

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



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

25 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

1 die, was passed out. When she woke up, the intruder was  
2 gone.

3 We heard after Rebecca Henry's testimony about  
4 the intruder in her apartment, the testimony of a next door  
5 neighbor named Robert Caruthers. Robert Caruthers testified  
6 that he was up three o'clock that morning, drinking a pot of  
7 coffee. That he saw what he thought was a man going by his  
8 window between twenty minutes of 5:00 and 6:00 o'clock in  
9 the morning. Couldn't tell that it was a black man or a  
10 white man but the individual was wearing a light orange or  
11 yellow trench coat and a light brown fedora. His size that  
12 he said that the person was a head shorter than he was and  
13 he was five foot nine and a half.

14 When the police were summoned to the Henry  
15 residence, Robert Caruthers told you that he suggested to  
16 the police officer that they go over and check on Miss  
17 Marlene because she might be dead. He changed his testimony  
18 a couple of times after that. Check on her if she's all  
19 right. Check on her see if she's hurt, whatever. It was a  
20 rather straining thing for him to say. But nevertheless,  
21 the police did go over to the Marlene Reeves apartment.

22 They described to you and they showed the  
23 videotape of what they found. They found a screen off of  
24 the window. They found the window open. They found the  
25 screen door unlocked. They pushed the front door open.

1 There was something resisting the front door. They pushed  
2 the bedroom door open, there was something resisting the  
3 opening of the bedroom door. There was sand just below the  
4 window and the clock radio had been disconnected at 4:17  
5 a.m. And of course, there was general ransacking throughout  
6 the apartment and Marlene Reeves' body was found on the bed  
7 that you saw in the videotape.

8 Let's not -- I'm going to not go into the  
9 technical evidence that was picked up from that apartment at  
10 this point, though, the technical evidence that was picked  
11 up elsewhere.

12 Let me -- let's now bring in another witness that  
13 we heard from and that was Edith Snow. Edith Snow, who was  
14 a good friend of Marlene Reeves. On February the third,  
15 Edith Snow testified -- excuse me. My mouth gets a little  
16 dry. On February third, she testified that she had been  
17 with Marlene Reeves over at her place, Lock Street, that she  
18 took Marlene Reeves back home, that she went inside Marlene  
19 Reeves' apartment and made sure that all the windows were  
20 closed and locked and that the sticks were in place. And  
21 she was absolutely sure that she checked the bedroom window  
22 to make sure the sticks were in place. That's important.  
23 I'll discuss those sticks later.

24 Edith Snow also testified that Marlene Reeves was  
25 a trusting individual and that people in that community took

1 advantage of her. That was one of the reasons that a lock  
2 had been placed on her telephone. She talked about how long  
3 she had known her and the things that she did for her and  
4 she talked particularly about making sure that the screen  
5 door was locked before she left. Not the door but the  
6 screen door.

7 At this point, we've been through both the  
8 Rebecca Henry apartment and we've been through the Marlene  
9 Reeves apartment.

10 The officer who arrived on the scene, Deputy  
11 Clark, I believe his name was, testified that, when I asked  
12 him, he didn't see or notice any sticks in the windows.  
13 Well, that didn't mean they weren't there. Just means he  
14 didn't see them. But he wasn't a technician, a crime  
15 technician. All he was was the officer responding to the  
16 scene and it was his job, once he had discovered the body of  
17 Marlene Reeves, to secure the crime scene and make sure  
18 nobody touched anything.

19 And you heard the testimony of Technician  
20 McMillan, that when he arrived at the scene of the homicide  
21 that he ascertained that the crime scene that he entered had  
22 not been disturbed by anyone. He further testified that the  
23 videotape accurately depicted the crime scene before any  
24 evidence was collected. That video clearly shows that the  
25 window was opened. That video clearly shows that they took

1 shoe impressions outside. That video shows the sand under  
2 the window which, if you recall, Technician McMillan  
3 testified a sample of the sand under the window and a sample  
4 of the sand from outside were sent to the Florida Department  
5 of Law Enforcement to compare. Unfortunately, for reasons  
6 not known to me, we didn't hear any testimony from the  
7 Department of Florida Law Enforcement as to whether or not  
8 the sand that was visible in the video, under the window,  
9 inside the apartment, compared to the sand that was outside.  
10 There was no evidence presented in that respect.

