

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT, IN AND
FOR LAKE COUNTY, FLORIDA

CASE NO. 87-1347-CF-A-01 and
88-262-CF-A-01

STATE OF FLORIDA,

Plaintiff,

v.

JAMES AREN DUCKETT,

Defendant.

V O L U M E X

AUG 11 2 47 PM '88
CLERK OF CIRCUIT
AND COUNTY COURTS
LAKE COUNTY
TAVARES, FLORIDA



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1 Q. What was your job?

2 A. Patrolman.

3 Q. Did you know another officer by the name of James
4 Duckett?

5 A. Yes, I did.

6 Q. Do you see that individual in the courtroom?

7 A. Yes, I do.

8 MR. EDMUND: I'll stipulate he has identified my client.

9 THE COURT: The record would reflect the witness has
10 identified the Defendant.

11 MR. HURM: Thank you, Mr. Edmund.

12 Q. Mr. Cooper, did Mr. Duckett work on the department
13 with you?

14 A. Yes, sir.

15 Q. Did you sometimes work as a team? Or both of you
16 on the same shift?

17 A. Yes, sir.

18 Q. Mr. Cooper, did you know a young lady by the name of
19 Shelby Dow?

20 A. Yes, sir.

21 Q. Did you ever have occasion... did you know her
22 boyfriend, Rafael Lopez?

23 A. Yes.

24 Q. Did you have occasion, at some point last spring,
25 prior to the homicide, to have a conversation with Shelby Dow

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1 and her boyfriend, Rafael Lopez, in the parking lot of the
2 Circle K laundromat, there on Highway 50?

3 A. Yes.

4 Q. Did that conversation have to do with the defendant?

5 A. Yes, sir.

6 Q. Would you tell us about that conversation? What
7 Shelby Dow and Rafael told you about the defendant?

8 A. Shelby Dow stated that Duckett had rode her around
9 and that...

10 Q. Had rode her around?

11 A. Rode her around looking for Rafael.

12 Q. And in what kind of vehicle?

13 A. In a patrol vehicle.

14 Q. Was that while he was on duty?

15 A. Yes, sir.

16 Q. Was there a policy concerning having people ride in
17 police cars in Mascotte?

18 A. Well, you are supposed to call them in. There is
19 a policy.

20 Q. What was the policy based on?

21 A. The policy is if you have someone in the car, you
22 help them out if they need help, or had to get them home, but
23 you had to radio in, or you should radio them in.

24 Q. Was that of more concern or less concern if the
25 person you were driving around was a female? If you were a

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1 male officer?

2 A. That would be more concern.

3 Q. What was the information you would radio in when you
4 would have a female in your car?

5 A. I would advise a 10-12.

6 Q. For a rider?

7 A. Yes, sir. And advise them we would have a female
8 and I would give them my mileage.

9 Q. Starting mileage?

10 A. Beginning mileage and ending mileage as I arrived
11 wherever I was going.

12 Q. What did Shelby Dow tell you about the defendant
13 riding her around in the police car?

14 A. She stated that, with Rafael standing there, she
15 stated that Duckett was driving her around trying to look
16 for her boyfriend and stated that he made some advances.

17 Q. Did she tell you...

18 A. Made advances to get her to leave him.

19 Q. To leave Rafael?

20 A. Yes, sir.

21 Q. That was with Rafael standing right there?

22 A. Yes, sir.

23 Q. Did she tell you what time of day this happened?

24 A. It happened at night.

25 Q. Did you have occasion or what did you do after you

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1 got that information?

2 A. Of course, I was part-time, so I didn't know exactly
3 what I needed to do, or what the procedure was, so I went to
4 the Sergeant's house. Sgt. Poole.

5 Q. Mike Poole?

6 A. Yes, sir. And I advised him what was going on and
7 he advised me to have her go to the Police Department on
8 Monday morning and give them a statement.

9 Q. Did you go back then, from Sgt. Poole's house to the
10 laundromat?

11 A. Yes, to advise her.

12 Q. Was she still there?

13 A. Yes, sir, she was.

14 Q. Was Rafael there?

15 A. No, sir, he was gone.

16 Q. Did she tell you any more about this riding around
17 with Duckett?

18 A. Yes, sir, she stated that he was trying to make
19 advances toward her and had put his hand on her body. I can't
20 recall.. .

21 Q. What kind of advances did she tell you he tried to
22 make?

23 A. Sexual advances.

24 Q. What had he done in making those advances?

25 A. I can't recall.

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1 Q. You said that she told you about him putting his
2 hands on her?

3 A. Yes, sir, on her body, but I can't remember exactly
4 where.

5 Q. Did she say anything about him trying to kiss her?

6 A. I can't recall what all.

7 Q. What did you do after you talked to her again and
8 she gave you more information?

9 A. I went back to the Sergeant and reported to him and
10 he said to have her to go to the Police Department on Monday
11 morning and file a formal complaint against Officer Duckett.

12 Q. Did she give you any explanation as to why she told
13 you more about what happened after Rafael left?

14 A. She stated to me that he was very jealous and she
15 would be afraid that he would go after him.

16 Q. After Duckett?

17 A. Yes, sir.

18 Q. To your knowledge, did she go to the Police Department
19 on Monday morning?

20 A. No, sir.

21 Q. Did you take any action yourself after that?

22 A. No, sir.

23 Q. Why didn't you do something?

24 A. Because she didn't make a formal complaint.

25 Q. Now, were you full-time or part-time?

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1 A. Part-time.

2 Q. Thank you, Mr. Cooper. Thank you, Judge.

3 MR. EDMUND: If it please, Your Honor?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. EDMUND:

7 Q. Mr. Cooper, I am Jack Edmund. Mr. Cooper, what size
8 fella is Rafael?

9 A. Pretty good size.

10 Q. Is Duckett a pretty good size, too?

11 A. This fella was more muscular.

12 Q. Duckett has got a weapon on him most of the time?

13 A. Yes, sir.

14 Q. Rafael got a weapon on him most of the time?

15 A. No, sir.

16 Q. Alright, now, you say to the Jury that you were
17 parked someplace and these folks came up and started talking
18 to you and made the complaint to you?

19 A. Yes, sir, while I was moving slowing, they hollered
20 to stop.

21 Q. Now, if Shelby Dow sat in that chair and swore to
22 this Jury that you came to them and said that Duckett was
23 bragging around the Police Department that he had made a
24 pass at her and you wanted her to make a complaint, is she
25 lying?

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1 A. I don't know.

2 Q. Well, did you do that?

3 A. Did I say she was lying?

4 Q. No, did you go up to her and say, "Lady, Duckett has
5 been bragging around the Police Department that he made a
6 pass at you, and I think that you ought to make a complaint to
7 the Police Department." Did you go to her and tell her that?

8 A. I told her that if she had a complaint, she should.

9 Q. She said out of the clear blue sky, that you showed
10 up and that you said, "Ma'am, a fellow named Duckett at the
11 Police Department is bragging and saying that he made a pass
12 at this guy's wife, Rafael, and I think you ought to go and
13 make a complaint to the Police Department." Did you do that?

14 A. No, sir.

15 Q. If she testified to that under oath, is she lying?

16 A. Yes, sir.

17 Q. Thank you, sir. No further questions, Your Honor.

18 MR. HURM: We don't have any further questions, Your Honor.
19 He may be released.

20 THE COURT: Any objection?

21 MR. EDMUND: No, Your Honor.

22 THE COURT: You are released from your subpoena, sir.
23 You are free to go.

24 MR. HURM: May we approach the bench?

25 THE COURT: Yes, sir.

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1 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

2 MR. HURM: Your Honor, we may have more witnesses, but
3 they are going to be a little bit longer and frankly, some of
4 them are not here at this point. I had planned on Monday
5 morning for them. We have kind of reached the end of the
6 trail at this point.

7 THE COURT: Do you have any more trail, Mr. Edmund, we
8 can lay out at this time?

9 MR. EDMUND: No, sir.

10 THE COURT: Why don't we send the Jury home and tell them
11 to come back at nine o'clock Monday and to bring their
12 baggage.

