

1 of proving this, their case against the defendant beyond and
2 to the exclusion of every reasonable doubt. That is true as
3 to each count of the indictment.

4 In the burglary charge, for example, one of the
5 elements of burglary that the State is required to prove
6 beyond a reasonable doubt, is that the defendant entered the
7 residence of Marlene Reeves. If you find that the State has
8 failed to meet it's burden of proof on this element, you
9 must find the defendant not guilty of the crime of burglary.

10 One of the elements of first degree murder is
11 that the death of Marlene Reeves was caused by Gregory
12 Capehart. The State must likewise prove that they've met
13 their burden of proof on this element beyond and to the
14 exclusion of every reasonable doubt.

15 Now, after you have retired to deliberate and the
16 Court will instruct you that you must first deliberate on
17 the charge contained in the indictment and if you find the
18 defendant not guilty on a charge contained in the
19 indictment, you must then consider the lesser included
20 offenses that the Court will instruct you on. The lesser
21 included offenses of the crime of murder in the first degree
22 are murder in the second degree, murder in the third degree
23 and manslaughter. There are no lesser included offenses to
24 the crime of burglary.

25 In your considering of the evidence, I think a



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good starting point will be what I -- now keep in mind that this is what I think that the State's theory is in this case, based upon what they've presented in evidence. This is not an admission. This is simply what I think the State is attempting to prove to you. The State is attempting to show to you that on the early morning hours of February the fourth, 1988, Greg Capehart, the defendant that's sitting right over there, a black male, removed a screen from the bedroom window of the apartment of Marlene Reeves. He opened that window and climbed into the apartment and in the process brought in sand from his shoes and disconnected the clock radio at 4:17 a.m. After entry into the apartment, he committed a violent sexual assault on Marlene Reeves without evidence of a struggle by her and then intentionally smothered her with her own pillow. He ransacked her entire apartment and then exited through that bedroom window. That's the State's theory. The State would have you believe that Greg Capehart did this without leaving the slightest evidence that a black man was ever inside that apartment. Not even a single hair fragment of negroid characteristics was found. Not any fingerprint of the defendant was found. In point of fact, the evidence clearly shows the fingerprint was found on the closet door of an unidentified third person.

The evidence began yesterday with the testimony

1 of a woman named Rebecca Henry. You will recall Rebecca
2 Henry. Her testimony had to do with a break-in in her
3 apartment that same morning. Albeit at a later time.
4 According to the testimony of Rebecca Henry, the intruder in
5 her apartment was there approximately 5:30, perhaps 6:00
6 o'clock but at least it was in that general time frame.

7 She says she was awakened from sleep with a
8 cushion over her face, tightly over her face, that the
9 cushion was released and the individual who she identified
10 as a black male, five foot nine, a hundred sixty pounds,
11 with a -- what appeared to be something over his face, said,
12 "I want your money." She further testified that, to the
13 best of my recollection, that the person, the intruder was
14 apparently not trying to kill her but to keep her quiet.
15 The individual insisted on getting some money. She lied to
16 him and told him that some money was in the trunk and in
17 order to try to get away, she stood up, with him, she got a
18 fairly descent idea of how large he was. She couldn't
19 identify him. And of course, in her testimony, she didn't
20 identify the defendant. But nevertheless, she proceeded to
21 testify that the defendant, the intruder in her apartment
22 had a switchblade knife, touched her on the arm and on the
23 leg with that switchblade knife, that at some point just
24 before, apparently, he left, he put his hand on her throat
25 or on her neck and choked her. She thought she was going to