

1 THE COURT: Ladies and gentlemen of the jury, the  
2 hour is now approximately 2 minutes of 3:00. Let's take a  
3 recess until 3:15. Court's in recess.

4 (Recess)

5 MR. VAN ALLEN: Your Honor, before you return the  
6 jury to jury box, I would advise the Court the State rests  
7 at this time.

8 THE COURT: In light thereof, Mr. Ivie, do you  
9 wish to make any motions?

10 MR. IVIE: Yes, Your Honor. I wasn't expecting  
11 that. He just told me he was going to call Linda Alland and  
12 then rest. Of course it's his privilege.

13 MR. VAN ALLEN: I'm sorry.

14 MR. IVIE: Oh. Okay. Basically, Your Honor, the  
15 defendant would move for a judgment of acquittal on the  
16 basis that the evidence is insufficient as a matter of law  
17 to sustain the indictment. This is a circumstantial  
18 evidence case. There were two incidents that occurred on  
19 February the fourth. The robbery and assault of Rebecca  
20 Henry and the homicide of Marlene Reeves. The evidence of  
21 the State in support of the indictment consists of the  
22 testimony of some witnesses who related conversations had  
23 with the defendant with the exception of one of those  
24 conversations, that being the conversation with Officer  
25 McKinnon of the Orlando Police Department. The statements

1 attributed to the defendant are ambiguous enough to be  
2 construed to either the Rebecca Henry case or the Marlene  
3 Reeves case but not both. There is no evidence that I heard  
4 that the defendant ever talked about two different cases,  
5 only one case.

6           Officer McKinnon, in his testimony, told you that  
7 the defendant made a voluntary statement to him that he was  
8 there on the porch with some others that were in the house.  
9 He didn't know what was taking so long. He went inside, saw  
10 one of them on top of the lady, strangling her. Between the  
11 two cases, the only evidence of any strangulation or choking  
12 was that of the victim Rebecca Henry. If you will recall  
13 the testimony of Joan Wood, there was no evidence of  
14 strangulation of Marlene Reeves. There is also in support  
15 of the theory that only one of these could be attributed to  
16 the defendant, and that one the Rebecca Henry case, the fact  
17 that the two scenes were totally dissimilar, the two  
18 assaults were totally dissimilar. In the Rebecca Henry case  
19 we have a cushion on the face but no attempt to kill. Just  
20 an attempt to keep quiet. There was a knife used. There  
21 was a sexual assault. There was no widespread ransacking as  
22 occurred over in Marlene Reeves' apartment. In Marlene  
23 Reeves' apartment, we have evidence of widespread  
24 ransacking, we have a sexual assault, we have homicide. We  
25 have a completely different picture. We don't have

1 similarity in crimes simply because they were both women and  
2 they were both apartments.

3 The only evidence against the defendant as to the  
4 Marlene Reeves case is the fingerprint on the outside of the  
5 screen. However, that circumstantial evidence standing  
6 alone is insufficient to sustain a conviction since it is  
7 clear that there is no testimony as to when that fingerprint  
8 was put on there. It could have been put on there before  
9 someone else broke in. It could have been put on there  
10 after she was dead. There is no evidence that the defendant  
11 was ever inside the Marlene Reeves apartment.

12 Further we have the testimony of Mr. Caruthers  
13 that closer to the time that Marlene Reeves was killed, the  
14 estimate by the medical examiner, he witnessed what he  
15 thought was a man in an orange or light coat with a brown  
16 hat, approximately a head shorter than his five foot nine,  
17 pass by his window.

18 The only evidence concerning the defendant's  
19 presence in that neighborhood is that he was wearing a black  
20 trench coat with a hat that could not possibly be described  
21 as a fedora, regardless of whatever description was given by  
22 the witness Diane Harrison.

23 The statements to Diane Harrison and the  
24 statements to Walter Harrison, even the statement that  
25 Officer Muck alleges was made to him at the jail, do not of

1 themselves point exclusively to Marlene Reeves.

2 Looking at the thing from the standpoint of the  
3 defendant, if what he witnessed was an attempt to strangle  
4 Rebecca Henry, he leaves, not knowing whether the woman's  
5 dead or alive, thereafter believing that the woman who was  
6 killed was the one he witnessed being strangled. Therefore,  
7 in all the conversations, he's assuming that the woman  
8 that's dead is the witness being strangled which was Rebecca  
9 Henry and not Marlene Reeves.

10 For that reason, I would move for a judgment of  
11 acquittal.

12 THE COURT: Motion for judgment of acquittal  
13 being the same is hereby denied.

14 Does the defendant intend to present testimony or  
15 evidence?

16 MR. IVIE: No, Your Honor.

17 THE COURT: What the Court intends to do,  
18 therefore, will be to call the jury back in, permit the  
19 State and defendant to rest in the presence of the jury,  
20 then recess the jury until tomorrow morning at nine o'clock,  
21 then request counsel together with court personnel to report  
22 to my chambers in a very short period of time and we can go  
23 over jury instructions at that time and then begin final  
24 arguments tomorrow morning at nine o'clock with everybody  
25 being fresh. Does either counsel have any objections to

1 following that procedure?