13 MR. HURM: Yes, sir.

14 THE COURT: Thank you.

15 (WHEREUPON, BENCH CONFERENCE ENDS)

16 THE COURT: Ladies and gentlemen of the Jury, that
17 concludes our testimony for today. We are going to be able
18 to excuse you at this time for the weekend and ask you to
19 come back at nine o'clock on Monday morning. I remind you
20 you are not to discuss the case among yourselves or with
21 anyone else. Don't read any accounts of the case. Don't
22 watch any television or listen to any radio accounts. Do not
23 visit the scene or scenes of the alleged occurrence. I am
24 going to ask you on Monday morning to bring with you your
25 suitcases and bring with you several changes of clothes and

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1 all your toilet articles and everything you are going to
2 need. I am somewhat guessing, but I am anticipating that
3 Monday morning will probably conclude the trial. Monday will
4 probably conclude the trial, so you need to be prepared from
5 that time forward to be sequestered, so is everybody clear with
6 me? Bring your suitcases, your toilet articles, anything you
7 might require, and several days changes of clothes. Are we
8 all straight? Alright. Thank you, Mr. Bailiff.

9 (WHEREUPON, JURY LEAVES COURTROOM AT 4:35 P. M.)

10 THE COURT: Gentlemen, one more thing, if you would
11 please bear with me at the bench.

12 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

13 THE COURT: I know I keep harping, but do we need Richard
14 Reynolds or do we want to say?

15 MR. HOGAN: Richard Reynolds? I think we can let him go.

16 MR. EDMUND: You are sending him back?

17 MR. HOGAN: Yes.

18 THE COURT: Do you want to tell Major Allen and you are
19 turning him loose?

20 MR. HOGAN: Yes, sir.

21 THE COURT: Frankly, I don't feel like reading the
22 Jury instructions to them at 4:30 on Friday. You all got more
23 witnesses on Monday anyway.

24 MR. HOGAN: That is fine.

25 THE COURT: Let's just go home for the weekend. What do

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1 you say?

2 MR. HURM: That's fine. We could probably finish with
3 witnesses in mid morning and the Jury Instructions before
4 lunch and do closings after lunch.

5 THE COURT: Okay, thanks.

6 MR. HOGAN: I have got one thing that Mr. Duckett
7 identified, which is AAAAAA.

8 THE COURT: You want to move them?

9 MR. HOGAN: Now that we are back on our case, we would
10 like to move it.

11 THE COURT: Any objection to that?

12 MR. EDMUND: No, sir.

13 THE COURT: State's AAAAAA for identification admitted
14 into evidence without objection as State's 102.

15 (WHEREUPON, STATE'S EXHIBIT #102 IS ADMITTED INTO
16 EVIDENCE WITHOUT OBJECTION)

17 THE COURT: It occurred to me once before and this is the
18 second time you all have admitted something into evidence
19 when the Jury wasn't here. At some point you may want to do
20 that, just to let them know that it is done. I don't think
21 is is any big problem, but any problem is a big problem in a
22 case like this.

23 MR. HOGAN: The other thing was the fingerprints and
24 things off the car.

25 THE COURT: The photos of the car taped on the car that

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1 we brought back up here. You may want to re-do them in front
2 of the Jury so that there is no question.

3 Anything else until Monday?

4 MR. HOGAN: No, sir.

5 THE COURT: Thank you.

6 (WHEREUPON, BENCH CONFERENCE ENDS)

7 (WHEREUPON, DEFENDANT IS REMOVED FROM THE COURTROOM AT
8 4:36 P. M.)

9 THE COURT: Ladies and gentlemen, we will be in recess
10 until nine o'clock Monday morning. I ask you to remain seated
11 just for another moment with me, please.

12 (WHEREUPON, COURT IS IN RECESS AT 4:37 P. M.)

13 May 9, 1988, 9:00 A. M.

14 (WHEREUPON, COURT CONVENES IN CHAMBERS)

15 THE COURT: I just thought we would explore what we have
16 on tap for this morning, and see what problems we can
17 anticipate today, gents.

18 Who are we going to call?

19 MR. HOGAN: Your Honor, we are going to introduce a
20 couple photographs, which will necessitate a real short
21 predicate from Mr. Aleno, who took the photographs, and
22 we are going to introduce the rest of the radio tape, which
23 will take a little short predicate from Captain Swails.

24 THE COURT: Do you have your player for that also?

25 MR. HOGAN: I don't know if we are going to play it.

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1 There is nothing on it from here, that is the point.

2 THE COURT: Just introduce it and show there isn't
3 anything else?

4 MR. HOGAN: Yes, sir. And introduce Lopez, Juanita
5 Lopez.

6 MR. HURM: She is the sister of Rafael Lopez, Shelby
7 Dow's boyfriend at the time of the Williams Rule incident.

8 THE COURT: What else?

9 MR. HURM: That's it.

10 THE COURT: How long do you anticipate on that?

11 MR. HURM: I expect an hour max.

12 THE COURT: 10:30. You will want to come back with your
13 motions again after that. Do you want to do the same way we
14 did?

15 MR. EDMUND: Just like I did when the State rested, when
16 we rested, Your Honor, if the Court please.

17 THE COURT: Okay. So roughly by 10:30, we are going to
18 be finished with this today. My thoughts are to just release
19 the Jury, Steve, at 10:30. We have got to do Jury Instructions,
20 which we can profitably use the rest of the morning on. I
21 want to do them over in the other chambers where we have the
22 library and the other facilities. We ought to be able to get
23 them absolutely straight by noon and have Brenda down, if you
24 would, so she can make notes of the changes, and then we can
25 start at one or 1:30 with closings.

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1 MR. EDMUND: How about 1:00 o'clock, Your Honor?

2 THE COURT: 1:00 o'clock? Well, I know you wanted
3 two hours, and I gave you an hour and a half. What do you
4 think exactly?

5 MR. EDMUND: No more... I still think no more than
6 forty-five, Judge.

7 THE COURT: Let's say it took you an hour. That is...

8 MR. EDMUND: Noone ever believes me when I tell them that.

9 THE COURT: That is 3:30. By the time we have read the
10 Jury Instructions, 4:00. A big decision to make is whether or
11 not we want to take a short on a quick verdict and let them
12 deliberate at 4:00. Say 4:00 to 6:00 and then if they don't
13 get a verdict, go ahead and sequester them, or whether or not
14 we just want to say, "To heck with it", and tell them to come
15 back at 9:00 o'clock tomorrow morning. They will have heard
16 all your closings and the jury instructions and everything.

17 MR. HOGAN: I would just as soon let them deliberate.

18 MR. EDMUND: My preference would be give them time to
19 elect a foreman, just casually go through the evidence and
20 send them home. Let them have an over-all view and send them
21 home about 5:00. Send them home in an hour. That gets them
22 started. It takes a lot of the yaketty yak out of tomorrow
23 morning and they go at it fresh.

24 THE COURT: I might even go two hours, because it is
25 going to take them longer to scan that evidence. There are

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1 a hundred and one exhibits, as I recall.

2 MR. HOGAN: Judge, if I might put my two cents in.
3 We request that they be allowed to deliberate as long as they
4 want to deliberate, with them knowing the option, that they
5 knowing that when they get tired, they can go to their hotel
6 room and let them work as long as they want to work.

7 THE COURT: I'll think about that. There are pluses and
8 minuses to that. The minus is that it could be argued you are
9 forcing a verdict if they don't want to be sequestered.

10 MR. HURM: Well, they are going to have to be sequestered
11 anyway, aren't they?

12 Let's assume if they come back with a guilty verdict at
13 six o'clock, they are going to have to be sequestered.

14 THE COURT: Depending on their verdict.

15 MR. HURM: Yes, sir.

16 MR. EDMUND: I had one in Sarasota about a month ago
17 when that very thing happened and we are investigating now
18 under Judge Smith's auspices pressure because it was getting
19 on towards what? One o'clock? And I think that really that
20 is coming into play or did in that and could very well in this
21 case.

