

1 two incidences that occurred on the morning of February
2 the 4th. One was the burglary and robbery of Rebecca
3 Henry and one was the homicide or the killing of
4 Marlene Reeves. When you listen to the evidence, you
5 have to determine whether it is sufficiently
6 unambiguous to refer only to the case that we are here
7 today trying. That is the Marlene Reeves case. The
8 defendant is not on trial today for the Rebecca Henry
9 case. If the evidence that is introduced can be
10 equally applicable to either or the other, then you
11 need to make that decision, and I have to ask you to
12 listen very carefully as to whether or not the evidence
13 clearly points to one or the other.

14 I'm not going to stand up here and tell you that
15 Mr. Capehart is a nice guy, but he's not on trial for
16 what kind of an individual he is. He's on trial for a
17 specific crime and that is the first-degree murder of
18 Marlene Reeves and the burglary of Marlene Reeves.

19 If, after hearing the evidence and applying your
20 understanding of that evidence, you have a reasonable
21 doubt as to whether Mr. Capehart actually committed this
22 terrible crime, then you must find him not guilty,
23 regardless of whether you feel he might be guilty of
24 some other crime. It is only this Marlene Reeves case
25 that you are to make your determinations of and no other

Exhibit "A"

1 case.

2 We expect the evidence to point equally to
3 innocence as it does to guilt and in that situation,
4 there is reasonable doubt. I'm not going to stand up
5 here and recite all of the evidence that I expect you
6 to hear because the State Attorney's office will be
7 presenting the case. They have the control of the
8 witnesses that will be called, so I cannot tell you what
9 witnesses they will call, what witnesses they will not
10 call. But the witnesses that they do call, I ask you
11 to listen carefully to their testimony, and in
12 particular listen to their answers on cross-examination
13 regarding that testimony.

14 Thank you very much.

15 THE COURT: Call your first witness, please.

16 MR. VAN ALLEN: Rebecca Henry.

17 THEREUPON,

18 REBECCA HENRY,

19 the witness herein, being first duly sworn, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. VAN ALLEN:

23 Q Ms. Henry, if you can't hear me, you tell me you
24 can't hear me. All right?

25 A All right.

1 Q You need to speak into that microphone so these
2 fine folks over here can hear what you have to say.

3 A All right. Okay.

4 Q Would you tell us what your full name is.

5 A My name is Rebecca Sue Henry.

6 Q And, Ms. Henry, where do you live?

7 A 903 Claude Street, Apartment 18, Dade City,
8 Florida.

9 Q And how long have you lived there?

10 A Since the first of July, I believe it was, I
11 lived in Apartment 18 since July 1, 1987.

12 Q And on February the 4th of 1988, what apartment
13 were you living in?

14 A Apartment 3.

15 Q Okay. Back in February of 1988, did you know a
16 person by the name of Marlene Reeves?

17 A Yes, I did.

18 Q And how is it that you came to know Ms. Reeves?

19 A She was my next-door neighbor. She was in
20 Apartment 6.

21 Q Okay. And how well did you know her?

22 A I knew her in a way -- I would say it was
23 casually, and then in another way it wasn't so casual because
24 she was about the first person I met when I moved there to
25 Apartment 3 on December 1, 1986.

1 Q Okay.

2 A And she was always in and out of her house to the
3 mailbox and she introduced herself to me, and I was somebody
4 new, you know. And then as time went on and I saw her more
5 frequently, like every day, I suspect.

6 Q Trading stuff back and forth?

7 A What?

8 Q Bringing stuff back and forth to one another?

9 A Yes. She would bring -- she would get a letter
10 in the mail and if this one particular friend of hers who
11 helped her read her letters to her and write letters to her,
12 if she wasn't home, well, then Marlene would come over to my
13 house to get me to read the letter to her because she was
14 completely illiterate.

15 Q Couldn't read, couldn't write, couldn't tell
16 time?

17 A Completely illiterate.

18 Q And I understand she was difficult to
19 understand, was she not?

20 A Well, the more you got -- the more I knew her,
21 well, she had a definite speech impediment, but the more I
22 was around her, well, then, the better I could understand
23 her, but when she talked to me, I always made sure I'd ask
24 her to repeat herself maybe six times till I got the full
25 meaning of what she was saying.

