged to have been  
15 staged so that Lakeysha would be afraid to tell  
16 police what happened. She said that in the  
17 photograph -- excuse me, before the photograph was  
18 taken, Dan places a knife in her hand and makes it  
19 look like she's stabbing Stephen.

20                   She goes into detail about jelly on the  
21 knife, jelly on the shirt. She's very specific  
22 and clear that the photograph is taken with a  
23 Polaroid camera, very clear on that, she was.

24                   There is no Polaroid camera, there is no  
25 Polaroid photograph, and there is nothing to

1 substantiate whatsoever that that photograph was  
2 taken.

3 Given that, even viewing that in the  
4 light most favorable to the prosecution, I think  
5 the burden for the directed verdict motion has not  
6 been met, and that that count should be directed  
7 out.

8 Thank you.

9 THE COURT: Mr. Bramble?

10 MR. BRAMBLE: I would oppose, your  
11 Honor, based on the theory that, again, viewing  
12 the testimony in the light most favorable to the  
13 prosecution, that this criminal activity continued  
14 until Lakeysha was outside the apartment and right  
15 up until she was outside of the apartment.

16 That would include the defendant being  
17 involved in the activity of placing the, having  
18 Lakeysha place a knife to his stomach and the  
19 photograph, pretending the photograph, whatever,  
20 the picture.

21 On that basis, and again, coupled with  
22 the remaining testimony that's come out at trial,  
23 I submit we've met our burden and demonstrated  
24 that the Defendant Stephen Turner assisted his  
25 brother in this criminal activity, which would

1 include two counts of criminal sexual conduct in  
2 the first degree.

3 THE COURT: Again, the jury might well  
4 conclude based upon the failure of the police to  
5 find the Polaroid camera that the incident  
6 Lakeysha describes did not occur.

7 However, the Court cannot say, as a  
8 matter of law, that the jury must draw that  
9 conclusion, for the simple and obvious reason that  
10 she has testified here, as well as stated at other  
11 times, that indeed a photograph was taken, with  
12 statements made that if believed by the jury  
13 establish a joint attempt to avoid Lakeysha going  
14 to the police.

15 It also could easily be found by the  
16 jury, if they believe that that incident occurred,  
17 that it happened while Mr. Daniel Turner was still  
18 engaged in the criminal activity, because in light  
19 of what I read, People versus Goree, at 30 Mich  
20 App, the transactional episode had not had any  
21 break in it which would say that it had come to a  
22 conclusion, so that he was merely helping after  
23 the fact.

24 And there was some testimony here, as  
25 well as some statements by Lakeysha which are



1 substantive evidence, although the statements  
2 weren't made here, which would ascribe to  
3 Mr. Stephen Turner sufficient knowledge as to  
4 conduct which his brother was engaging or  
5 intending to engage, if the jury finds that it  
6 happened, for which he could be held to, have  
7 intended to help commit a CSC One.

8 Obviously, not knowing it to be called  
9 that, but through aiding and abetting the acts  
10 which constitute that crime, even though his help  
11 may have been only at the tail end. It may not  
12 have been to perpetrate the physical acts, but  
13 merely to avoid detection. As I say, that is  
14 enough.

15 Let us take a break until 10:00. I want  
16 to consult with the lawyers one more time on the  
17 jury instructions, and then we will bring in  
18 Mr. Daniel Turner's jury.

19 Anybody think it's necessary for Mr.  
20 Stephen Turner to be here? He may, I don't have  
21 any objections.

22 MS. KRAUSE: He would like to stay, your  
23 Honor.

24 THE COURT: Okay. We've kept both  
25 defendants here all trial, so it would probably

1 simply be a continuation of routine for the jury  
2 to have both.

3 (At about 9:52 a.m. - Recess taken)

4 (At about 10:15 a.m. - Mr. Daniel  
5 Turner's jury returned to the courtroom)

6 THE COURT: Ladies and gentlemen, I want  
7 to continue with the instructions in  
8 Mr. Daniel Turner's case by focussing now on the  
9 offenses with which he is charged. There are  
10 three, although two happen to be the same in terms  
11 of legal definition.

12 So I'll explain how there can be,  
13 depending on your finding of the facts, two  
14 separate convictions in that regard, but we won't  
15 repeat all the instructions.

16 Before I get to those definitions, I  
17 want to caution you in a few regards. First of  
18 all, however, don't read into the giving of these  
19 instructions any conclusion by me that something  
20 has or hasn't been proven. Some people might  
21 think, "Well, if the judge didn't think the  
22 prosecution had proven its case, he wouldn't be  
23 giving us these instructions."

24 Well, as I told you earlier this  
25 morning, that's, of course, not for me to decide.

1 In every case every jury is told what the elements  
2 of the offenses are, and don't read into the  
3 statement I've just made that the judge is saying  
4 they haven't proven it, because, otherwise, he  
5 wouldn't have said what he did. I'm just being  
6 very careful to be sure that nobody has any cause  
7 to misread what's occurring.

8 Also, please remember, don't draw any  
9 conclusions from the number of charges. As I said  
10 earlier, a charge is no evidence at all, so three  
11 charges is still, absolutely, no evidence.

12 Also, please remember that each of these  
13 three charges are to be considered by you  
14 separately. And the prosecution has to prove, if  
15 you return verdicts of guilty on all three, all  
16 three of them beyond a reasonable doubt. You  
17 shouldn't dilute the burden on one because the  
18 prosecution has made it on the other.

19 In other words, if you're convinced  
20 beyond a reasonable doubt that one or two but not  
21 all of the charges have been proven beyond a  
22 reasonable doubt, then don't say the equivalent of  
23 "Oh, well, what's the harm. We're not sure about  
24 the other, but we'll return a verdict of guilty on  
25 that one, as well."

1           Each one is to be analyzed separately,  
2 and if there are to be verdicts of guilty, one,  
3 two, or three, you have to be satisfied beyond a  
4 reasonable doubt as to each of those counts.

5           Now, let's move on to talk about the  
6 offenses with which Mr. Turner is indeed charged.

7           In Count Number One -- and the word  
8 "count" is simply the formal way of saying Charge  
9 Number One, and there's no particular order the  
10 way these were listed -- Mr. Daniel Turner is  
11 accused of the crime of kidnapping.

12           There are, ladies and gentlemen, under  
13 the law of Michigan, several different forms of  
14 kidnapping. To prove the form which is charged in  
15 this case, which probably is not the one that  
16 you're most familiar with, the prosecution has to  
17 prove these things beyond a reasonable doubt.

18           The first thing which the prosecution  
19 must prove is that Mr. Daniel Turner led, or took,  
20 or carried, or decoyed, or enticed Lakeysha Cage  
21 from one place to another. The prosecution does  
22 not have to prove all of those things. One is  
23 enough. So it's one of these things: Led, or  
24 took, or carried, or decoyed, or enticed Lakeysha  
25 Cage from one place to another.

1           The prosecution does not have to prove  
2 any particular amount of movement. Some movement  
3 is inherent in the concept of from one place to  
4 another, but the prosecution does not have to  
5 prove any particular amount as long as it proves  
6 that Lakeysa was moved some distance which is  
7 more than insignificant.

8           And when it comes to assessing the  
9 significance of any movement, what you should do  
10 is take into account the actual distance involved,  
11 and also take into account the circumstances  
12 surrounding the movement.

13           For example, moving a child a few feet  
14 in the same area may not be significant, but  
15 moving a child even a short distance from one  
16 environment to another may be significant. So  
17 it's up to you to decide, was one of those things  
18 done, not all have to be proven, and was the  
19 movement which is inherent in doing one of those  
20 things from one place to another something more  
21 than the insignificant.

22           The law doesn't deal with the  
23 insignificant. But if it was more than  
24 insignificant, then that first element has been  
25 proven, assuming they have proven one of those

1 things happened.

2 The next thing which the prosecution  
3 must prove is that if he did one of those things,  
4 Mr. Daniel Turner acted forcibly, or maliciously,  
5 or fraudulently.

6 Now, forcibly has its standard  
7 definition, which means by the actual application  
8 of some physical strength or by a threat to use  
9 physical force.