22 THE COURT: I'll give it some thought and give you a
23 decision on it before we do it. Do we have anything else we
24 need to talk about up here? Okay. See you downstairs in
25 a few minutes.

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1 (WHEREUPON, WE ARE IN RECESS IN CHAMBERS)

2 (WHEREUPON, COURT CONVENES IN COURTROOM AT 9:32 A. M.)

3 (WHEREUPON, DEFENDANT IS PRESENT IN COURTROOM WITH HIS
4 COUNSEL, MR. EDMUND, AT 9:33 A. M.)

5 THE COURT: Anything before we bring the Jury back?

6 MR. HURM: No, sir.

7 MR. EDMUND: No, Your Honor.

8 THE COURT: Please, Mr. Bailiff.

9 (WHEREUPON, JURY ENTERS COURTROOM AT 9:34 A. M.)

10 THE COURT: Welcome back, folks. Be seated please.
11 I trust your weekends were at least marginally enjoyable
12 considering your duties. Can you all assure us once again
13 that you did abide by our admonitions of Friday afternoon?

14 JURORS: Yes, sir.

15 THE COURT: Thank you very much. From the State?

16 MR. HURM: If it please the Court, Your Honor, the State
17 would call Juanita Lopez.

18 THE COURT: Alright.

19 (WHEREUPON, JUANITA LOPEZ IS CALLED AS NEXT WITNESS FOR
20 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

21 DIRECT EXAMINATION

22 BY MR. HURM:

23 Q. Good morning, Ms. Lopez.

24 A. Good morning.

25 Q. Pull your chair up to the microphone, please, and

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1 speak right into it. Also address your answers to the folks
2 in the Jury.

3 Tell us your name, please?

4 A. Juanita Lopez.

5 Q. How old are you?

6 A. Twenty-two.

7 Q. Where do you live?

8 A. In Groveland.

9 Q. Ms. Lopez, did you ever live in Mascotte in 1987?

10 A. Yes.

11 Q. In January and February specifically in 1987, were
12 you living in Mascotte?

13 A. Yes.

14 Q. What road? What street?

15 A. Talbott Avenue.

16 Q. Do you know Rafael Lopez?

17 A. My brother, yes, sir.

18 Q. How about Shelby Dow?

19 A. Yes.

20 Q. Is she your brother's girlfriend?

21 A. Ahum. (Affirmative response)

22 Q. Was she your brother's girlfriend in January and
23 February of 1987?

24 A. Yes.

25 Q. Ms. Lopez, do you remember... by the way, is your

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1 nickname also Poncho?

2 A. Ahum. (Affirmative response)

3 Q. Ms. Lopez, do you remember a night back in January
4 or February of '87 when Rafael didn't come home and Shelby
5 was concerned about it?

6 A. Ahum. (Affirmative response)

7 Q. Tell us what happened? How did you find out that
8 he hadn't come home?

9 A. That night Shelby went out to the house to my
10 apartment, and she told me that Rafael probably got drunk or
11 something, right, so then she came to me and she said she was
12 going to go out looking for him, so the next thing I know,
13 there was a car, a cop car...

14 Q. Police car?

15 A. Yes.

16 Q. What color police car, do you remember?

17 A. Brown.

18 Q. Was it...

19 A. Brown and tannish...

20 Q. Do you know what city it was from?

21 A. No.

22 Q. But it was there in Mascotte where you lived?

23 A. Yes. In front of the apartment.

24 Q. Did it have lights on the top?

25 A. Ahum. (Affirmative response)

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1 Q. Was there someone in the police car?
2 A. The police.
3 Q. The policeman was in the police car?
4 A. Yeah. (Affirmative response)
5 Q. How was he dressed? Was he in uniform?
6 A. Yes.
7 Q. What did Shelby ask you or what did you do with
8 Shelby with regard to the police car?
9 A. She asked me if I could go with her to look for my
10 brother.
11 Q. Who was going to take you to look for your brother?
12 A. The cop. The cops took us back to Crawford
13 Apartments.
14 Q. When you say cops, were there more than one?
15 A. No, one.
16 Q. There was just one policeman?
17 A. Yeah, just one police.
18 Q. Did you get in his car?
19 A. Ahum. (Affirmative response)
20 Q. Where did Shelby sit in the car?
21 A. In the middle.
22 Q. And where did you sit?
23 A. On the door side.
24 Q. How long did you all drive around?
25 A. Maybe ten or fifteen minutes.

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1 Q. Where did he take you?

2 A. He took us around the Crawford Apartments, down
3 the back road and then he dropped us off there and then Shelby
4 came in again and she told me...

5 Q. Let me stop you just for a minute. You are getting
6 ahead of me. Where are the Crawford Apartments located?

7 A. Behind the school in Mascotte, the elementary school.

8 Q. Mascotte Elementary School?

9 A. Ahum. (Affirmative response)

10 Q. After you went to Crawford Apartments, did you find
11 Rafael there?

12 A. No.

13 Q. Did you come back to your apartment?

14 A. Ahum. (Affirmative response)

15 Q. Is that where you were dropped off?

16 A. Yeah. (Affirmative response)

17 Q. Were both you and Shelby dropped off at that point?

18 A. Yes. First we were.

19 Q. What did you do?

20 A. I stayed in the apartment. I went in .

21 Q. Did you ever see the police car again?

22 A. Yes, a few minutes later, he came and that is when
23 Shelby left again.

24 Q. What did Shelby do?

25 A. She told me that she was going to go out again and

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1 look for Rafael.

2 Q. With the policeman?

3 A. Ahum. (Affirmative response)

4 Q. Did she do that as far as you know?

5 A. Yeah, as far as I know.

6 Q. Did she come back to your apartment again that night?

7 A. Yes.

8 Q. Did she tell you anything about what had happened?

9 MR. EDMUND: I object on the grounds of hearsay, if it
10 please the Court.

11 MR. HURM: Your Honor, this is not offered for the truth
12 of the matter asserted. It is offered to rehabilitate Shelby
13 Dow's testimony, which has been questioned by the Defendant's
14 own. this is rebuttal and it would be suitable for her to
15 testify as to what Shelby Dow reported. It is a prior
16 consistent statement, and therefore, it would be an exception
17 to the hearsay rule. It is showing that she made the same
18 statement she made here in court prior to ever being brought
19 into contact with the criminal justice system. As a matter of
20 fact, just a few minutes after it happened.

21 MR. EDMUND: It can only be offered for the truth of the
22 statement and furtherance of the corroboration of the truth
23 of another statement, if it please Your Honor. It is hearsay
24 and I would object.

25 THE COURT: I sustain the objection.

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1 Q. After you were dropped off at your apartment by
2 the police officer, you said the police officer came back again?

3 A. That is when Shelby left again with him.

4 Q. With him?

5 A. Ahum. (Affirmative response)

6 Q. How long was she gone that time?

7 A. Around twenty or thirty minutes, I guess. Probably.
8 Somewhere around in there.

9 Q. How did she seem when she came back? Emotionally?

10 A. When she came back, I was going to get ready to go
11 back to sleep and she asked me, are you going...

12 Q. Wait a minute. Without telling what she said, just
13 how did she seem? How did she appear?

14 A. She seemed okay to me.

15 Q. Can I have a moment, Your Honor?

16 THE COURT: Yes, sir.

17 MR. HURM: I have no further questions. Thank you.

18 MR. EDMUND: Just a moment, Your Honor.

19 MR. HURM: I do have one other question, Your Honor.
20 Thank you.

21 Q. Ms. Lopez, I ask you to look around the courtroom
22 and tell me if you see the policeman who drove you and Shelby
23 around Mascotte that night? Do you see him?

24 A. Yeah. (Affirmative response)

25 Q. Would you point to him and tell us what he is wearing?

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1 A. That man over there.