1 Q Okay. Well, on February the 4th, 1988, early in
2 the morning, you had a terrible experience occur to you, did
3 you not?

4 A Yes, I did. The most terrible experience of my
5 life.

6 Q Would you explain to the jury what happened to
7 you that morning.

8 A I was awakened from a sound sleep like I'm being
9 -- I don't know exactly what it was. I would say it was
10 around 5:00. I have no idea of the exact time, but a
11 cushion was being -- I can't even think of a word except
12 mashed. Well, mashed, that's good. That's good, good
13 enough -- down on my face so tight as to -- that I was --
14 didn't realize what was going on for a second of what's
15 happening, you know. And then I realized that somebody was
16 over me with that -- holding that cushion down tightly on my
17 face.

18 Q That person that was holding the cushion down
19 tightly on your face, did that person say anything when you
20 were awakened?

21 A Well, not right at that moment you see,
22 and then he was apparently -- he was only holding that
23 cushion down so tight over my face for me -- to keep me
24 quiet. So that I go -- you know, he come up and just
25 touched you on the shoulder and your head, and you wake up

1 and somebody was there, you'd probaby scream. Well, you
2 couldn't scream with that, you know.

3 The first thing he said to me was, "I want your
4 money."

5 Q Now, when these words were spoken to you, "I want
6 your money," was the cushion still across your face?

7 A You're asking me something that happened well over
8 a year ago now. No, the cushion wasn't tightly down on my
9 face when he asked me that. He, you know -- I don't know.
10 You know, it wasn't real tightly -- I don't know.

11 Q Well, the reason I ask you that, was whether or
12 not you had the ability to understand the person who was
13 saying he wanted your money?

14 A Yes. I could see him. He had something tied
15 around his face. It wasn't covering his face, it was just
16 right up, you know, just under his nose.

17 Q Uh-huh.

18 A Which later -- well, you didn't ask me that
19 though.

20 Q Well go ahead. What did you figure it was?

21 A I mean, it was something -- I was just going to
22 say it would be something like a big -- like a scarf or
23 handkerchief or something. But later when, mercifully, he
24 was gone from my house, my apartment, then I noticed this
25 pillow case missing from my pillow which I kept in my chair

1 in the living room for my back. And then that same pillow
2 case was over at another place in the living room on the
3 floor. So I assumed that it was my pillow case but it was
4 something that covered enough of his face that I could not
5 see his face.

6 Q Okay. You're saying it was a he, so you're
7 certain it was a male standing there?

8 A I'm certain it was a he.

9 Q Black man or white man?

10 A A black man.

11 Q Could you see how tall he was or determine how
12 tall he was?

13 A Yes. Later when we were both standing up, he
14 was just a little bit taller than I, and I'm five foot eight.

15 Q Okay. And as far as how much he weighed, do you
16 have any idea?

17 A I would say he weighed a little more than I do.
18 He was not big and fat, but I mean, he was sturdy enough
19 that I would certainly think that he weighed a little more
20 than I do, and I weigh a hundred and fifty.

21 Q Okay. Well, he's over you, he's got the cushion
22 on your face, he says, "I want your money."

23 A Right.

24 Q What did you tell him?

25 A "I don't have any money," I said.

1 Q And what happened when you told him, "I don't
2 have any money"?

3 A He said, "Yes, you have."

4 Q Okay.

5 A And then -- okay.

6 Q Yes.

7 A And then I said, "No, I don't. I don't have any
8 money. All the money I have is in the bank."

9 Q Did you have any money, Ms. Henry?

10 A No.

11 Q Okay. You offered to write him a check?

12 A Yes. I said I would write you a check for
13 fifty dollars because I said I have paid bills, but I have
14 not paid any telephone bill yet, but he wasn't interested in
15 the check.

