

1 did it. I just watched. He lied. He lied. He lied. It's
2 like Tom Muck said, there's no evidence to support either of
3 those theories. He lied. Greg Capehart is a murderer, a
4 burglar, a thief, a rapist, and a liar. Do you know why?
5 Because the evidence proves it.

6 Thank you.

7 THE COURT: Does defendant wish to respond?

8 MR. IVIE: Thank you, Your Honor.

9 At the outset, the Judge will instruct you on the
10 different degrees of homicide and Mr. Van Allen has gone
11 over those. I don't disagree with the statements that he
12 made concerning the law. And you will, as I said earlier,
13 be given a copy of the instructions that the Judge will read
14 to you. You can read those instructions and come to your
15 own conclusions but first I need to talk about one thing.

16 Mr. Van Allen read a part of an instruction that
17 will be read to you by the Court. I would like to take a
18 few moments and read that instruction in its entirety as
19 emphasis and for point of reference in my comments at this
20 time. The instruction is entitled plea of not guilty,
21 reasonable doubt and burden of proof. The entire
22 instruction goes as follows: The defendant has entered a
23 plea of not guilty. This means you must presume or believe
24 the defendant is innocent. The presumption stays with the
25 defendant as to each material allegation in the indictment

1 through each stage of the trial until it has been overcome
2 by the evidence to the exclusion of and beyond a reasonable
3 doubt. To overcome the defendant's presumption of
4 innocence, the State has the burden of proving the following
5 two elements: One, the crime with which the defendant is
6 charged was committed. Two, the defendant is the person who
7 committed the crime.

8 The defendant is not required to prove anything.
9 Whenever the words reasonable doubt are used, you must
10 consider the following: A reasonable doubt is not a
11 possible doubt, a speculative, imaginary or forced doubt.
12 Such a doubt must not influence you to return a verdict of
13 not guilty if you have an abiding conviction of guilt. On
14 the other hand, if after carefully considering, comparing
15 and weighing all of the evidence there is not an abiding
16 conviction of guilt or if having a conviction it is one
17 which is not stable but one which wavers and vacillates,
18 then the charge is not proved beyond every reasonable doubt
19 and you must find the defendant not guilty because the doubt
20 is reasonable.

21 It's to the evidence introduced upon this trial
22 and to it alone that you are to look for that proof.

23 A reasonable doubt as to the guilt of the
24 defendant may arise from the evidence, conflict in the
25 evidence or the lack of evidence.

1 If you have a reasonable doubt, you should find
2 the defendant not guilty. If you have no reasonable doubt,
3 you should find the defendant guilty.

4 Mr. Van Allen opened his statements making
5 reference to an old television program called Petrocelli. I
6 recall the Petrocelli program and I appreciate the
7 comparison to Petrocelli. If I recall the program
8 correctly, the defendant won every time in that television
9 program. However, we're in a real courtroom today and we're
10 dealing with a very real case. We're dealing with a case
11 that involves a man's life.

12 My comments on the lack of the evidence in this
13 case are intended to point out to you deficiencies in the
14 State's case against the defendant. We do not have any
15 argument with the evidence that the crime which is charged
16 was in fact committed. Marlene Reeves in fact was murdered.

17 What I said in my opening comments that there was
18 no evidence of a struggle, I was -- that was during the
19 part, if you recall, where I was talking about what I
20 presumed that the State's theory of the Marlene Reeves' case
21 was and I was telling you basically what Joan Wood had said
22 on the witness stand that in her opinion that there was no
23 physical evidence to support a struggle during the sexual
24 assault of Marlene Reeves.

25 There was evidence of ransacking of the Marlene



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Reeves' apartment but for what purpose we don't know. We get into what Mr. Van Allen referred to as a who done it. I had already talked in my first argument about that sort of thing.

Mr. Van Allen says that I have the right to subpoena the FDLE records. Well, the evidence that was collected at the scene by the deputies, the evidence that was sent to FDLE and the evidence that was presented by the State was not my evidence. That was the State's evidence. What they want to do with it, of course, is their concern but I have the right to comment on their failure to present evidence on critical points and that's what I did.

Mr. Van Allen tells you or says in his argument that I told you in my opening comments that there was absolutely no proof at all that Mr. Capehart was at the scene of the crime. I didn't say that. What I said was there was absolutely no proof, no physical evidence, that Greg Capehart was ever inside the apartment of Marlene Reeves.

Talk about word on the street. It's common in the community that something like this for rumors to start, people to start talking about things but nowhere, nowhere in any of the evidence that has been presented is it made clear that any of the comments attributable to Greg Capehart were referencing Marlene Reeves. Neither was it clear that he

1 was referencing Rebecca Henry. But I would suggest to you
2 that there are parts of it which strongly suggest that what
3 the defendant was involved with was the burglary of Rebecca
4 Henry.