2 Q. What color suit?

3 A. In the black suit.

4 Q. Will the record reflect she has identified the
5 defendant.

6 THE COURT: What say you, Mr. Edmund?

7 MR. EDMUND: No objection, Your Honor.

8 THE COURT: The record would reflect the witness has
9 identified the defendant.

10 MR. HURM: Thank you. I have no further questions.

11 MR. EDMUND: No questions, if it please, Your Honor.

12 THE COURT: What do you say about Ms. Lopez' subpoena?

13 MR. HURM: She may be released, Your Honor.

14 THE COURT: Any objection, Mr. Edmund?

15 MR. EDMUND: No objection, Your Honor.

16 THE COURT: You are free to go, ma'am. Thank you very
17 much.

18 MR. HOGAN: Deputy Aleno.

19 (WHEREUPON, DEPUTY RANDY ALENO IS CALLED AS NEXT WITNESS
20 FOR THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

21 DIRECT EXAMINATION

22 BY MR. HOGAN:

23 Q. Deputy Aleno, you previously testified that you
24 assisted in the processing of Mascotte police car Unit 203,
25 at the time of this investigation involving the murder and rape

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1 of Teresa McAbee?

2 A. Yes.

3 Q. I show you what is marked for identification with
4 six Cs and ask you if you recognize that series of photographs?

5 A. Yes, sir, I do.

6 MR. EDMUND: I have no objection and waive any further
7 predicate.

8 THE COURT: Moving them into evidence?

9 MR. HOGAN: Yes, sir.

10 THE COURT: State's Exhibit Composite CCCCCC admitted
11 into evidence without objection as State's Composite #103.

12 (WHEREUPON, STATE'S COMPOSITE EXHIBIT #103 IS ADMITTED
13 INTO EVIDENCE WITHOUT OBJECTION)

14 Q. Could you tell us what these are photographs of, sir?

15 A. Yes, sir, those are photographs of the interior
16 of Unit 203, Mascotte police car that I took.

17 Q. Is this the way the car looked at the time you
18 processed it? The front seat? Any substantial change?

19 A. No, sir, it appears to be the same.

20 MR. HOGAN: Permission to publish these?

21 THE COURT: Yes, sir.

22 (WHEREUPON, COMPOSITE EXHIBIT #103 IS PUBLISHED TO THE
23 JURY)

24 THE COURT: Folks, while the Jury is examining this
25 exhibit, I want to make clear once again to the folks in the

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1 media. No pictures of these jurors identity will be published
2 in the media. That is by Court Order.

3 (WHEREUPON, EXHIBIT IS HANDED BACK TO MR. HOGAN)

4 Q. Now, Deputy Aleno, you also testified previously
5 about taking a photograph at the crime scene or the scene down
6 by Knight Lake where the body of Teresa McAbee was recovered,
7 is that correct?

8 A. Yes, sir.

9 Q. I show you two photographs of State's Exhibit six Bs
10 and ask if you recognize those?

11 A. Yes, sir, I do.

12 Q. Did you take those photographs?

13 A. Yes, sir, I did.

14 MR. EDMUND: I have no objections, Your Honor. Waive
15 any further predicate.

16 THE COURT: State's Composite Exhibit BBBBBB for
17 identification admitted into evidence without objection as
18 State's Composite Exhibit #104.

19 Q. With regard to the first photograph in this exhibit,
20 please explain what that shows?

21 A. This shows one part of the pencil in the brush that
22 I found on Thursday after finding the victim's body.

23 Q. Okay, sir, and this other photograph in the composite
24 exhibit?

25 A. This photograph depicts the way the victim appeared

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1 at the time we removed her body from the water at the crime
2 scene.

3 Q. Okay. Thank you. Thank you, Judge. Thank you,
4 Deputy.

5 MR. EDMUND: No questions, Your Honor.

6 THE COURT: Release Deputy Aleno from his subpoena,
7 gentlemen?

8 MR. HOGAN: Yes, sir.

9 THE COURT: Any objection, Mr. Edmund?

10 MR. EDMUND: No objection.

11 THE COURT: You are free to go, sir. Thank you.

12 MR. HOGAN: Captain Swails.

13 THE COURT: Captain Swails, please.

14 MR. EDMUND: May we approach the bench, Your Honor?

15 THE COURT: Yes, sir.

16 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

17 MR. HOGAN: I don't know what happened to my witness.

18 MR. EDMUND: This is the Sheriff's channel on there?

19 MR. HOGAN: This is all the Sheriff's channels. Groveland
20 works off the Sheriff. These are the master tapes that show
21 communication from Officer Duckett from 10:52, ten after twelve.

22 MR. HURM: He is on his way. He was supposed to be over
23 here and he was in his office instead, so he is on his way over.

24 MR. EDMUND: I don't have any problem stipulating it in
25 if they want to.

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1 MR. HURM: He is here now.

2 THE COURT: Well, we have got him here. Let's go through
3 it.

4 (WHEREUPON, CAPTAIN SWAILS IS CALLED AS NEXT WITNESS BY
5 THE STATE AND IS DULY SWORN BY THE CLERK OF THE COURT)

6 DIRECT EXAMINATION

7 BY MR. HOGAN:

8 Q. Would you state your name for the record?

9 A. Captain James R. Swails.

10 Q. Captain Swails, how are you employed?

11 A. Through the Lake County Sheriff's Office.

12 Q. What is your responsibility for the Lake County
13 Sheriff's Office?

14 A. I am Captain in charge of administrative services.

15 Q. Does that include communications?

16 A. Up until about two weeks ago, yes, sir.

17 Q. In May of 1987, did that include communications?

18 A. Yes, sir, it did.

19 Q. Captain Swails, when you say communications, what
20 all does that involve?

21 A. Well, the Communications Division is charged with
22 taking complaints from citizens, civilians, and dispatching
23 information to the deputies on the police agency.
24 That also includes daily logs, tapes, stat cards, all
25 information pertaining to calls.

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1 Q. When you say dispatching deputies, is that over
2 what we call radio, two way radio?

3 A. Yes, sir.

4 Q. How many channels does Lake County Sheriff's Office
5 monitor?

6 A. The Sheriff's Office itself monitors five channels.

7 Q. Does that include what we call Channel One?

8 A. Yes, sir. The Sheriff's Office is assigned actually
9 three frequencies themselves. Channel One is used to dispatch
10 cities and do the teletype work; Channel Two is for the
11 Sheriff's Office.

12 Q. When you say dispatch cities, what cities are
13 included in that on Channel One?

14 A. It is Fruitland Park, Astatula, Minneola, Mascotte,
15 and Mount Verde.

16 Q. Alright, sir, Captain, do you keep a record of these
17 transmissions?

18 A. Yes, sir, we do.

19 Q. How do you do that?

20 A. They are put on twenty-four hour logging tape and
21 any time a call is received in from one of the officers or
22 an officer is dispatched somewhere, there is also a card punched
23 through a time clock.

24 Q. You do keep a twenty-four hour tape recording of
25 the actual calls?

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1 A. Yes, sir, we do.

2 Q. I show you what has been marked for identification
3 as State's Exhibit B and ask you if you would open this
4 package and tell me if you recognize the contents?

5 THE COURT: Is that B as in boy?

6 MR. HOGAN: Yes, sir, it is.

7 A. Yes, I do. These are logging tapes that were taken
8 from the Sheriff's Office.

9 Q. What date or time span do those tapes cover?

10 A. This covers from midnight the night of the 10th,
11 and the morning of the 11th, until midnight of the 12th, and
12 morning of the 13th. This right here, covers a forty-eight
13 hour period.

14 Q. That would be of what month?

15 A. This would be May.

16 Q. 1987?

17 A. Yes, sir.

18 Q. Have you had occasion to listen to this tape?

19 A. Yes, sir.

20 Q. Did you have occasion to make a copy of the tape from
21 those tapes?

22 A. Yes.

23 Q. I show you what has been marked in evidence as
24 State's Exhibit #16 and ask you if you recognize that tape?

25 A. Yes, sir, I do.

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1 Q. Did you make that tape?

2 A. Yes, sir, I made the tape and my name is on it.

3 Q. Did you make that cassette tape by copying it from
4 the master tape or the big tape you have there marked State's
5 Exhibit B?