10 Maliciously means intentionally, without  
11 just cause or excuse, and fraudulently means  
12 December seat fully.

13 Now, again, the prosecution doesn't have  
14 to prove all three. It's sufficient if it proves  
15 one. Of course, it has to prove at least one  
16 beyond a reasonable doubt.

17 To repeat, what it must prove is that  
18 Mr. Turner acted forcibly, or maliciously, or  
19 fraudulently.

20 The final thing which the prosecution  
21 has to prove, assuming its proven those first two  
22 things, is that Mr. Turner intended to detain or  
23 conceal -- again, proving one is sufficient, both  
24 do not have to be proven -- Lakeysha from her  
25 parents.

1           The intended detention or concealment  
2 need not be permanent, it need not even be long  
3 term. What the prosecution has to prove is that  
4 Mr. Turner intended to detain the child or conceal  
5 the child for a length of time, which again was  
6 longer than insignificant.

7           When a specific intent, like we're  
8 talking about here, is an element of a crime, it's  
9 obvious that crime cannot have occurred if that  
10 intent didn't exist. It's a necessary element of  
11 the crime, and, therefore, if it hasn't been  
12 proven, even if the other things had been proven,  
13 the crime has not occurred. If, however, the  
14 intent existed and the other things have been  
15 proven, then the crime has been proven.

16           Now, very few people, ladies and  
17 gentlemen, who commit crimes state their  
18 intentions out loud in so many words that a  
19 witness can come into a courtroom and repeat a  
20 declaration of an intent. So what that means is  
21 that in almost all cases, assuming that something  
22 was done that might be criminal, intent has to be  
23 deduced by the jury from the totality of the  
24 surrounding circumstances.

25           What you are to do is take into account

1 what was said by whom and what was done.

2 It's those things taken together that  
3 are quite capable, often, of revealing a person's  
4 intent. There's the old adage that actions speak  
5 louder than words. It's not a legal principle,  
6 but it certainly is applicable.

7 You look at everything that somebody  
8 did, what they said, even though it may not have  
9 been explicitly with regard to an intent, to  
10 determine whether those things do indirectly,  
11 "circumstantially" is the proper word, convince  
12 you of the intent.

13 If the circumstances of what happened,  
14 depending upon whatever you find that to be,  
15 convince you beyond a reasonable doubt that  
16 Mr. Turner had the intent to detain or conceal  
17 Lakeysa from her parents for something more than  
18 an insignificant moment or so, then you may find  
19 that intent to exist, even though there was  
20 presented no evidence of any intent having been  
21 expressed in so many words.

22 Obviously, if you have a reasonable  
23 doubt as to whether that intent existed, even if  
24 the other things had been proven, then the crime  
25 of kidnapping has not been proven, and you have to



1 find Mr. Daniel Turner not guilty of that offense.

2 Now, let's summarize briefly what it is  
3 that the prosecution has to prove to prove the  
4 kind of kidnapping which is alleged in this case.

5 Number one, the prosecution has to prove  
6 that Mr. Turner led, or took, or carried, or  
7 decoyed, or enticed Lakeysha Cage from one place  
8 to another.

9 Number two, that he acted forcibly, or  
10 maliciously, or fraudulently.

11 And number three, that when he did those  
12 things, if you find that he did them, his intent  
13 was to detain or conceal the child from her  
14 parents for something more than an insignificant  
15 amount of time.

16 Now, in addition to being charged with  
17 kidnapping, Mr. Daniel Turner is also charged with  
18 two counts of criminal sexual conduct in the first  
19 degree. Again, remember, "count" is simply the  
20 legal term for "charge." In effect, the criminal  
21 sexual conduct in the first degree charges in this  
22 case are Counts Two and Three.

23 Now, to prove CSC One, which is the  
24 common way we refer to this particular offense,  
25 rather than constantly repeating its fairly long

1 name, the prosecution has to prove beyond a  
2 reasonable doubt, again, one of several things.  
3 Not all of them, any one will do.

4 They are that Mr. Turner inserted his  
5 penis, or his tongue, or a finger, or some object,  
6 any object will do, into the genital or anal  
7 openings of Lakeysha Cage.

8 Any penetration, however slight that  
9 penetration may have been, is sufficient if it was  
10 truly penetration which means it went beyond the  
11 surface of the skin, or the prosecution satisfies  
12 its burden, if it proves that Mr. Turner put his  
13 penis in Lakeysha's mouth, again, any such  
14 insertion, however slight, is sufficient, or the  
15 prosecution satisfies its burden, if it proves  
16 that Mr. Daniel Turner touched the genitals of  
17 Lakeysha with his mouth.

18 Now, the first two things I've talked  
19 about are obvious insertions. They involve what  
20 clearly is a penetration. The last does not  
21 require that there be any penetration. Contact of  
22 a mouth with genitals is sufficient, but, frankly,  
23 the law uses the term "sexual penetration" to  
24 include all of those.

25 So the prosecution's got to prove one of

1 those things.

2 If you have a reasonable doubt that any  
3 one of them occurred, then obviously you've got to  
4 find Mr. Turner not guilty of criminal sexual  
5 conduct in the first degree, because without one  
6 of those things, that crime simply didn't occur.

7 However, if you are satisfied that he  
8 did one or more of those acts, then you may find  
9 him guilty of criminal sexual conduct in the first  
10 degree, because engaging in one of those acts with  
11 a child of the age of ten is, by definition, in  
12 Michigan criminal sexual conduct in the first  
13 degree.

14 Were an adult involved, there would be  
15 questions of force and injury, and whatever. But  
16 because there's a child involved, the act of  
17 sexual penetration on a child of ten is the crime,  
18 unless it was done for some legitimate purpose,  
19 such as a medical purpose or hygiene. And there's  
20 no claim of anything like that in this particular  
21 case.

22 If you find beyond a reasonable doubt  
23 that one act of penetration, any one act of those  
24 things that I've discussed with you, occurred,  
25 then you may find Mr. Daniel Turner guilty of one

1 count of criminal sexual conduct in the first  
2 degree.

3 If you are satisfied that two acts of  
4 penetration occurred, even though they occurred in  
5 quick succession and as part of the same single  
6 episode, you may find him guilty of two counts.  
7 The law of this state makes each act of  
8 penetration a separate crime even if they happen  
9 in the course of the same episode.

10 Two different kinds of penetration  
11 during the same episode justify two separate  
12 convictions of criminal sexual conduct in the  
13 first degree. The same kind of penetration  
14 engaged in on two occasions, twice in the same  
15 episode, also justifies two guilty verdicts.

16 Of course, remember, if you're not  
17 convinced beyond a reasonable doubt that at least  
18 one occurred, then the required verdict is not  
19 guilty.

20 You may also consider as an alternative  
21 to the charged offenses of criminal sexual conduct  
22 in the first degree the offense of criminal sexual  
23 conduct in the second degree.

24 To prove CSC One, criminal sexual  
25 conduct in the first degree, the prosecution has

1 got to prove an act of sexual penetration, one of  
2 those things I've talked about, or putting a mouth  
3 on genitals, which may not involve penetration but  
4 is defined to be comparable in terms of  
5 offensiveness and therefore deemed to be a  
6 penetration.

7 To prove criminal sexual conduct in the  
8 second degree, what the prosecution's got to prove  
9 is sexual contact, which is obviously different  
10 than sexual penetration.

11 To prove, therefore, CSC Second, what  
12 the prosecution's got to prove is any one of the  
13 following things. The legislature has defined a  
14 lot of things. We give them all to you with the  
15 caution that it's one that has to be proven, not  
16 all of them.

17 Therefore, to prove criminal sexual  
18 conduct in the second degree, what the  
19 prosecution's got to prove is that Mr. Daniel  
20 Turner intentionally touched the genital area, or  
21 the groin, or the inner thigh, or a buttock, or a  
22 breast of Miss Cage, or the clothing covering any  
23 one of those parts of her body, or that he had her  
24 touch one of those parts of his body, his genital  
25 area, his groin, his inner thigh, a buttock, or

1 one of his breasts, as long as the touching was  
2 under circumstances that could reasonably be  
3 construed to be for purposes of sexual arousal or  
4 gratification.