5 For example, his friend Walter Harrison and his
6 testimony. Walter says that, I believe Mr. Van Allen said,
7 "I choked her until she died. I didn't mean to kill her. I
8 only meant to rob." That's consistent with Rebecca Henry.
9 We don't know what the purpose of the individual was who
10 went to Marlene Reeves' but it wasn't just to rob.

11 Second, what the State is trying to tell you is
12 absolutely without support in the evidence. And that is
13 that Greg Capehart committed both crimes. Nowhere is it
14 suggested in any of the statements that Mr. -- that is
15 attributed to Mr. Capehart that he committed two burglaries.
16 The State would have you believe that a person or that Mr.
17 Capehart, in fact, I assume that's what their argument is,
18 would go into Marlene Reeves' apartment, commit a violent
19 sexual assault and murder her with a pillow and there would
20 be no reason to have anything over your face if you were
21 going to do that, if that was your intent. And the person
22 who went into Rebecca Henry's apartment who did wear
23 something over his face and apparently had no intent to kill
24 but may have thought, as Mr. Van Allen admitted, that he had
25 killed her when he was choking her shortly before he left.

1 He says that Greg Capehart lied to McKinnon. But
2 he did use the word strangle and the only one of these two
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6 Tom Muck lied. What I tried to suggest to you is that the
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8 circumstances that Tom Muck reports to you and his failure
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10 to make any attempt to corroborate what was said to him
11 suggest that he allowed that opportunity to be presented.
12 He's an experienced detective. It would have been a simple
13 matter to get the names of the other inmates to corroborate
14 what was said if in fact it was said. Tom Muck took the
15 stand, took his oath, said he would tell the truth. That
16 doesn't necessarily mean that he told the truth. I leave
17 that to you to decide. But I must ask you again to consider
18 all of the other evidence before those statements alleged by
19 Tom Muck.

19 Finally, Mr. Van Allen said there was no other
20 evidence that anybody else was there. Nobody else could
21 have killed Marlene Reeves. On the contrary, there is
22 evidence that someone else killed Marlene Reeves. You heard
23 the detective or the Technician Ferguson testify as to the
24 fingerprints on the closet door recovered by the laser, that
25 he compared them to five different individuals, one of which

1 was Gregory Capehart, one of which was Marlene Reeves and he
2 couldn't identify -- that print didn't match those five so
3 it's unidentified. We don't know whose print that was but
4 it was the print of somebody. Somebody else was in that
5 apartment. That's evidence that somebody else was in that
6 apartment. Again, we don't know when that print was put
7 there but it strongly suggests that somebody else committed
8 this crime.

9 Further we have the description of Robert
10 Caruthers of the man that appeared to be a man dressed in a
11 light orange or yellow trenchcoat and wearing a light
12 colored brown fedora, which is total dissimilar from the
13 description given by Diane Harrison of what she thought was
14 Gregory Capehart at 6:30 in the morning.

15 There is no effort to explain what happened to
16 the sticks in the window that Edith Snow testified about
17 that were there the night she left Marlene Reeves.

18 Finally, the microscopic evidence that was
19 presented to FDLE, recovered from the body. There was also
20 microscopic evidence recovered from the scene. If Greg
21 Capehart had been in that apartment with Marlene Reeves,
22 it's reasonable to expect to find some evidence of his
23 presence. Again, it's not a single negroid hair fragment in
24 that apartment, on the body. No evidence to that effect.

25 The fact of the matter is that despite this

1 horrible killing, the State has failed to meet its burden of
2 proof, that there is reasonable doubt.

3 I would leave you with this other thought. Our
4 system has worked for years, as Mr. Van Allen said, for two
5 hundred years, two centuries. And each of you, each of you
6 must decide for yourselves, what the evidence means and what
7 it means when you listen and consider the instructions. And
8 each of you must deliberate with each other to reach a
9 decision in this case. I would ask you to do that. I would
10 ask you to consider my remarks. I would ask you to find
11 that there is reasonable doubt that Greg Capehart committed
12 this terrible crime and return a verdict of not guilty.

13 I thank you for your attention.

14 THE COURT: Members of the jury, I thank you for
15 your attention during the trial. Please pay attention to
16 the instructions on the law that I am about to give to you.

17 Greg Capehart, the defendant in this case, has
18 been accused of the crimes of murder in the first degree and
19 burglary.

20 Now, murder in the first degree includes the
21 lesser crimes of murder in the second degree, murder in the
22 third degree and manslaughter, all of which are unlawful.

23 A killing that is excusable or was committed by
24 the use of justifiable deadly force is lawful.

25 Now, if you find Marlene Reeves was killed by