6 A. Yes, sir, I did.

7 Q. Now, in listening to State's Exhibit B, did you become
8 familiar with the Unit Mascotte Four?

9 A. Yes, sir.

10 Q. That has been identified to you as belonging to
11 Officer Duckett, is that correct?

12 A. That is correct.

13 Q. With particular attention to the late evening hours
14 of May 11th, and early morning hours of May 12th, did there
15 come a time period during that time for a significant period
16 of time that you did not find Mascotte Four anywhere on your
17 radio log?

18 A. Yes, sir.

19 Q. And what time was that, sir?

20 A. As memory serves, it was from approximately eleven
21 o'clock until ... there was about an hour and twenty minute
22 time loss there. I think it was from somewhere around eleven
23 until about 12:30.

24 Q. Okay, sir.

25 A. I would have to look at the time cards to be sure.

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1 Q. Could I have one moment, Judge?

2 THE COURT: Yes.

3 Q. Captain, this is a document marked for identification
4 with six Ds. See if that refreshes your memory. Calling your
5 attention specifically to the time period of 10:50 to 12:10?

6 A. Yes, sir, it does.

7 Q. And that is a typed log of the same thing that is on
8 the tape?

9 A. Yes, sir, it is.

10 Q. Alright, sir. Do you have a memory now of the blank
11 spot on the tape?

12 A. Yes, sir. Yes, sir, I do.

13 Q. And if you would please tell us if you have examined
14 those tapes?

15 A. Yes, sir.

16 Q. Have you ... is there a time period in the late evening
17 hours of May 11th, early morning hours of May 12th, for any
18 lengthy period of time, when you do not have a recording of
19 Mascotte Four?

20 A. Yes, sir, the last recording that I found on the
21 tapes was what we refer to as 2200 hours, which was 10:00
22 o'clock, and the next I received on there was when there was
23 a radio transmission between, as the radio log shows, Groveland
24 City Police and Mascotte Four and that was an hour and twenty
25 minutes later.

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1 Q. Okay, sir, now, if Mascotte Four was operating off
2 Channel One, would that be a radio frequency that you monitor
3 or record?

4 A. Yes, sir.

5 Q. Wrap those back up, please.

6 MR. HOGAN: Any objection?

7 MR. EDMUND: No, sir.

8 MR. HOGAN: We would move these.

9 THE COURT: State's Exhibit B for identification admitted
10 into evidence without objection as State's Exhibit #105.

11 (WHEREUPON, STATE'S EXHIBIT #105 IS ADMITTED INTO
12 EVIDENCE WITHOUT OBJECTION)

13 MR. HOGAN: Thank you, Judge.

14 CROSS EXAMINATION

15 BY MR. EDMUND:

16 Q. If it please, Your Honor, may I use the exhibit...
17 what was it... #6...?

18 May I approach the witness?

19 THE COURT: Yes, sir.

20 MR. HOGAN: Judge, if we could agree to make this a
21 composite. The other one I was looking for is right here.

22 THE COURT: Alright.

23 Q. Captain, my name is Jack Edmund. Captain, is the
24 police officer supposed to use the radio unless he has something
25 to transmit?

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1 A. No, sir, he is not.

2 Q. Are there occasions where deputies may go all night
3 and never make a transmission?

4 A. No, sir.

5 Q. When would they make a transmission?

6 A. If there was no activity, they need to report, they
7 need to make some sort of transmission to the communication
8 center, and we do what is referred to as 10-4 checks period-
9 ically to make sure they are.

10 Q. How often is that done?

11 A. Generally, on an intermittent basis depending on the
12 activity of that officer during that time period, but at least
13 once an hour.

14 Q. Did you check in with the local police officers at
15 least once an hour?

16 A. For those on duty at the time, yes, sir.

17 Q. Did you check in with Mascotte Four? Did your
18 office check in with Mascotte Four during the hour period?

19 A. They should have. If they did, it would have been
20 on the dispatch card. It depends again on just how busy they
21 are.

22 Q. Do you have now before you something that would
23 indicate whether or not any inquiry was made of Mascotte Four
24 by your office during that hour period?

25 A. I show where they did a 10-4 check at 2250 hours,

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1 which is 10:50 P. M. and again at 0019 hours.

2 Q. So they got a response at 10:50, is that right?

3 A. Yes, sir.

4 Q. Alright, now, do you have a transmission showing
5 on your sheet from the Groveland Police Department earlier than
6 12:19 or midnight and nineteen?

7 A. On this sheet, no, sir. We don't dispatch Groveland.

8 Q. So if it would only reflect there on the certain
9 channels that you monitor, is that right?

10 A. On the channels we dispatch. It gets a little
11 confusing, but Groveland does occasionally use our Channel One,
12 so we do have some of their transmissions recorded. We don't
13 keep a running stat on them.

14 Q. Can you tell from what you have before you when the
15 last transmission that you received from Mascotte Four was
16 prior to 10:50?

17 A. Yes, sir, it shows here that it was at 1834, which is
18 6:34 P. M.

19 Q. So there was a four hour period in there that, did you
20 say...6:30 to 10:50, you received no transmissions from
21 Mascotte?

22 A. Not indicated on the card.

23 Q. No further questions, Your Honor.

24 MR. HOGAN: Nothing further.

25 THE COURT: Alright. Be sure your exhibit is put together

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1 in proper form. That has not been moved into evidence.

2 MR. HOGAN: No, sir, it has got a lot of notes on it.

3 THE COURT: Alright. Anything further?

4 MR. EDMUND: No, Your Honor. Thank you.

5 THE COURT: Release the Captain from his subpoena, gents?

6 MR. EDMUND: No objection, Your Honor.

7 THE COURT: You are free to go, sir.

8 MR. HOGAN: Can I have one moment, Judge?

9 We have nothing further, Your Honor. The State would
10 rest.

11 MR. EDMUND: May the record just reflect my Motion in toto
12 Your Honor?

13 THE COURT: Yes, sir, and the same ruling. Can we
14 approach the bench just quickly?

15 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

16 THE COURT: I am going to propose to let the Jury go now
17 and give them the option of meeting Mr. Corbett at 11:30
18 in the lobby if they want to go to lunch, or they can disperse
19 and come back here at one. Either way, alright?

20 MR. HOGAN: Yes, sir.

21 THE COURT: No objection to that? I am going to ask
22 out of an abundance of caution, if he is prepared to do so,
23 Mr. Duckett waive his presence at the jury instruction
24 conference.

25 MR. EDMUND: I discussed this with him and he is willing

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1 to do so.

2 THE COURT: Alright, would you ask him to come to the
3 bench at this time?

4 MR. EDMUND: Yes, sir.

5 (WHEREUPON, DEFENDANT APPROACHES BENCH)

6 MR. EDMUND: Your Honor, I have discussed with my client
7 earlier this morning, the conference is going to be in the
8 next courthouse and in anticipation of problems, that he could
9 waive his presence. He has agreed to and would so announce
10 on the record.

11 THE COURT: You understand, Mr. Duckett, you have a right
12 to be present at this jury instruction conference, but if you
13 choose to give that right up, you can do that also.

14 MR. DUCKETT: I'll waive my right.

15 THE COURT: Alright. That is all I have. Thank you.
16 I will see you all over in chambers in the other courthouse
17 now as soon as we let this jury go.

18 MR. HOGAN: Yes, sir.

19 (WHEREUPON, BENCH CONFERENCE ENDS)

20 THE COURT: Ladies and gentlemen, the State has rested
21 again. That is going to be the conclusion of the testimony
22 in the case. The attorneys and I yet have to go over the
23 jury instructions, which may take some period of time. What
24 we are going to do with you all is as follows: We are going
25 to be in recess until 1:00 o'clock. We are going to allow you

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1 to be free if you choose, to go about your own personal
2 business until 1:00 o'clock. If you wish to go to lunch with
3 the bailiff, if you will meet him at 11:30 downstairs right
4 outside the elevator in this courtroom, then he will take you
5 to lunch. If you don't choose to do that, we will just ask
6 you to be back at 1:00 o'clock. We will advise you once again,
7 this is not yet the time to discuss the case among yourselves
8 or with anyone else. You should not read any accounts of the
9 case, watch any television accounts, or listen to any radio
10 accounts.