5 Again, doing one of those things with a  
6 child under the age of 13 is criminal sexual  
7 conduct in the second degree unless, of course, it  
8 was done, as I said, for some legitimate reason,  
9 such as hygiene, medical treatment, again, none of  
10 which are claimed here.

11 To prove criminal sexual conduct in the  
12 first degree, the prosecution does not have to  
13 prove any intent at all, other than that it was  
14 done deliberately rather than by accident.

15 The law of this state says that certain  
16 acts, anything defined as penetration, is so  
17 inherently offensive that doing it constitutes  
18 criminal sexual conduct in the first degree if a  
19 child is involved and if there is no legitimate  
20 reason like we're talking about, whatever the real  
21 intent was.

22 Now, frankly, if you find that such  
23 conduct occurred, the most common reason for doing  
24 it was to achieve sexual arousal or gratification,  
25 but that doesn't have to be the reason. It is the

1 nature of the physical contact which is the crime.

2 Criminal sexual conduct in the second  
3 degree is somewhat different. There the  
4 prosecution has to prove that the contact that  
5 we've talked about, one of those several things,  
6 could be construed by reasonable people like you  
7 to have been for purposes of sexual arousal or  
8 gratification. That's because those acts are not  
9 necessarily all that offensive. It depends upon  
10 the circumstances.

11 If they were done in a way that someone  
12 could take them to have been sexual, whether or  
13 not that's what was really meant, if they could  
14 reasonably be taken to be sexual, then they rise  
15 to the level of being offensive enough to be  
16 criminal sexual conduct.

17 If, on the other hand, no reasonable  
18 person would take a touching in that area to be  
19 for sexual purposes, and while it might be a  
20 crime, assault and battery or something like that,  
21 they're not a sexual offense.

22 Now, it doesn't mean that that is what  
23 the person doing it actually intended. It doesn't  
24 require that that be how the person who was  
25 touched take it. It's an objective standard.

1           If reasonable people reviewing it like  
2 you are going to be reviewing it conclude that it  
3 likely was for purposes of sexual arousal or  
4 gratification, whether it was or wasn't, whether  
5 it was taken that way or not, if that's the way it  
6 looks to reasonable people, then it is offensive  
7 enough to be a sexual offense. If reasonable  
8 people wouldn't take it that way, then it's  
9 something else that we're not concerned with here.

10           Therefore, ladies and gentlemen, if  
11 you're not convinced beyond a reasonable doubt  
12 that Mr. Daniel Turner engaged in some form of  
13 sexual penetration with Lakeysha Cage, but you are  
14 convinced beyond a reasonable doubt that he did  
15 engage in sexual contact once or twice, then you  
16 can't obviously find him guilty of criminal sexual  
17 conduct in the first degree, because a finding of  
18 penetration is necessary to that. But you may  
19 find him guilty of criminal sexual conduct in the  
20 second degree once or twice, depending upon  
21 whether you find there was one, there were one or  
22 two separate incidents of sexual contact.

23           With that background, I'm now going to  
24 turn the matter over to the lawyers for their  
25 argument. Once they are finished, what I will do



1 is explain to you how to go about the deliberation  
2 process.

3 Mr. Bramble will address you first and  
4 last, the way we always I do. Those of you who  
5 have experience know, because he's got the burden  
6 of proof, he gets to go first. We will then hear  
7 from Mr. Turner's counsel, and then Mr. Bramble  
8 will get a few minutes thereafter to respond to  
9 anything which has been said. Then I'll give you  
10 your final instructions, and it will finally be in  
11 your hands to decide this.

12 Mr. Bramble?

13 MR. BRAMBLE: Thank you, your Honor.

14 Ladies and gentlemen of the jury, as the  
15 judge indicated, this is the stage of trial known  
16 as closing argument. I get a chance now to argue  
17 how the facts have come forward, both the pieces  
18 of evidence and the testimony related to the  
19 elements the judge just instructed you.

20 I guess I'd prefer doing it this way, as  
21 normally I have to go over the elements of the  
22 offense and then the judge instructs you, but now  
23 since you have been instructed first, you know  
24 what those are.

25 For criminal sexual conduct in the first

1 degree, since there's not a dispute that Lakeysha  
2 Cage is under 13 years of age, I simply have to  
3 prove penetration. That he placed a mouth on her  
4 vagina or, in fact, he penetrated her mouth with  
5 his penis.

6 The kidnapping requires, again, simply  
7 that she, Lakeysha Cage, was led, took, carried  
8 away, enticed, anything of that nature. That she  
9 was under 14 years of age. That he did so  
10 maliciously, fraudulently, or forcefully, he  
11 applied physical force in taking her or leading  
12 her away, and that he did so with the intent to  
13 conceal, or detain, or take away from her parents.

14 Now, I am going to get a chance to speak  
15 to you twice, and I promise you that during that  
16 second time I speak to you I'm not going to rehash  
17 my entire closing argument. I'm simply going to  
18 comment on some of the things defense counsel  
19 says, because he will be doing that throughout the  
20 course of his closing argument, commenting on some  
21 of the things I say to you now.

22 Now, even though this is the end of the  
23 trial, I'd like to draw your attention back to the  
24 beginning of the trial, actually, during even the  
25 voir dire section.

1           You recall Mr. Mirque asked you a number  
2 of questions by asking you what type of meaning,  
3 what would you draw from the statement, "Why did  
4 you mess with my daughter, why did you fuck with  
5 my daughter, why did you touch my daughter,"  
6 things of that nature.

7           And many of you said, "Well, yeah, it  
8 might have many different meanings, but I need the  
9 context in which this was said. I need the  
10 framework. I need the surrounding facts before  
11 I'd draw a conclusion."

12           Well, why did he ask you those  
13 questions? Well, when Carmen Garcia testified,  
14 when Mrs. Scott testified, when Mrs. Dixon  
15 testified, when India Harris testified, it became  
16 pretty apparent, because they all testified that  
17 they watched this man when confronted with this  
18 type of statement -- again, Mrs. Garcia says  
19 Mrs. Marble is saying, "Why did you molest my  
20 daughter, why did you touch my daughter, why did  
21 you fuck with my daughter," and the defendant  
22 drops down in an act of forgiveness, an act of  
23 contrition and says, "I don't know why I did it, I  
24 don't know why I did it."

25           But you have more to determine what he

1 meant by that, a lot more, and you really do get  
2 the context, and it's pretty clear the defendant  
3 knows exactly what he's confessing to, exactly  
4 what he's admitting to at that time.

5 How do we know this? Well, because when  
6 Officers Mesman and Baar arrive on the scene, they  
7 talk to him, and the first thing they say is,  
8 "What happened here?" And the interesting thing  
9 to note here is they haven't mentioned anything of  
10 any type of accusation, nothing.

11 They ask, "What happened here," and  
12 Daniel Turner responds, "Just take me to jail."  
13 Baar, Officer Baar says, "Why," and he says, "You  
14 know, what she's accusing me of."

15 Well, the officer knew what she was  
16 accusing him of and the defendant knew, at that  
17 time, as well, and he knew exactly what he was  
18 admitting to. He dropped to his knees and made  
19 that statement. But you don't simply have to rely  
20 on the testimony and the evidence that came out  
21 when Officer Baar and Mesman arrive.

22 Look at the tape submitted by defense  
23 counsel, and, if you remember, the co-defendant  
24 makes the statement, "There's a man pounding on my  
25 door, our door, and he's here about some alleged

1 sexual affair with a neighbor's daughter."

2 And it's important to note the wording  
3 here. They're talking about a ten year old,  
4 sexual conduct with a ten year old, and they  
5 describe it as an affair. He describes it as an  
6 affair, Stephen Turner. This is before the police  
7 arrive.

8 The facts, the context now that you have  
9 clearly indicate he knew exactly what he's  
10 admitted to. He was admitting to those things in  
11 which Lakeysha Cage described to you, and he  
12 stands there or kneels down, almost, and says, "I  
13 don't know why."