16 Q Okay. Did you ultimately tell him that you did in
17 fact have some money?

18 A Oh, yes. I lied.

19 Q What did you tell him about the money?

20 A I said, oh, I said, "My money is in my trunk."
21 My trunk was in the living room part of the apartment, right
22 outside the bedroom door. So I lied. Evidently I had in
23 mind something to get him away from me, so that I could get
24 out of my house.

25 Q Okay. Let me stop --

1 A Get to my front door and yell for my neighbor.

2 Q Okay. Let me stop you a minute. You said it's
3 early in the morning. Were there any lights on in the room,
4 in your bedroom?

5 A The TV was on in the living room, so that's
6 adjoined. Here's the bedroom, here's the living room, here's
7 the TV (indicating). So it was a case of -- and there's a
8 pole light out there.

9 Q But it was still dark out?

10 A In front, oh, yes, it was still dark, but I would
11 say it was a case of semi-darkness, semi-light in the
12 house.

13 Q Okay. So you said, okay, "I got money in the
14 trunk." And what happened when you said, "I have money in
15 the trunk"?

16 A He went to the trunk and he raised the lid and
17 just pilfered around a little in the tray of the trunk. And
18 for some reason, he didn't -- he didn't start, he didn't
19 tear everything out of the trunk and throw it around the
20 floor. He didn't go very far in it. And maybe he -- well,
21 maybe doesn't count, I realize that, but I say evidently --

22 Q Miss Henry, can you wait just a minute? Okay.
23 (Pausing.) You were saying?

24 A Evidently in a very brief period of time he came
25 to the conclusion that that woman doesn't have any money

1 in this trunk. You know, that's what it appeared to me.

2 Q All right. So you told him there was money in
3 the trunk and he was pilfering around in the trunk. What
4 were you doing?

5 A Nothing. I was probably petrified.

6 Q Were you still on the bed?

7 A No. I was standing up then. I had gotten close
8 to him. Oh, yes, I had walked close near him because what I
9 had in my mind was to get around him and head for my front
10 door.

11 Q And were you --

12 A Where I could call Robert, the other next-door
13 neighbor that lived beside Marlene, and then Robert, because
14 I knew his habits were that he would be -- he wouldn't have
15 his lights on, but I knew he'd be up because he would be up,
16 you know, smoking cigarettes and, you know, waiting for his
17 wife to get up.

18 Q Did you make it out the bedroom door?

19 A I was out the bedroom door, just inside, and then
20 he, the intruder, the stranger, the black intruder, he just
21 took me by my arm, didn't grab it real hard, but he said,
22 "You're not going anywhere. You're not going anywhere."

23 Q And --

24 A So then I didn't go.

25 Q What did he do with you after he grabbed you by

1 the arm and said, "You're not going anywhere"?

2 A Well, he didn't really grab, you know. What he
3 did, take my arm and say, "You're not going anywhere," and
4 then --

5 Q And then?

6 A He took out a switchblade out of one of his
7 pockets and I go -- it was the biggest switchblade I ever
8 saw in my life. Naturally, it would look that big, but it
9 was out. (Indicating.) It wasn't the smallest switchblade
10 I have ever seen.

11 Q Okay.

12 A And then he touched me on this arm (indicating)
13 and he touched me on my right leg with the switchblade.

14 Q And then what happened? Where were you when he
15 did that? Still in the living room?

16 A Yeah, we were in the living room.

17 Q Did he bring you back into the bedroom?

18 A Yeah. I don't recall whether that -- where we
19 were, whether he took me and we walked back in there or not.
20 But I know, or I thought I knew -- I mean, I thought that he
21 went to the bathroom and you might ask why I didn't make a
22 break for it then. I was too frightened.

23 Q And the reason you thought he went to the
24 bathroom while he was in there was because the lid of the
25 toilet was up?

1 A That's correct. I didn't go. I didn't see that
2 the lid was open. One detective told me the lid was -- when
3 we were talking, said the lid was up. She said -- I said,
4 you know, I don't know for sure whether he did go to the
5 bathroom. And she said evidently he did because the lid was
6 up.

7 Q Okay.

8 A Well, later on, when I was in the bathroom, after
9 he was gone, I wouldn't have noticed whether the lid was up
10 or not.