11 Promptly, at one o'clock, the attorneys are going to submit
12 to you their closing arguments. I am going to read to you
13 the jury instructions and when that is concluded, we are going
14 to allow you to retire to deliberate your verdict. Are we all
15 clear on the procedures?

16 JURORS: Yes, sir.

17 THE COURT: Alright. I'll see everyone back at 1:00
18 o'clock.

19 (WHEREUPON, JURY LEAVES COURTROOM AT 10:12 A. M.)

20 (WHEREUPON, THE DEFENDANT IS REMOVED FROM COURTROOM AT
21 10:13 A. M.)

22 THE COURT: See you next door, gentlemen, and Ms. Patz,
23 please.

24 (WHEREUPON, COURT IS IN RECESS AT 10:14 A. M.)

25 (WHEREUPON, COURT CONVENES IN CHAMBERS IN NEW COURTHOUSE)

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1 THE COURT: Okay, does everybody have a complete set
2 of the State's proposed instructions? I have one additional
3 proposed instruction by counsel for the Defendant on
4 circumstantial evidence. My normal procedure is to let's
5 first go through the State's proposed instructions, page by
6 page and make corrections or additions as we see fit and then
7 we will come back to the Defense instruction and decide if
8 it is appropriate or not and decide where to insert it.
9 We are discussing not only the language in the State's
10 proposed instructions, but the order that the instructions are
11 presented as well.

12 I notice on the cover sheet there is a mistake. It says,
13 "Charge I: Murder in the First".

14 MR. HURM: Degree is on the next line.

15 THE COURT: It is not on the next line which you
16 proposed to me, which is the master sheet presumably.

17 MR. HOGAN: Yes, it is.

18 MR. HURM: It says, "Murder in the First", and then the
19 second line is "Degree".

20 THE COURT: I would like that retyped if you would.
21 Type Charge: Murder in the First Degree. Bring that two
22 down below it.

23 Any other suggestions or corrections to the cover sheet?

24 MR. EDMUND: No, sir.

25 THE COURT: Alright. Now we have a proposed Statement of

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1 the Charge as to the Indictment. Any objection to that?

2 MR. HOGAN: No, Your Honor.

3 MR. EDMUND: No, sir.

4 THE COURT: Now, we have Statement of the Charge as to
5 the Information. Is that 794? That type is a little hard
6 to read?

7 MR. HURM: Yes, sir.

8 MR. EDMUND: No objection, Your Honor.

9 THE COURT: Alright. Then I have the Williams Rule
10 instruction. Shouldn't the word in the second line be "acts"
11 plural?

12 MR. HOGAN: Yes, sir.

13 THE COURT: Alright, we will ask you to correct that one.
14 I am going to strike a number of these things. I ruled
15 specifically on which matters were Williams Rule matter in
16 this case. Do you recall which number is the Williams Rule
17 instruction? Here it is. The ones we leave in are:
18 Motive; leave in opportunity; strike intent; strike preparation;
19 leave in plan; strike knowledge; leave in identity; and strike
20 or the absence of mistake or accident.

21 MR. HURM: There should be an "or" between plan and
22 identity?

23 THE COURT: Yes. Now, let's read the whole Williams
24 Rule instruction.

25 The evidence which has been admitted to show similar

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1 crimes, wrongs, or acts allegedly committed by the Defendant
2 will be considered by you only as that evidence relates to
3 proof of motive, opportunity, plan or identity on the part
4 of the Defendant and only in your deliberation regarding the
5 Capital Sexual Battery charge.

6 Any objection to that as amended?

7 MR. EDMUND: No, sir.

8 THE COURT: Alright, we have the Introduction to
9 Homicide. Any objection to that, or have you had a chance
10 yet, Mr. Edmund?

11 MR. EDMUND: I have looked at it, sir. I have no
12 objection to it, Your Honor.

13 THE COURT: Justifiable Homicide.

14 MR. EDMUND: I have no objection to it, Your Honor.

15 THE COURT: Alright. Definition of Excusable Homicide.

16 MR. EDMUND: Alright, sir. No objection.

17 THE COURT: I find a typo in it. The third line, the
18 word unlawfully should be unlawful. Right before intent.

19 In the fourth line, the word and between sudden and
20 sufficient should be stricken according to my jury instructions.

21 MR. EDMUND: You said the word "and" between sudden
22 and sufficient? It is in mine, sir. It is in the Statute.

23 It is at ... FS 82.03, Your Honor. Upon any sudden and
24 sufficient provocation, or upon a sudden combat.

25 THE COURT: Alright. Let me take a look. Maybe there is

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1 a typo in mine.

2 MR. EDMUND: And it is in 782.03, Your Honor.

3 THE COURT: What section in the standard instructions
4 is Homicide? Where do they begin?

5 MR. EDMUND: I don't have the section in the standard
6 instructions.

7 MR. HOGAN: #61. On page sixty-one, Judge.

8 THE COURT: I have no objection with leaving the word
9 "and" in. In my introductory instructions it is not there,
10 but let's leave it in. All we need to do is strike the
11 letters "ly" on the word "unlawfully" and retype that one.
12 Any objection to that?

13 MR. EDMUND: No, sir.

14 THE COURT: Now we have the definition of Murder in the
15 First Degree.

16 MR. EDMUND: I think that is the instruction, Your Honor,
17 and I have no objection to it.

18 THE COURT: Alright. Now, I have a proposed Maximum and
19 Minimum Penalties instruction.

20 MR. EDMUND: That is short and to the point and correct.
21 No objection.

22 THE COURT: The Supreme Court told us not to give these
23 anymore. Do we have an exception for capital cases?

24 MR. HOGAN: My understanding is that ... that's a good
25 question.

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1 THE COURT: They took them out of the standard instructions.
2 Pauline, you may.

3 MS. ALBON: You have to give maximum on a First Degree
4 Murder case. That is all you have to give.

5 THE COURT: If nobody has any objection, I am going to
6 give it.

7 MR. EDMUND: I certainly have none.

8 MR. HOGAN: Let me check.

9 THE COURT: I'll put a clip on that and a question mark
10 in my mind about it. I mean, generally, we all know we don't
11 give those anymore since they took them out of the standard
12 jury instructions. If there is an exception for First Degree
13 cases, just double check that if you would.

14 Alright, now I have got the Lesser Included Crimes or
15 Attempts. These are going to be the Lesser Included for
16 First Degree Murder, right?

17 MR. HURM: Yes, sir.

18 THE COURT: We have Second Degree and Manslaughter.

19 MR. HOGAN: One thing we are missing here, Judge, is
20 Felony Murder.

21 MR. EDMUND: Third Degree.

22 MR. HOGAN: It is not a Third Degree Murder. A Third
23 Degree Murder would not be an appropriate instruction in this
24 case, but I think that Felony Murder may be.

25 THE COURT: If you want to give a Felony Murder, we are

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1 going to have to go back to the start.

2 MR. EDMUND: We'll have to go all the way back.

3 There is no question this is a First Degree Murder case.
4 The more we put in these instructions, the more confusing it
5 becomes.

6 THE COURT: If the State wants to proceed on Felony Murder,
7 I'll entertain your argument, but we have got to go back and
8 re-structure our Introduction to Murder.

9 What I am talking about is when you start defining
10 Murder in the First Degree and you look at your standard
11 instructions, mine begin: There are two ways in which a person
12 may be convicted of First Degree Murder. One is known as
13 Premeditated Murder and the other is known as Felony Murder
14 and then they start with the definition of Premeditated
15 Murder. I am on page sixty-three of my standard instructions.

16 MR. HOGAN: That's right. I think we need that.

17 THE COURT: Is the State going to urge a Felony Murder
18 instruction in this case?

19 MR. HOGAN: Yes, sir.

20 THE COURT: What says the Defense?

21 MR. EDMUND: I am not going to do back flips and object.
22 I think this is a First Degree Murder case either way it goes.
23 I just think that to give the instruction simply adds to the
24 length, and confusion of the jury instructions, sir.