14 Well, I questioned many of you at the  
15 beginning of this and I said, you know, I don't  
16 have to demonstrate why. None of us can  
17 understand why. But he admitted it to. He did  
18 these acts that Lakeysha Cage described.

19 And what did Lakeysha Cage describe to  
20 you? She talks about she's at home. She goes  
21 outside to play. In fact, at one point she's  
22 bouncing the ball around. She says she's bouncing  
23 it and it comes right back into her hand.

24 That's important to note, because the  
25 last witness that testified here described that

1 very type of activity by a young black girl.

2 She says she is bouncing that ball. She  
3 goes, she sits down at the steps. She begins to  
4 make I think either an arrow and then she's going  
5 to make a boat out of sticks and rubber bands.  
6 She's sitting there, and the defendant comes up  
7 and grabs her and takes her back into his  
8 apartment.

9 And it's important to note from the  
10 exhibits that we've admitted, and there are a  
11 couple of them, Lakeysha Cage doesn't have time to  
12 pick up her things at this time. She's grabbed  
13 away, and the very thing she's playing with, the  
14 things that are important enough to her that she's  
15 trying to construct some type of boat or something  
16 out of some sticks and rubber bands, are left  
17 right where she's grabbed, ladies and gentlemen.

18 She's taken into this apartment,  
19 Apartment 204, which is occupied by both  
20 defendants, and she's taken in that apartment and  
21 she describes a series of acts.

22 She describes the defendant dressing her  
23 up in lingerie, red with hearts on it. If you  
24 look through these items, they're there. The  
25 defendant puts on a bra and puts some type of

1 material in it, and, in fact, in Exhibit 6, the  
2 green compact case, or whatever, those items are  
3 there.

4 She describes all these things. She  
5 talks about being taken back into the back  
6 bedroom. She describes a bird up there. We had  
7 pictures of a stuffed animal. I think she called  
8 it the American symbol bird or something of that  
9 nature, and it's back there.

10 She describes a cot back here. She  
11 describes some of the computer games and the TV,  
12 and she calls it a monitor, and what's important  
13 about this is Mr. Kusmierz comes in here and  
14 testifies that he has an apartment that is  
15 identical in layout. Says you can't see these  
16 things from the window.

17 And, in fact, she is back in that room  
18 and she describes several acts, and she describes  
19 several acts on tape to Detective Vazquez. You  
20 can listen to that tape because that's substantive  
21 evidence for you to consider.

22 She describes him masturbating his penis  
23 to Detective Vazquez, placing his mouth on her  
24 vagina. She also describes to you him urinating  
25 on her. She describes him placing his penis in

1 her mouth, and despite the cross-examination of  
2 defense counsel, she was real clear: "The yellow  
3 stuff went down here (indicating), the white stuff  
4 went in my mouth."

5 And it was interesting to note when  
6 she's being interviewed by Detective Vazquez, she  
7 described having this stuff in her mouth, kind of  
8 wiped some of it on the blanket. She also  
9 described for you she still had it in her mouth  
10 when she was playing the video game, and she was  
11 spitting it out even after she got outside when  
12 she saw India Harris.

13 It's important to note when she's  
14 talking with Detective Vazquez at the hospital,  
15 she wants to brush her teeth. The taste of this,  
16 this act, and the thought of this act continues  
17 with this girl, and she, even at the hospital she  
18 wants to brush her teeth. She wants to talk about  
19 getting the taste out of her mouth, getting the  
20 smell out of her mouth.

21 From there Lakeysa is brought to the  
22 hospital, and there are a couple factors that are  
23 real important to note. Defense counsel made a  
24 great deal out of the fact that there wouldn't be  
25 any evidence of penetration and things of this



1 evidence from the doctor's examination.

2 Well, I told you in my opening statement  
3 that the defendant is charged with two counts of  
4 criminal sexual conduct in the first degree: His  
5 mouth being placed on her vagina and him placing  
6 his penis in her mouth.

7 Now, a lay person, you and I, can  
8 understand that that isn't going to result in any  
9 trauma or any damage to the vagina. We never  
10 alleged that. I made that clear right from the  
11 beginning, and the doctors state, "Well, based on  
12 the history she provides us and those acts, you  
13 aren't going to have any findings."

14 Dr. Perry testifies that he couldn't get  
15 her to subject to a pelvic examination, and  
16 despite repeated attempts, Nurse, Leslie  
17 Vandenhout describes how she becomes hysterical  
18 when they attempt to do that, and that he  
19 describes the hospital ramifications, the dangers  
20 of actually putting her under, and they include  
21 death. Cynthia Marble makes the choice not to do  
22 that.

23 Now, what's important about what happens  
24 at St. Mary's Hospital is Leslie Vandenhout  
25 testifies she takes a history from Lakeysha, and

1 Lakeysha describes, essentially, what she has  
2 described to you. That the defendant brings her  
3 into the apartment. That he undresses her. He  
4 gets on top of her. He tries to penetrate her,  
5 but does not.

6 That's exactly what she testified to you  
7 here in court. That he urinated on her and some  
8 white stuff -- that he put his penis in her mouth,  
9 and the white stuff went in her mouth. She tried  
10 to spit it out.

11 She further testifies that she describes  
12 some pain in her foot, hitting it against the  
13 wall, and importantly, as defense counsel said,  
14 "Well, there wouldn't be any evidence of neck  
15 pain."

16 Well, in fact, Leslie Vandenhout said,  
17 "Yeah, I do remember that she said she was  
18 experiencing or suffering some pain in her neck."  
19 Why? Because she was grabbed in that area.

20 Leslie Vandenhout also testifies that,  
21 in fact, her clothing is damp or wet. This is  
22 after -- it kind of struck her because this is  
23 after a woman who appears from the testimony or  
24 the history from the little child that in fact she  
25 has been urinated on.

1                   Now, you will recall some of the  
2                   questions of defense counsel in describing  
3                   Lakeysha's demeanor and her activity out in the  
4                   waiting room, and he's trying to create the idea  
5                   in your mind that she isn't reacting to how a  
6                   ten-year-old victim of a sexual assault should.

7                   That's clear from that question, and he  
8                   describes how she's out in the waiting room and  
9                   she's laughing and having some pop, and things of  
10                  this nature.

11                  Well, Patricia Ann Haist came in here  
12                  and testified about that activity. She is a woman  
13                  who for the past nine-and-a-half years is a  
14                  supervisor of counselors, who supervises both  
15                  children and adults of sexual assault and counsels  
16                  them. She herself does that, as well.

17                  She described for you the two theories,  
18                  the two ways that these children and even adults  
19                  cope with this type of assault, and the important  
20                  statement she made was, she says, "People want to  
21                  draw the conclusion that just because a child  
22                  doesn't act in some type of preconceived way or  
23                  some type of way that we believe they should, that  
24                  it didn't happen." And her statement was, "and  
25                  that is not the case."

1                   She said there are two ways to respond  
2 to this, and a victim may do it in different ways  
3 or maybe both of them at different times.

4                   She described how a child will attempt  
5 to get back some normalcy in her life, will  
6 attempt to regain control in her life, and you  
7 heard that taped interview with  
8 Detective Vazquez: "I want some pop, I want some  
9 chips."

10                   She's trying to get back in control of  
11 her life because, in fact, she has lost control,  
12 and the reason she's lost control is because this  
13 man has taken control and threatened her.

14                   And what happens in that hospital room  
15 when they attempt to regain control of her, when  
16 she's going to lose control of the situation  
17 again, when they're going to put her up and have  
18 her spread her legs and put her in these stirrups  
19 and stick some cold gadgets up inside her vagina,  
20 how does she react then?

21                   Well, she's losing control again, and as  
22 Leslie Vandenhout says, she's almost hysterical.  
23 If you listen to the testimony of Ann Haist, this  
24 fits and doesn't in the fact draw out the  
25 conclusion that defense counsel would ask you to

1 draw.

