

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