11 Q All right.

12 A I wouldn't have cared.

13 Q Did he get you back into the bedroom?

14 A Yeah.

15 Q What happened?

16 A I just don't remember the little details because I
17 was too frightened, but then before I know it, and just how
18 this happened, I do not know, because I was -- I'm just too
19 -- I was too frightened and in any case, I just don't have
20 any comment on that. But then he did put a -- but he wasn't
21 using any -- he wasn't using any strong force, you know,
22 during that time. It was all -- I mean, in other words, like
23 grab, you know what I mean, like that (indicating). But then
24 it's just before I knew it my head is down at the other end of
25 the bed and then he is -- I don't know what he was trying to

1 do, whether -- but then he had his hands on my neck then and
2 he was -- well, he was choking me because I did lose my
3 breath, but I have no idea. I have no idea whether he
4 thought -- whether he intended to kill me or whether he
5 intended that I would be quiet and stay quiet while he made
6 a quick getaway after he had convinced himself then that I
7 had no money in the house.

8 Q So he's got you at the foot of the bed. He's got
9 his hands around your neck and he's choking you?

10 A Yeah, and I was just a little bit sore, just a
11 little bit sore right here. (Indicating.)

12 Q Okay. Well, did you close your eyes?

13 A Oh, I'm sure I did. I always close my eyes in
14 times like that.

15 Q Did you hold your breath?

16 A Yes. But I thought -- I thought just briefly or
17 momentarily, for the shortest length of time you can say
18 though, I thought, well, that I'll -- that I'm dying, that
19 I'll die. And I had two thoughts, but they're irrelevant.

20 Q Okay.

21 A So two thoughts, and then though I was not
22 consciously planning this move, but I go, you know,
23 subconsciously that I did, then I just held my breath and I
24 just didn't breathe. And when I didn't breathe was when he
25 left.

1 Q Okay. So it would appear he left out the
2 front door?

3 A I don't know how he left. I don't know how he
4 came in. I don't know how he left. I didn't even know that
5 he had left, because I was just out momentarily. I suppose
6 it could have -- well, it couldn't have been very long.
7 Well, I had to breathe, you know, pretty quick, pretty soon,
8 anyway, but it was just like a little -- well, just like,
9 you know, when you go to sleep momentarily and then all of a
10 sudden I was wide awake.

11 So I sat up and I got up and I went to the
12 doorway between the bedroom and the living room, and just as
13 I got -- was getting to the doorway, I thought I saw his feet
14 and legs under my chair in the living room and then I was
15 really frightened. And I don't know how to go into how I
16 felt. I just felt like I was gone down to the center of the
17 earth. And then though I looked again and he wasn't there.
18 It was just my mind playing -- or my eyes playing tricks on
19 me. And he -- mercifully, he was gone.

20 Q And that's when you went to the front door and
21 called for Robert?

22 A Robert.

23 Q And Robert is Robert Caruthers, right?

24 A Robert is Robert Caruthers. And Robert came.

25 Q And after that, the police came?

1 is. And a little firmer.

2 Q But this individual, this black male that assaulted
3 you was just slightly bigger than you are?

4 A Yeah, just slightly taller than me.

5 Q Did you notice whether there was any other
6 individual in your apartment or in that area?

7 A No, there was no other individual in my apartment.

8 Q There was none in your apartment that you saw?

9 A No, he was the only one.

10 Q All right.

11 A Somebody could have been outside. Somebody could
12 have been out peering around the windows, but there could
13 have been several of them. I wouldn't know. The one in
14 there was enough. Too much.

15 Q All right. And do you recall about when it was
16 that you called for Robert?

17 A When?

18 Q Yes.

19 A No, I don't. I didn't even -- I didn't even
20 look at the clock. I don't know when it was I called him.
21 It wasn't daylight -- well, it might have been what you call
22 breaking day. I don't know for sure about that. And then he
23 came right over and then I called the sheriff. And being
24 very thankful that boy hadn't bothered to pull my
25 telephone, you know, out of the wall. I thought I was -- I