2 Defense counsel also says they're  
3 looking into evidence of jelly and anything of  
4 that nature, any lipstick, and, in fact, it's on  
5 the pillowcases, and Robert Birr said it's on her  
6 shirt, as well, and the jelly, the substance  
7 consistent with jelly is in fact on her shirt.

8 He's cut a swatch out of the other white  
9 shirt that's found at the scene, and there's a  
10 substance on that, and he can't make a definite  
11 determination.

12 But it is on her shirt, and the lipstick  
13 is around her neck.

14 You also heard testimony from  
15 Detective Vazquez after Lakeysha described to you  
16 the room, the video disks, and so on,  
17 Detective Vazquez finds those video disks and the  
18 numerous amount seized in the department, and  
19 there is in fact a video strip poker, and there is  
20 in fact a Pac-Man, and there is in fact a race car  
21 game.

22 And Detective Vazquez also showed you or  
23 described to you how Lakeysha told how the  
24 defendant was in fact masturbating his penis,  
25 moving his hand up and down.

1                   Lakeysha described for you, a ten year  
2 old, some acts that a ten year old simply would  
3 not have knowledge of. She described those to  
4 you. She told Detective Vazquez, "I wish this  
5 never would have happened. This is my first  
6 time. I wish this never would have happened."

7                   Finally, ladies and gentlemen, you heard  
8 from Mr. Kusmierz. He testified this morning, and  
9 what is important about his testimony?

10                   Well, he says he comes home at  
11 approximately 4:30, sees a young girl playing  
12 outside bouncing a ball. Defendant's blinds are  
13 open. The door is open. They're both sitting  
14 inside and they're watching TV, and he goes inside  
15 the apartment for five, a maximum of ten minutes,  
16 comes back out, and this little girl is gone. She  
17 has disappeared.

18                   The door is shut, the blinds are  
19 closed. I submit to you Lakeysha Cage is inside  
20 the apartment, and it is at that time that the  
21 activity she describes is going on.

22                   Now, there can be no doubt she was  
23 inside this apartment and the acts occurred. The  
24 best evidence of this comes from, even from the  
25 mouth of the defendant.

1 I submit to you, ladies and gentlemen of  
2 the jury, when you begin to pull everything  
3 together, the facts here clearly indicate the  
4 defendant is guilty of child enticement, child  
5 kidnapping as instructed by the Court a moment  
6 ago.

7 He is also guilty of criminal sexual  
8 conduct in the first degree for the two acts I  
9 described for you during the opening statement,  
10 and Lakeysha Cage described to you in the many  
11 statements she made to various officers.

12 The facts here indicate the defendant is  
13 guilty as charged.

14 On behalf of Lakeysha Cage, on behalf of  
15 the People of the State of Michigan, I ask that  
16 your verdict reflect that.

17 THE COURT: Mr. Mirque?

18 MR. MIRQUE: Thank you.

19 Ladies and gentlemen, they teach you in  
20 law school the first minute of a closing argument  
21 to grab your attention. The first minute of this  
22 opening argument is, I want to thank you for  
23 hearing our side of the story.

24 What you heard Lakeysha Cage say on the  
25 stand differs a whole lot from what she has said

1 to Officer Baar, Officer Mesman, Sergeant Carrier,  
2 physicians, the nurses at St. Mary's, the  
3 physicians at the Child Assessment Center, and,  
4 importantly, to Detective Vazquez.

5 The prosecutor seems to have alluded  
6 that the young lady was nervous and there's some  
7 excuse as to why this story is different, but the  
8 fact of the matter is, they do differ and they  
9 differ significantly, and, as I say, at opening  
10 argument, we're not nitpicking here, ladies and  
11 gentlemen, there are some major differences in  
12 this story.

13 Lakeysha Cage tells us that at  
14 approximately 1:30 in the afternoon she leaves her  
15 apartment. Her father is sleeping, her mother is  
16 at work. She tells her sister, Meeka, I believe,  
17 that she's going out to play.

18 She knows it's 1:30, as we've heard on  
19 the tape from Detective Vazquez, because she  
20 looked at the clock. She told us here today that  
21 she's quite sure the gentleman with the lipstick  
22 on took her at 2:00, or roughly in that area.

23 And then the story starts getting a  
24 little bit complicated. She told  
25 Detective Vazquez that the man with the lipstick



1 grabbed her by the neck, one hand around the  
2 mouth.

3 Now, nitpicking would be which hand was  
4 over which part, right or left, but certainly not  
5 when she tells Sergeant Carrier it was around the  
6 waist, or when she told Nurse Vandenhout it was  
7 two men who took her. That's not nitpicking.

8 She then is dragged into the apartment,  
9 and as Mr. Bramble said, right from where she left  
10 the sticks, somewhere on the steps, on these steps  
11 that Mr. Bramble indicates, somewhere in the  
12 middle of the steps.

13 Well, she's being dragged upstairs,  
14 she's being dragged along an aisleway, and yet,  
15 what I said earlier, there's no physical markings  
16 from being dragged from the steps. There's no  
17 physical markings of her being dragged around the  
18 neck or around the middle.

19 As a matter of fact, she said she was  
20 dragged so hard with her hand over her mouth she  
21 could hardly breathe.

22 Once into the room, into the apartment,  
23 we have differences again. Which room do we start  
24 with? It's not a difficult differentiation. She  
25 knew which room was which. Officer Mesman stated

1 she spoke as if she knew the living room from the  
2 bedroom.

3 The apartments, as in all the complex,  
4 seem to be very similar in structure, except maybe  
5 they're mirror images of the other. But she says  
6 when she's talking with you that the events  
7 started in this room (indicating).

8 The events started, when she spoke with  
9 Detective Vazquez, started in this room  
10 (indicating), and when Detective Vazquez says,  
11 "Well, is there any contact prior to getting into  
12 this room," unequivocally, she says, "No." The  
13 events, according to what Detective Vazquez  
14 elicited from Lakeysha Cage, started in this room.

15 Nitpicking? No, I don't think so.

16 When she started her story, things get a  
17 little confusing because not having, knowing where  
18 it starts -- at trial she says it starts here  
19 (indicating), and she's felt on the chest and then  
20 is beckoned by Mr. Turner to come into this room  
21 (indicating), whereas in an interview with  
22 Detective Vazquez, it started here and then she's  
23 dragged out into this room (indicating).

24 What's clear at trial is when she was in  
25 this room, her clothes were taken off, the

1 defendant got on her, went to the bathroom on  
2 her. This time in front of you she said it was  
3 yellow. Well, in her interview with  
4 Detective Vazquez, each and every time, and if you  
5 listen to the tape, it's three times. All of  
6 those times it's white.

7 The reason that's important is because  
8 if there was white, it would fluoresce. You would  
9 have had the Woods light showing some seminal  
10 fluid on her person. That's why that's important.  
11 That's why Detective Vazquez was asking those  
12 questions. That's why the basis to do the Woods  
13 light.

14 She says that after he urinated yellow  
15 on her, there was some degree of oral sex. She  
16 says that he put his penis in her mouth, and had  
17 ejaculated in that mouth, and that there was white  
18 stuff all over the mouth.

19 Now, we know that she was eating  
20 crackers and had a soda pop, but there's no  
21 evidence of that. The prosecutor's going to try  
22 by circumstantial evidence to prove that that  
23 event did happen.

24 After he had ejaculated in her mouth,  
25 she then goes into the living room to play,

1           apparently, some video games. I asked her how  
2           long did she have the stuff in her mouth, during  
3           the game. She said she kept it in the mouth until  
4           she had exited the apartment, and once outside she  
5           got rid of it.

6                       Well, that's not true. A kid having a  
7           funny taste in her mouth, that stuff is out in a  
8           second.

9                       And it comports a little bit with what  
10          Detective Vazquez had said, or asked her, "You  
11          wiped it on the sheets."

12                      Well, she said white sheets. There were  
13          no white sheets in the apartment, no white sheets  
14          found. There was some semen found on an aqua-blue  
15          blanket, but if you look at the picture, the  
16          aqua-blue blanket is underneath the bedspread.

17                      In order for that semen to be put on  
18          that blanket, the prosecutor's going to have to  
19          argue that they made the bed during the time that  
20          this had all -- after she had left. There's been  
21          no statements as to whether that occurred or not.