11 They collected all of the evidence. They used a  
12 laser. You heard talk about how the laser was used to pick  
13 up microscopics and used to pick up latent prints and the  
14 superglue process that was used to pick up possible latent  
15 prints. In other words, in sum, the technicians of the  
16 Sheriff's Department, in their normal procedures, went over  
17 the apartment of Marlene Reeves with a fine tooth comb.  
18 They selected everything they could think of that would be  
19 evidence and sent it off to the lab. And yet out of all of  
20 the evidence that was collected, not one shred of evidence  
21 was developed that Greg Capehart was ever inside the  
22 apartment of Marlene Reeves.

23 Let's look at the two burglaries that occurred  
24 that morning. See if there are any similarities or any  
25 inconsistencies or differences between those two occasions

1 and how those consistencies and inconsistencies relate to  
2 the other evidence that the State introduced. First, the  
3 break-in or the burglary of the Henry apartment. Rebecca  
4 Henry, of course, was a single woman as was Marlene Reeves  
5 and to that extent, those are similarities. There's  
6 testimony from Rebecca Henry that a black male, five foot  
7 nine, a hundred sixty pounds entered her apartment for the  
8 purpose of robbing her for money. There's testimony that he  
9 put a cushion over her face and the purpose, apparently, was  
10 not to kill her but to keep her quiet. There's no evidence  
11 of any attempt at a sexual assault. There is some evidence  
12 that a switchblade knife was used. There is evidence that  
13 she was choked by hand during the assault on her and, of  
14 course, there's the evidence that she thought she was dead  
15 and passed out, whereupon the intruder left. No physical  
16 evidence that was found at the Rebecca Henry home. No  
17 fingerprints or other physical evidence tying the defendant  
18 to the Henry case.

19 Let's compare the scene of the burglary at the  
20 Henry residence with that of the burglary and homicide at  
21 the Reeves apartment. We know from the evidence or the lack  
22 of evidence that the intruder into Reeves' apartment could  
23 be either black or white and most likely was caucasian. We  
24 have evidence to support that in that the hair samples that  
25 were recovered from the microscopic examination of Mrs.

1 Reeves' body failed to reveal the presence of any negroid  
2 hair.

3 You recall the testimony of Dr. Joan Wood, who  
4 discussed the nature of the sexual assault on Mrs. Reeves  
5 and the smothering of Mrs. Reeves and the length of time  
6 that would have taken and yet despite the close contact  
7 between the intruder and Mrs. Reeves during the sexual  
8 assault and the smothering, the microscopic examination did  
9 not reveal the presence of any negroid hair or any proof  
10 that a black man committed that horrible crime. Further,  
11 the killing of Mrs. Reeves, from the testimony of Dr. Wood,  
12 does not suggest an accident. It suggests somebody who went  
13 in there to intentionally kill her.

14 There's further a lack of strangulation of Mrs.  
15 Reeves. Dr. Wood testified that there was no evidence of  
16 strangulation, choking by hand.

17 We were shown a video of Mrs. Reeves' apartment.  
18 Unfortunately we weren't shown a video of the Henry  
19 apartment. But the video of the Reeves' apartment showed  
20 that the scene was chaotic, that there had been widespread  
21 ransacking of the Reeves' apartment. There was no such  
22 widespread ransacking of the Henry apartment. There was  
23 some in the bedroom and some in the living room but it was  
24 rather confined.

25 Those are the scenes that we have, between the

1 Henry burglary and the Reeves burglary.

2 Let's take a look at the evidence in the Reeves'  
3 apartment a little more closely. Mrs. Snow testified that  
4 she was sure when she took Marlene Reeves home the night  
5 before that the sticks were in place in the bedroom window.  
6 You heard the technician, Brian McMillan, testify that in  
7 his opinion, entry to Marlene Reeves' apartment was through  
8 the window. But I don't recall anybody ever explaining what  
9 happened to the sticks. Why would Edith Snow lie? She had  
10 no reason to. This was her friend. She was concerned about  
11 her friend and she wanted to make sure that everything was  
12 in place before she left. And yet -- and she was there that  
13 day, at the scene. She was talked to. Yet, nobody from the  
14 Sheriff's Department ever said one thing about the sticks.  
15 They're not in the video, obviously. The window is open.  
16 Now, if the sticks were in place, entry could not be gained  
17 from the outside through that window. Entry would have to  
18 be gained through the door.