2 MR. JORDAN: No, Your Honor.

3 MR. IVIE: No, Your Honor, but to preserve the  
4 record, I would renew my objections. I would announce  
5 defense rests and renew my motion for judgment of acquittal.

6 THE COURT: Not in front of the jury.

7 MR. IVIE: No. Right now.

8 THE COURT: Okay. Right now. So done.

9 Mr. Bailiff, bring in the jury, please.

10 MR. IVIE: I'll simply announce --

11 THE COURT: That you have rested, right. Bring  
12 in the jury.

13 THE BAILIFF: Jury is seated in the jury box,  
14 Your Honor.

15 THE COURT: Does the State wish to present  
16 additional testimony or evidence?

17 MR. JORDAN: No, sir, Your Honor. The State of  
18 Florida would rest.

19 THE COURT: Does the defendant wish to present  
20 testimony or evidence?

21 MR. IVIE: No, Your Honor. The defense would  
22 rest.

23 THE COURT: Ladies and gentlemen of the jury, at  
24 this time all the evidence upon which your verdicts are to  
25 be based has now been presented to you. There will not be

1 any additional testimony presented for your consideration.

2           The next phase of the trial is that of final  
3 arguments during which each attorney will have an  
4 opportunity to discuss with you what he feels the evidence  
5 shows, how he feels the law applies to that evidence and  
6 generally assisting you in evaluating the evidence and  
7 evaluating the law. Counsel will not intentionally try to  
8 mislead you. However, what the attorneys say during their  
9 final arguments will be commenting upon the same evidence  
10 that you have heard. Consequently, if the evidence as  
11 described by counsel differs from the evidence which you  
12 have heard or seen, rely upon your own recollection of the  
13 evidence. And if the law as described by counsel differs  
14 from the law as I'll give it to you when the arguments are  
15 completed, rely upon the law as I give it to you.

16           The defendant will have the right to make the  
17 opening statement to which the State will have a right to  
18 reply, to which the defendant will have a right to make the  
19 final reply.

20           Following the conclusion of the final arguments  
21 you will then be given the law by the Court, the applicable  
22 law in this case and then you will retire to the jury room  
23 to consider your verdicts.

24           By reason of the hour, that is being  
25 approximately 3:27, the Court is going to, at this time,

1 take an overnight recess and request that you be back here  
2 at nine o'clock tomorrow morning. So, nine o'clock tomorrow  
3 morning, you will be fresh. You will be able to listen to  
4 the arguments and the instructions and then receive the case  
5 for your consideration sometime tomorrow morning.

6 Now, even though you have now heard all of the  
7 evidence, you have not yet heard the arguments and you have  
8 not yet heard the applicable law. So, it's not yet time to  
9 make any decisions on this matter. Do not make any  
10 decisions between now and then. Both arguments of counsel  
11 as well as the law are integral and important parts of the  
12 trial and until you have heard both, you're not really  
13 qualified to make a decision on any matter in this case.

14 Now, there have been news reports about this  
15 trial in this morning's paper. I would anticipate there  
16 will be news reports about the trial in both of the morning  
17 papers tomorrow morning. So, my instructions are still the  
18 same. Do not read these news reports. The news reports in  
19 this morning's papers, at least one of the morning papers,  
20 was inaccurate in one important respect. Consequently, if  
21 you would have read that, you would have been misled and  
22 consequently I am reiterating: Don't read the news reports  
23 that are in the morning papers or anything on television or  
24 radio.

25 Now, for your future planning, it's anticipated

1 that sometime tomorrow morning, the case will be to you for  
2 your consideration. In other words, the case will go into  
3 the final phase of the trial sometime probably late tomorrow  
4 morning. Consequently, depending upon how long you chose  
5 for your deliberations, once your deliberations are  
6 completed, then that phase of the trial will be concluded  
7 probably sometime tomorrow.

8 Now, further more, once we begin the final  
9 arguments of counsel, there will be no recesses until you  
10 retire to the jury room to consider your verdicts.  
11 Consequently, when we begin tomorrow morning, whatever plans  
12 or arrangements you have to make, we'll continue in session  
13 until you retire to the jury room to consider your verdict.  
14 So, plan on sitting there until we're finished. You go into  
15 the jury room and consider your verdict. No recesses in the  
16 middle of either final arguments or the instructions on the  
17 law.

18 Now, all the other instructions I gave to you  
19 still apply.

20 The Court as well as counsel, as well as court  
21 personnel do have some other matters to take care of this  
22 afternoon in your absence. And since you will all be going  
23 home early, we have some other matters to take care of in  
24 your absence.

25 Consequently, for the jury's benefit you're now,