22                      It just doesn't make sense that after  
23          this degree of heinous activity, that these guys  
24          are making beds, cleaning up, getting rid of white  
25          sheets, and so forth. There's nothing to indicate

1           that.

2                       Having left the bedroom and now entering  
3 into the living room, she's trying on some  
4 clothes, some bras stuffed with cotton balls,  
5 trying on lingerie.

6                       Well, if you remember at opening  
7 argument, we didn't dispute that she was actually  
8 into this apartment. She was in this apartment  
9 playing computer games right here (indicating),  
10 and you know all the items that she sees in the  
11 apartment are a knife and a bird.

12                      She can't remember what's here, she  
13 cannot remember what's here, she can't remember  
14 what's here (indicating).

15                      She sees these things. They're all in  
16 the line of sight from where she was playing the  
17 video games, and there's no doubt she was playing  
18 Pac-Man, and there's no doubt she was playing race  
19 track.

20                      But as to the naked poker game, you saw  
21 how long it took to get anywhere, and in  
22 Detective Vazquez's own words, "If you're a better  
23 poker player than me, you're going to get  
24 somewhere on this game faster than that."

25                      Lakeysa said she played for only a few

1 seconds, not more than a minute, and if Lakeysa  
2 Cage can play poker that good, to get a man  
3 stripped down in that amount of time, she's going  
4 to lead a very successful life in Las Vegas.

5 After she has played these video games,  
6 she then noticed that her mother's home, and  
7 according to her, the man in the apartment, the  
8 man with the lipstick, gets angry, throws her up  
9 against the wall.

10 In one version of the statement, he  
11 holds her by the neck and she passes out. Then  
12 she wakes up, comes back in here (indicating), and  
13 then she starts the same thing that happened the  
14 first time she was in here. She's reliving those  
15 memories, she's reliving the story. She's getting  
16 them confused.

17 Now, she was in this room twice, but the  
18 events that happened after she woke up in this  
19 room are exactly the same as the events that  
20 happened the first time she was in this room  
21 (indicating).

22 She can't differentiate between which  
23 story is which. She now placed herself into this  
24 room (indicating). She's using the same story.

25 We don't know how she got out of this

1 room back into the living room for the peanut  
2 butter and jelly incident. She doesn't say  
3 whether she was dragged or walked out. But what I  
4 submit to you is that when she was knocked out,  
5 she was never in there, let alone she was never  
6 knocked out. But that the peanut butter and jelly  
7 incident, in her mind, had now happened after  
8 playing the video games.

9 And what about the peanut butter and  
10 jelly thing? She was quite sure that it was the  
11 Polaroid camera, no doubt about that. She saw  
12 that picture come out. She saw the flash. She  
13 didn't see the picture.

14 And when the police went in there and  
15 basically took almost everything out of that  
16 apartment, there was no Polaroid camera in there  
17 and no picture. They even took the trash, and  
18 there was no picture in that trash. There's no  
19 evidence of the peanut butter and jelly incident,  
20 I can tell you that.

21 And the jelly on the shirt of Stephen  
22 Turner, they took that white shirt. But what it  
23 turned out to be was make-up. Well, that happens  
24 when you're a cross-dresser wearing make-up and  
25 when you're wearing it as thick as what Lakeysha

1 said, like a woman who wears too much make-up.  
2 You're going to get make-up on clothes, you're  
3 going to get make-up on anything.

4 But the important thing was that there  
5 was no jelly on that shirt. There was no jelly on  
6 the white shirt that they found.

7 The only jelly that they did find was on  
8 Lakeysha's shirt. All they said it was was  
9 jelly. They never did an analysis to see if it  
10 was even the same jelly in the apartment.

11 And as far as the lipstick stain on the  
12 collar, the only scientific evidence as to that  
13 was that the guy looked at it and said it's  
14 consistent with it.

15 Consistent with what? Consistent with  
16 make-up or consistent with the make-up that was  
17 contained in this apartment?

18 And then Lakeysha left the apartment,  
19 apparently after the peanut butter and jelly  
20 incident and being threatened if she told anybody  
21 she'd be killed.

22 The first person she sees is,  
23 apparently, India Harris, and I don't know whether  
24 she got in a tussle with the other guy, fighting  
25 on the grass, rolling around, but she says India



1 says to her, "What's the matter with you?" She  
2 says, "India, I have been touched by the man with  
3 the dress."

4 Well, everybody knows who the man in the  
5 dress is. The man in the dress is Daniel Turner.

6 He's known throughout the apartment  
7 complex as the man with the dress. They knew  
8 about his clothing. They knew about his  
9 life-style. It wasn't a secret. Mr. Kusmierz  
10 says the windows were open, the door was open. He  
11 saw it and everybody saw what was going on, their  
12 life-style, nothing to hide.

13 Mr. Kusmierz adds one very important  
14 thing. Mr. Kusmierz says that he comes home at  
15 4:30. He saw Lakeysha at 4:30. Lakeysha said  
16 that she was abducted at two.

17 I asked Lakeysha, "Do you remember  
18 playing ball on the balcony?" She said, "Yes."  
19 There's no doubt that what Mr. Kusmierz saw was  
20 Lakeysha, but I asked Lakeysha, "Was it before or  
21 after the incident?" She said, "Before."

22 Lakeysha is wrong. Mr. Kusmierz saw her  
23 at 4:30. It had to have been after the incident.  
24 It must have been.

25 And I don't care -- you know, you're

1 going to listen to these counselors and counselors  
2 are going to tell you that they can be happy or  
3 they can be sad when they're trying to regain  
4 their life after this horrific incident.

5 But there's one thing that human nature  
6 tells us all, that if you've had a traumatic,  
7 horrific experience like that, the last place on  
8 earth you want to be is right outside this door,  
9 with it open, and the two guys watching  
10 television, bouncing the ball.

11 The reason why is because nothing  
12 traumatic happened here. She went in, she played  
13 some video games. She knew her mom was home. She  
14 knew she was in trouble. She knew she was going  
15 to get whooped, and who did she blame it on but  
16 the boogeyman in the neighborhood, the man who  
17 wears the dress.

18 Mr. Bramble said, "How would a girl know  
19 all of this stuff at the tender age of ten years  
20 old unless it happened?" Well, you heard India  
21 talking about her girlfriend, all the bad names  
22 that was going around, the cuss words.

23 A ten-year-old child these days, ladies  
24 and gentlemen, they know a lot more than what you  
25 think. They hear it, they see it. Congress is

1 screaming about it. The little kids, the little  
2 neighbors, they know, they know what's going on  
3 out there.

4 I guess, in part, Lakeysha Cage is a  
5 victim. She's a victim all right. She's a victim  
6 of what she already knows. What she's not, she's  
7 not a victim of Daniel Turner.

8 Thinking about this case, I remember an  
9 incident watching my son in day care, and in the  
10 day care room they have a little sandbox in the  
11 room, sort of like the one we have back home, but  
12 at day care.

13 But my two year old would grab that sand  
14 and as hard as he would grab it, the interesting  
15 thing was that the harder he held on to it, the  
16 more it would fall right between his fingers until  
17 nothing was left.

18 And that's exactly what Mr. Bramble is  
19 doing to you today. He's holding on to that story  
20 of Lakeysha Cage. He's holding tightly on to the  
21 story that Daniel Turner put his mouth on her  
22 vagina, put his penis in her mouth, and that he  
23 forcibly dragged her into the apartment to do  
24 those things.

25 Well, as far as the abduction is

1 concerned, I have three different verses of the  
2 same story. You can almost hear that sand running  
3 between his fingers.

4 Whether or not there was his mouth to  
5 her vagina, where's the lipstick that was so thick  
6 and that Officer Baar got on the tissue? She even  
7 said that it was -- he did this to her all over  
8 the chest. There's no lipstick on her chest, no  
9 lipstick on her breasts. The sand is falling  
10 between his fingers even faster.