25 THE COURT: It gives me a different pause, and I never got

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1 to this point before because I didn't think we needed to, but
2 I think this requires some careful analysis. Think with me
3 for a minute. When we discussed the Williams Rule, we discussed
4 the Williams Rule on the theory that we would limit the Jury
5 Instruction on the Williams Rule to Capital Sexual Battery.
6 We have done that. Now, if the State urges a Felony Murder
7 charge, you are, in fact, Williams Ruling the First Degree
8 Murder through the Felony Murder rule.

9 MR. HOGAN: I think I understand what you are saying,
10 Judge, but I don't think that is necessarily so, because there
11 is still a separate charge of Capital Sexual Battery and
12 certainly, you can commit Sexual Battery without committing
13 Murder. If you do commit Murder or death results... is a
14 result of that Sexual Battery, then that is Felony Murder, and
15 I am sure the Court is familiar with the case law that persons
16 indicted on First Degree Murder, Premeditated, we're certainly
17 free to argue the theory of Felony Murder, if there is an
18 accompanying felony.

19 THE COURT: There is no question about that.

20 MR. EDMUND: I think you are catch 22 now.

21 THE COURT: I do, too.

22 MR. HOGAN: Judge, I don't think so at all. Because
23 certainly they could still easily find... I don't know, maybe
24 not easily, but they could certainly do it. They could
25 find him guilty of Sexual Battery and not the Premeditated

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1 Murder.

2 MR. EDMUND: With the Court's instruction to the Jury
3 at this point, there is no way they are going to be able to
4 distinguish application of the Williams Rule to the Capital
5 Sexual Battery and not to the Felony Murder and I thought the
6 Court, when it gave the rule, it was certainly the tenor and
7 atmosphere of the courtroom at that time, that it would be only
8 on Premeditated First Degree Murder that we were going to
9 trial to this Jury and frankly, wondered at the time about
10 once the ruling was entered, then the Felony First Degree
11 Murder was out.

12 MR. HOGAN: Well, that was certainly never my understanding
13 and that was certainly never stated. Judge, this precludes us
14 from arguing anything but Premeditated Murder and it opens the
15 door for the Defense to argue that as absurd as it may be,
16 it opens the door for him to argue that choking was intentional
17 but the killing was not.

18 THE COURT: I frankly, this one issue is what I have
19 considered about the Williams Rule from the start. It has been
20 the sticky point in this case. You take your Capital Sexual
21 Battery and you Williams Rule it. We say just as to that
22 we Williams Rule these other events, and then you come over
23 here with your First Degree Premeditated Murder and you argue
24 Premeditated Murder and we have kept it as clean as we can.
25 You argue Felony Murder, now how can I tell the Jury to forget

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1 the Williams Rule with regard to Felony Murder? And the
2 underlying felony?

3 MR. HOGAN: You don't have to tell them that. You tell
4 them there is still an Indictment and an Information. If
5 the death... he could have still sexually attacked the other
6 girls or attempted sexual acts with the other girls, and that
7 is still proper Williams Rule to show the things that we
8 decided it shows: identity is one, to the Sexual Battery.
9 But in this case, the girl died and that should not preclude
10 us from arguing that she died as a result of a felony or she
11 died as a result of a premeditated act.

12 THE COURT: It does to me when you Williams Rule the
13 felony.

14 MR. HOGAN: Judge, how can you be precluded from some-
15 thing that we are provided for by case law, as we are provided
16 to be able to argue either theory.

17 THE COURT: I will make it as clear as I can. You
18 precluded yourself when you Williams Ruled the Capital Sexual
19 Battery.

20 MR. EDMUND: You precluded yourself when you filed the
21 Information and got them joined.

22 MR. HURM: By stipulation. Even with the overwhelming
23 evidence that the two were committed virtually simultaneously.
24 I mean the common sense and the evidence indicates that you
25 really can't separate these things out. I think even

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1 Mr. Edmund has conceded that they were both done by the same
2 person.

3 THE COURT: I understand everything, and the more you
4 argue that, the more you taint your murder case with the
5 Williams Rule.

6 I am telling you I think the Williams Rule is extremely
7 close in this case to begin with and always has been as to
8 whether or not it should have come in at all and when it
9 starts flowing over from the Capital Sexual Battery into the
10 Murder, for the simplest of all reasons, in all your Williams
11 Rule Evidence; not only did he not kill anybody, he didn't even
12 hurt anybody. Now, you are trying to flow that over to suggest
13 motive, intent ... the things we have talked about in the
14 killing.

15 MR. HOGAN: Well, I don't see it that way, Judge.
16 I don't see that we are trying to do that at all. What I
17 think we are trying to do is try to maintain a right that we
18 have under the Supreme Court case law to argue either theory
19 under the Indictment that we have.

20 THE COURT: I give you the ruling. You don't have a
21 right to argue Felony Murder in this case. You can't argue
22 it and I am not going to give an instruction on it. I'm
23 right or I'm wrong. That means we will not go back and change
24 our introduction to Murder in the First Degree. It is
25 appropriate. The Maximum and Minimum Penalties, we have a

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1 question mark about. We have reached the Lesser Included
2 Crimes or Attempts. Do you have any objection to that, Mr.
3 Edmund, as to the First Degree Murder?

4 Is that going to get later to the lesser included crimes
5 and attempts of Capital Sexual Battery after they define it?
6 I think the organization makes sense to me.

7 MR. EDMUND: Okay.

8 THE COURT: No objection to that one.

9 MR. EDMUND: No, sir.

10 THE COURT: Now, we reach Murder in the Second Degree.
11 Are these Category Ones? You always give them in Murder
12 cases.

13 MR. HOGAN: Yes, sir.

14 MR. EDMUND: No objection, Your Honor.

15 THE COURT: Alright. Manslaughter.

16 MR. EDMUND: The Manslaughter charge has been giving
17 me trouble for a long, long time. We have got the election
18 was it the act of an other, the procurement of another, or
19 culpable negligence of another. I don't think, Your Honor,
20 that simply the act of a person period that results in a
21 death is necessarily Manslaughter. The charge itself has
22 gotten bolloxed around when they tried to be too definitive
23 between the act procurement and culpable negligence. As you
24 recall, they used to run them all together and as a consequence,
25 culpable negligence definition was a requirement. As a

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1 consequence of running it all together, noone ever gave any
2 real thought to the simple act of someone that results in the
3 death of another would be Manslaughter, because everybody
4 approached Manslaughter as though it needed the culpable
5 negligence status in order to convict. This is really so
6 confusing as it is presently written now that the Jury is
7 not going to understand it.

8 Culpable negligence, if you go only the death was caused
9 by the act of James Duckett, is not a proper definition,
10 because nowhere is there anything saying anything about
11 culpable negligence in the definition of Manslaughter itself.

12 If you stopped with the phrase that the death was caused
13 by the act of James Aren Duckett, then that is an incorrect
14 statement of the law. It has got to be the ... I really
15 think that the act needs to come out of there; that we need
16 to go to the culpable negligence in order to achieve a
17 reasonable definition of Manslaughter as I understand it to be
18 over the years.

19 MR. HOGAN: Why don't we change number two to say: It
20 was caused by the culpable negligence.

21 MR. EDMUND: If that is changed, then I think that the
22 rest of the first paragraph, the large paragraph, is proper.
23 And I guess the balance of it then would be proper.

24 THE COURT: You would agree then if we changed paragraph
25 number two from "act" to "culpable negligence of".

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1 MR. EDMUND: Yes, sir.

2 THE COURT: Just culpable negligence. I think you are
3 right.

4 Strike the word "act" in paragraph two and insert
5 "culpable negligence".

6 Now, here is a little note to the Judge on page sixty-
7 eight of the standard instructions that has always confused
8 me. It says in the middle of that page, "In the event of any
9 re-instruction on Manslaughter, the instructions on
10 Justifiable and Excusable Homicide on page sixty-one should
11 be given at the same time." What are they talking about,
12 re-instruction?