19 The evidence suggests that the screen door which  
20 had been locked the night before in Mrs. Snow's presence was  
21 unlocked. The evidence shows that whoever was inside Mrs.  
22 Reeves' apartment that night did not go out through that  
23 front door. The evidence is consistent with a view that the  
24 person who entered that apartment exited through the window,  
25 taking the sticks with him.

1                    Now, if that's the case, then how do we explain  
2 the sand? Let's assume that the unidentified third person,  
3 whose fingerprint was found at the scene, killed Mrs. Reeves  
4 for some purpose, either for sexual gratification or for  
5 robbery or whatever, but they wanted to make it look like  
6 they came in through the window. All they have to do is  
7 after they leave is pick up the sand and drop it inside.  
8 Look at the sand in the video. That's an awful lot of sand  
9 to be accounted for simply by tracking in a foot. And  
10 remember now Technician McMillan didn't tell you that it was  
11 caused by a footprint. He said it was apparently a  
12 footprint. Well, we don't even know whether the sand that  
13 was under the window matches up with the sand that was  
14 outside. I don't know whether that evidence is available  
15 but we didn't hear it so we don't know.

16                    Now, what does all this mean? In order to  
17 establish their theory that the defendant Greg Capehart  
18 entered the Reeves' apartment, they bring in the testimony  
19 of other people who they say Greg Capehart talked to.

20                    They talked about -- for the -- excuse me. For  
21 the moment, let's set aside the testimony of Detective Muck.  
22 Let's talk about Walter Harrison, Diane Harrison, Carol  
23 McPhail, and Officer McKinnon of the Orlando Police  
24 Department. And let's also talk about Carol McPhail's  
25 testimony. I wrote down what she said. She said she was

1 walking on February the fifth or the sixth, "Why you do that  
2 to that woman?" And to which she said Greg Capehart  
3 responded, "They ain't going to catch me." What woman?  
4 It's ambiguous at best. No mention of the name of the  
5 woman. No identification of the apartment. I think I would  
6 be remiss if I didn't point out that all throughout this  
7 trial there has never been put forth any evidence from these  
8 witnesses that the defendant committed two burglaries that  
9 morning. He committed one.

10 The prosecution is going to attempt to persuade  
11 you that he committed the Reeves' burglary. If the evidence  
12 shows you that he committed the Henry burglary, while you  
13 may consider that as evidence in this case, you must not  
14 render a conviction of the Reeves case because -- just  
15 because of the Henry burglary. If in fact the evidence  
16 shows that the defendant committed the Henry burglary, that  
17 would be for another jury to decide, not you. Your job,  
18 your duty is concerned only with the Reeves' burglary.

19 But all of this evidence that the State  
20 introduced only concerns itself with one burglary. Not any  
21 of the witnesses ever said anything about two burglaries.

22 Diane Harrison. She's a lady who knew the  
23 defendant slightly and said that she saw the defendant  
24 walking away from this apartment complex about 6:30 in the  
25 morning. Well, you heard me read the deposition where she

1 gave some answers back last year that she wasn't sure it was  
2 him. She told you on the stand that she never denied or  
3 never said that she wasn't sure. Well, that -- I'll leave  
4 that to you as to whether or not she was actually able to  
5 identify Greg Capehart. But even assuming that she was  
6 identifying Greg Capehart, the person that she identified  
7 coming out of that apartment was not wearing a light orange  
8 or yellow trench coat and a light brown fedora. The person  
9 that she identified was wearing a dark trench coat, black, I  
10 think she said, and Lord knows what kind of hat. I tried to  
11 get her to tell me what kind of hat it was and I never could  
12 get her to tell me what kind of hat but it wasn't a fedora.  
13 That I know. It was also dark in color and not light brown.

14 So, the person that Robert Caruthers saw and the  
15 person that Diane Harrison saw were not the same people.

16 Further, the time that she saw or said that she  
17 saw Greg Capehart was 6:30 in the morning, which is  
18 consistent with the Henry burglary, which had occurred  
19 between 5:30 and 6:00 that morning and not with the Reeves'  
20 burglary which occurred much earlier.

21 You heard the testimony of Officer McKinnon.  
22 Now, at best, what Officer McKinnon told you he heard from  
23 the defendant was statements by a nervous and confused  
24 individual. Whether there were -- whether there was  
25 somebody with him or not, whether he witnessed somebody