11 Then he says that he put his penis in  
12 her mouth, and that he ejaculated all over the  
13 mouth.

14 And somehow between Detective Vazquez's  
15 getting that information and Dr. Perry, he makes a  
16 determination that the examination with a Woods  
17 light, which is nothing more than raising a  
18 flashlight to the mouth, need not be done.

19 Something in his mind said there's not  
20 going to be any semen in that area, in the area,  
21 on the lips, anywhere. The sand is falling  
22 through Mr. Bramble's fingers real fast.

23 She played video games. She loves video  
24 games. She says she plays with them in the  
25 stores. She has a Super Nintendo set. She plays

1 the games she would normally play in the stores,  
2 the games she would normally have to plunk down a  
3 quarter for. That's normal childhood behavior.

4 If enticing a child with a video game is  
5 a crime, then we're all in trouble.

6 Then what about this accusation, what he  
7 said, you know, she goes from the apartment, she  
8 knows she's in trouble, she's going to get whooped  
9 on. That's her own words, she's going to get  
10 whooped on by her mom and her dad.

11 She says the man with the dress did it.  
12 That just starts things, and once it gets into  
13 India's ear, gets into Ms. Garcia's ear, then it  
14 gets into Miss Dixon's ear, then finally it gets  
15 into Mrs. Cynthia Marble's ear, and then she runs  
16 up to the apartment, the lynching mob behind her,  
17 and says, "Why did you fuck with my daughter? Why  
18 did you do this, why did you do that? Why did you  
19 do that?"

20 It's not as calm as what we're asking.  
21 It's not to the same degree as what she said on  
22 the stand. You can imagine the commotion. She  
23 didn't stop and wait for an answer. According to  
24 her, her daughter was violently raped. She wasn't  
25 thinking about getting an answer right then and

1 there. She was ready to string him up.

2 Mr. Turner knew that he had done  
3 something. He had her in the living room playing  
4 games. He's a cross-dresser. Worse than that,  
5 he's a man who's going to change his sex.

6 No one talks to the Turners. None of  
7 the neighbors remember him. He's going to --  
8 these guys live as recluses. Parents tell the  
9 children to stay away from those type. "Don't go  
10 near those guys." And they know it, the Turners  
11 know it. They're the personification of a  
12 disease.

13 So when he finds out that mother knows  
14 their daughter was in there playing video games,  
15 "I don't know why I did it, I don't know. Just  
16 forgive me. I'm sorry. I won't mess with your  
17 daughter. I won't fuck with your daughter."

18 And to say that he knew what he was  
19 admitting to is preposterous, because he was in  
20 the patrol car afterwards and he asked  
21 Officer Baar whether he had been arrested for a  
22 misdemeanor or a felony.

23 You can bet that if he knew he was being  
24 charged with or being accused of having put his  
25 penis in her mouth, you don't need a law degree,

1 you don't need to go to the police academy. That  
2 isn't a misdemeanor.

3 He didn't know what he was admitting  
4 to. He knew that he had had the daughter in the  
5 apartment. He knew that he was playing video  
6 games with her. He admitted that.

7 He was sorry. He knows he's not  
8 supposed to interact with people. He's shunned.  
9 He knows that. What he didn't know was what he  
10 was being accused of.

11 Mr. Bramble makes a very important point  
12 about the sequence of events, the 911 call.  
13 Apparently, they already made the call. Well,  
14 that's not true.

15 The 911 call was made after Larry Marble  
16 was banging on the door with a crowbar. Larry  
17 Marble was banging on the door after Cynthia  
18 Marble had accused him. So to say that the 911  
19 call was made prior to Mrs. Marble approaching  
20 them is just out of sync, it's not true.

21 The sequence of events were such that he  
22 left the apartment. He's accused by the mom. Mom  
23 tells the dad, "Get down here." Dad comes with a  
24 crowbar. Stephen Turner then calls the police.  
25 It's not the other way around.

1           The evidence as to the lingerie that was  
2 found in here, that's no surprise because she's  
3 here playing video games. They weren't hiding  
4 anything. You saw from the pictures, the place  
5 looked like a disaster zone. There's lingerie  
6 here, there's lingerie in the closets.

7           They weren't hiding it. The windows are  
8 open. Who knows how many times she's walked by  
9 the windows and stared in. The door was open.  
10 The stuff is around. She sees 'em wearing it,  
11 prodding around the apartment. There's nothing to  
12 say that there was some secret revealment of that  
13 stuff. No, no.

14           And here the sand is falling from his  
15 hand a little more.

16           Mr. Bramble told you that he needed to  
17 prove three things in this case. The abduction,  
18 and then forcible penis entry into her mouth, and  
19 the mouth on the vagina. Those are the three  
20 things he said he was going to prove.

21           I told you at opening argument that this  
22 is not like a politician's speech. We have to  
23 deliver on our promises before we get your vote.

24           Has Mr. Bramble delivered on those  
25 promises? Has he delivered on the abduction? Has



1 he delivered on the mouth to the vagina? Has he  
2 delivered on the penis to the mouth?

3 And we submit to you, ladies and  
4 gentlemen, if you look at that board and look at  
5 what the medical people say, not just at the time  
6 of the incident but ten days after, ten days  
7 after, for the event to have worn off a little  
8 bit, she still can't get her story straight.

9 She denies any other contact than the  
10 penis in the mouth. No other contact is what  
11 Dr. Cox told you. It's in the report. It was a  
12 simple matter of checking off the box.

13 Has he delivered? I submit to you no.  
14 And when you look at Mr. Bramble's hands now, how  
15 much sand he holds in those hands, it's empty.  
16 There's nothing left of the story.

17 Now, we're not here to call Lakeysa  
18 Cage a liar. No. Lakeysa Cage is a normal  
19 ten-year-old child, a normal ten-year-old child  
20 who wants to get out of trouble at all costs. We  
21 know that. We've seen that. We've all done it.

22 But what happened in this case is that  
23 that little excuse, that little fib to get out of  
24 trouble is a fib that is the most heinous fib that  
25 society can recognize, and that is sexual abuse.

1 When that gets within the earshot of an adult, a  
2 responsible parent, we do what's logical. We call  
3 the authorities and things just get blown way out  
4 of proportion.

5 Lakeysha Cage didn't intend this all to  
6 happen. She just wanted to keep herself from  
7 being whooped.

8 On behalf of Mr. Daniel Turner, thank  
9 you for your time. Thank you for your serious  
10 consideration in this matter. Thank you very  
11 much.

12 THE COURT: Mr. Bramble?

13 MR. BRAMBLE: Thank you, your Honor.

14 Ladies and gentlemen of the jury, as I  
15 promised, I will not go over everything that I  
16 stated a while ago in my opening statement.  
17 However, I will comment on some of the things that  
18 defense counsel said.

19 And the first thing I'm going to have to  
20 comment on is that he said, and I got this down,  
21 if enticing a child with a video game is a crime,  
22 then we are all in trouble.

23 Well, enticing a child away from their  
24 parents into your apartment with the video game is  
25 a crime, and it's called child enticement. It's

1 called child kidnapping. It is exactly what he's  
2 charged with.

3 And if we're starting there, what is a  
4 ten-year-old child doing with this  
5 thirty-some-year-old man in an apartment with  
6 him? Why does he bring her in there? Why is he  
7 playing video strip poker with her?

8 And defense counsel would have you  
9 believe that this game took a long time, but we  
10 don't know if the defendant was very good at this  
11 game. But we do know one thing, and the question  
12 is, how does Lakeysa Cage know that in fact when  
13 you lose all your money the clothes come off the  
14 little players on the game?

15 How does she know that? Because she sat  
16 and watched it with this man. That's how she  
17 knows.

18 How do we know that to be true? Because  
19 she can describe those clothes coming off. Just  
20 as Detective Vazquez described how if you play and  
21 the money is gone, the clothes come off.

22 Lakeysa Cage sat and played a video  
23 strip poker game with this man, among other things  
24 that went on in that apartment. She played with  
25 this man. And she knew how the game was played

1 because this man played it with her. And she  
2 played it until it was done.

3 Inconsistencies? You have a  
4 ten-year-old child here. I would assume you would  
5 have more problems if a ten-year-old child would  
6 be able to come here and like a robot testify to  
7 everything perfectly. That should concern you  
8 more than what defense counsel raises. Or his arm  
9 being around her waist or around her neck.

10 What has been consistent all along is  
11 that this man came up and grabbed her. He took  
12 her into the apartment. Again, if a ten-year-old  
13 child were to stand here and testify like a robot  
14 and have everything perfectly down, that would  
15 cause you some concern.

16 But you have a ten-year-old child, and  
17 with every ten-year-old child, there are going to  
18 be inconsistencies. But the core of what she has  
19 described to Detective Vazquez she described to  
20 you.

21 And if you're looking at  
22 inconsistencies, you heard five or six adults come  
23 in here and describe a single incident. They all  
24 saw the same thing. They saw this man rocking his  
25 knees and saying, "I don't know why I did it, I

1 don't know why I did it," and yet each one of them  
2 described it a little different and even a little  
3 internally inconsistent in their story, and even  
4 adults do that, but they all observed the same  
5 thing.

6 And the defendant knew exactly what he  
7 was admitting to. You know it from the 911 tape  
8 where his brother says, "Well, it's a sexual  
9 affair," an affair with a ten year old.

10 You know it from the fact the officers  
11 come in there and say, "What happened," and he  
12 says, "Take me to jail," and they say, "Why?"  
13 "You know, what she's accusing me of."

14 When the defendant makes that statement  
15 in response to questions like, "Why did you molest  
16 my daughter, why did you touch my daughter, why  
17 did you mess with my daughter, why did you fuck  
18 with my daughter," he knew exactly what he was  
19 admitting to.

20 We have make-up and we have lipstick,  
21 and it gets on Lakeysha's collar. The other shirt  
22 has seminal stains on it, some other substances  
23 that he just can't make a determination on.

24 Defense counsel also raises an issue  
25 that, geez, there are no physical markings on her,

1 even though he told you during his opening  
2 statement there will never be any pain, any  
3 complaint of pain in the neck, and you know that  
4 isn't true.

5 He says there aren't any physical  
6 markings. Ladies and gentlemen, one thing we know  
7 for sure is that Lakeysha got in a fight with a  
8 boy and was wrestling around with him, and this is  
9 a boy that India Harris says was one of those kind  
10 of boys that makes you want to do that to him.

11 She observed it, and even though she's  
12 been dragged with this guy and had a fight with  
13 the little boy, there aren't any physical  
14 markings.

15 Ladies and gentlemen, when do bruises  
16 show up? We don't know. If you have children,  
17 they can fall off a bike and get a skin mark or  
18 they can play for days and not have anything on  
19 them.

20 I submit to you, since we know the fact  
21 that she got in a fight and doesn't have any  
22 marks, and the lack thereof that he complains of  
23 simply isn't relevant.

24 Her statement here before you is  
25 consistent. She describes, with defense counsel

1 questioning her a number of times, that "The  
2 yellow stuff went down here (indicating) and the  
3 white stuff went in my mouth." Defense counsel  
4 would have you say, "Well, I believe they had to  
5 made the bed" or something of this nature.

6 Well, we do know that they took certain  
7 steps. They took certain actions because the  
8 underwear, the little panties that are in  
9 Exhibit 23 that were found underneath the sink of  
10 the bathroom were those contained in Exhibit 8,  
11 the wet panties, and she said, "Those are the ones  
12 I tried on."

13 Well, were where are they found?  
14 Underneath the sink. Someone put them under the  
15 sink. This man did, to cover up his actions.

16 Did he make the bed? Did he try to make  
17 things look like nothing happened? Sure. What  
18 are they doing underneath the sink? He put them  
19 there.

20 The time-frame, ladies and gentlemen.  
21 4:30 Lakeysha Cage is in that apartment. It isn't  
22 until 5:30 that the commotion starts. You have a  
23 full hour that she is there, practically, or  
24 forty-five minutes, at least. Because we know  
25 that the first calls come in at 5:41 and, in fact,

1 there's a stipulation here that there were three  
2 or four other calls before that.

3 Per Mrs. Vangenderen's, again,  
4 testimony, the one who saw the guy sitting there  
5 saying, the defendant saying, "I don't know why I  
6 did it," she had called and already made the call  
7 before Mr. Marble even arrives.

8 It isn't until Mr. Marble arrives that  
9 they make a call.

10 Medical personnel, based on the history  
11 you have been provided, and they were provided,  
12 the findings they have are consistent. And again,  
13 these are the experts. They're saying this is  
14 what he should see.

15 Defense counsel, despite his protest to  
16 the contrary, is trying to call Lakeysha Cage a  
17 liar. There was an Indian poet who once said,  
18 "Each child born today is God's expression of  
19 hope for the future."

20 What hope does Lakeysha Cage have? What  
21 hope does any child have if when they come to us  
22 and tell us this, "A man hurt us," we don't  
23 believe them? Especially when that child,  
24 Lakeysha Cage, sees this man say, "I don't know  
25 why I did it, I don't know why I did it," when she



1 sees him admit to what she has described to the  
2 people, to the adults.

3 I submit to you, ladies and gentlemen of  
4 the jury, the facts here, when you pull them  
5 together, indicate the defendant is guilty of  
6 enticement, of leading away, of carrying away  
7 Lakeysha Cage. And he did so either by using  
8 force, fraudulently or maliciously, and he did so  
9 with the intent to conceal or detain, to keep her  
10 away from her parents.

11 And how do we know that? Because he  
12 tells her, "If you tell anyone I will kill you,"  
13 and he tells her that on two occasions.

14 The defendant is guilty of that charge,  
15 and the facts indicate that.

16 The defendant is also guilty of the  
17 primary charge, criminal sexual conduct in the  
18 first degree, because of the two acts of  
19 penetration described by Lakeysha Cage. The facts  
20 indicate that.

21 Again, on behalf of Lakeysha Cage and  
22 the People of the State of Michigan, I ask that  
23 your verdict reflect that, as well.

24 THE COURT: Ladies and gentlemen, I will  
25 not now repeat any of the instructions given to

1 you before. If, however, in the course of your  
2 deliberations, even at the very beginning of them,  
3 you would like some repetition of all or some part  
4 of the instructions, don't hesitate to let me know  
5 and I will gladly do that.

6 We have done things here a little  
7 differently, in that the instructions have come  
8 first rather than later. So maybe the passage of  
9 an hour-and-a-half in between the instructions  
10 didn't help. I hope it did, but if that passage  
11 of time causes you to want something said over  
12 again, please let me know.

13 Right now I want to close the  
14 instructions by simply explaining to you the  
15 process by which deliberations are to occur.

16 Obviously, those deliberations are to be  
17 conducted in as curious and businesslike a manner  
18 as you can do.

19 The first thing you should do is select  
20 a foreperson. That individual has to see to it  
21 that your deliberations go forward in a sensible,  
22 courteous, and orderly fashion, and that everybody  
23 has opportunity to participate fully and fairly in  
24 those deliberations.

25 A verdict in a criminal case, ladies and

1 gentlemen, must be unanimous, whatever that  
2 verdict is. To convict a defendant of a crime,  
3 all twelve jurors must agree, based on the  
4 evidence and the law, that that person is guilty  
5 of that crime.

6 To find an individual not guilty of a  
7 crime, all twelve jurors must also agree. Any  
8 time there is not an agreement, all one way or the  
9 other, then there is no decision.

10 It is your duty to consult with your  
11 fellow jurors and to deliberate with a view to  
12 reaching an agreement if, and I want to emphasize  
13 the word "if," you can do that without violating  
14 your own individual judgments.

15 Obviously, give impartial consideration  
16 to the views of your fellow jurors. Almost  
17 inevitably differences of opinion will develop.  
18 Frankly, we want differences of opinion to  
19 develop. That's why we have twelve jurors rather  
20 than a smaller number, because it's out of the  
21 analysis which follows from discussing differences  
22 of opinion that we get a thoroughness that  
23 provides a great deal of credibility to jurors'  
24 decisions.

25 When differences of opinion arise, if