13 MR. HURM: When the Jury comes back and wants to...

14 MR. EDMUND: When they come back and ask for the instruction
15 read again.

16 THE COURT: Otherwise we do not read it again at this
17 time. Do we all agree with that?

18 MR. EDMUND: I agree with that, Your Honor, and they
19 will have the written instructions so they won't be coming
20 back. We won't be facing that.

21 THE COURT: Good. Now we define Culpable Negligence.

22 MR. EDMUND: This is my recollection of culpable
23 negligence, Your Honor.

24 THE COURT: Alright. It looks appropriate to me. If
25 I hear no objection.

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1 MR. EDMUND: No objection.

2 THE COURT: Still, we will have to retype this, ma'am,
3 just to make that one change.

4 Now we find the charge for Capital Sexual Battery.

5 MR. HURM: Your Honor, do you want to put the Statement
6 of the Charge for Capital Sexual Battery here after we have
7 done the whole homicide instead of up at the beginning?

8 THE COURT: It might make better sense to do that, and
9 to move the Williams Rule here.

10 MR. HURM: With regard to multiple count informations.

11 THE COURT: I think that would make better sense. What
12 do you think, Mr. Edmund?

13 MR. EDMUND: I have no objection. I think it does.
14 Move the Statement of the Charge as to Capital Sexual Battery..

15 THE COURT: To right in front of the definition of it.
16 That makes better sense to me. It leaves me with a question
17 of where to put the Williams Rule instruction.

18 MR. HURM: How about after the...

19 THE COURT: Your first thought would be to move it also,
20 but then you start thinking, well, then we have read them the
21 whole First Degree Murder Instruction and never told them
22 the Williams Rule didn't apply to it.

23 MR. HURM: But they are really not starting to deliberate
24 until after they have heard it all. They will have heard it.

25 THE COURT: I would seem to me to move it along with the

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1 Statement of the Charge to the Capital Sexual Battery. What
2 do you say about it?

3 MR. EDMUND: I don't have any objection to that. I
4 think it is probably appropriate, Your Honor.

5 MR. HURM: Immediately after the Statement of the Charge?

6 THE COURT: Why not? It has got to fit somewhere and
7 why don't we get their attention immediately with it.
8 Then we define Capital Sexual Battery.

9 MR. HURM: I changed this, Your Honor, from the
10 standards. The standards give detailed instructions about
11 if you find the ages are different and so forth.

12 THE COURT: Let's look at it. What number is the
13 standard?

14 MR. HURM: It is on page 115.

15 It just seemed clear from the evidence that he is over
16 eighteen. I thought it might be an exercise in futility to
17 go through it.

18 It is a standard instruction. It is kind of like a
19 burglary instruction here in the sense that the age of the
20 defendant is set out as an enhancing factor, rather than an
21 element to be proved. What I did was make it an element and
22 then left out that enhancing material. Because that is not
23 really... you would agree, wouldn't you, Jack, that is not an
24 issue in this case? His age?

25 MR. EDMUND: Sir?

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1 MR. HURM: His age is not an issue in this case?

2 MR. EDMUND: No.

3 MR. HURM: He was over the age of eighteen.

4 THE COURT: I'll tell you one thing that I personally
5 like about this, but I am going to hear objections to it, but
6 the one thing this does, by redrafting it this way instead of
7 going with the standard, is it leaves out a lesser, which
8 would be Sexual Battery Upon a Person Less than Twelve by a
9 Person Under Eighteen, which technically we would have to put
10 in as a lesser if we used the standard instruction.

11 MR. HURM: Can that be supported factually? I mean...?

12 THE COURT: I don't think so.

13 MR. HURM: With him taking the stand...

14 MR. EDMUND: I have no objection to this instruction as
15 it is presently drawn?

16 THE COURT: Now we have Lesser Crimes or Attempts.
17 Look back to that one, I am sorry, Capital Sexual Battery.
18 Paragraph three. Last line. The word "the" before Teresa
19 Mae McAbee. The is a typo. It should come out.

20 Let's retype that one.

21 MR. HURM: Your Honor, could we just have a minute?

22 THE COURT: Yes.

23 MR. HURM: Could we flag this one until we find the
24 proper paragraph.

25 MR. HOGAN: I think paragraph D would have been the

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1 proper paragraph instead of paragraph C, which was chosen.

2 MR. HURM: The injury of the sexual organs. There is a
3 choice of C or D.

4 MR. HOGAN: I think D is the one that tracks the
5 information, rather than C.

6 THE COURT: The Statement of the Charge will tell us.
7 It tracks the Information exactly. It is supposed to.

8 MR. HOGAN: It should be paragraph D. Paragraph three
9 should be changed.

10 THE COURT: I agree with you that D is appropriate, but
11 when you look at your Statement of the Charge as compared
12 to D, there is still some variation.

13 MR. HURM: This is what the ... the Statement of the
14 Charge is what the Statute says and then the instructions
15 add.

16 THE COURT: The instruction doesn't seem in appropriate
17 to me if we just read the defendant injured the sexual organ
18 of the victim by name, in an attempt to commit an act upon
19 the victim in which the vagina of the victim would be
20 penetrated by an object. That really comports with the
21 Statement of the Charge unless I hear an objection.

22 MR. HURM: The Statute just says Sexual Battery. All it
23 is doing is giving a definition of Sexual Battery.

24 MR. HOGAN: It certainly tracks the Information.

25 THE COURT: What do you say to that, Mr. Edmund?

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1 MR. EDMUND: You mean D?

2 THE COURT: Yes, sir. I think, number one, I think D
3 is appropriate. They have typed C for their paragraph three
4 and I think that is wrong. It should be D, and you agree to
5 type D like I read it? That will have to be changed.

6 MR. EDMUND: So then we will leave off union, is that
7 right? So they don't come back and say what does that mean?

8 THE COURT: We don't need the definition of union, do
9 we?

10 MR. HOGAN: I don't think so.

11 THE COURT: Union isn't in D.

12 MR. HOGAN: Right.

13 THE COURT: We will strike that out, too.

14 MR. EDMUND: So they don't come back and ask.

15 THE COURT: Lesser Included Crimes or Attempts.

16 Suggested are three for this: Attempted Sexual Battery,
17 Battery, and Assault. Battery is the only Category One in
18 my lesser includeds and the attempts and assaults are
19 Category Twos.

20 MR. HOGAN: We would request that Assault not be given.

21 MR. EDMUND: You request it not be given?

22 MR. HOGAN: Yes, sir. I think we certainly have more
23 than a threat here.

24 MR. EDMUND: I always like to cut down the instructions
25 as much as possible. I have no objection to Assault not being

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1 given.

2 THE COURT: What about Attempted Sexual Battery?

3 MR. HOGAN: I would request that not be given, too,
4 Judge. It is an option.

5 THE COURT: It is according to my book. You all check
6 your books. These things seem to get outdated or undated
7 or something. Mine is current through May of '87.

8 MR. HOGAN: We have no evidence of an attempt. We only
9 have evidence that it was a completed act.

10 MR. EDMUND: I don't think the evidence indicates it and
11 I have no objection to it being stricken.

12 THE COURT: Alright, ladies on your lesser included
13 crimes, first of all, since we have to retype it, go to your
14 heading and strike the words "or attempts". We are not going
15 to have an attempt. Then we are going to strike, when you
16 get to the last line, "Attempted Sexual Battery", and we are
17 going to strike "Assault", so it would be colon and read
18 "Battery". We have to give the Battery instruction.

19 MR. HURM: We need to change the tense, too, so it
20 would be lesser crime instead of crimes.

21 THE COURT: Yes.

22 MR. HOGAN: When there is a lesser included crime?

23 MR. HURM: Crime is.

24 THE COURT: In the last full sentence, it is agreed
25 the lesser crime indicated in the definition of Capital Sexual

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1 Battery is colon Battery. That is all we need isn't it?

2 Alright, we are all agreed on that one? We will remove
3 our Attempted Sexual Battery. Leave Battery.

4 No objection to the Battery instruction?

5 MR. EDMUND: No, sir, I am not going to object to it.

6 MR. HOGAN: Is that the way it reads?

7 MR. EDMUND: Well, what we have got here is we have got
8 Sexual Battery without the definition of Battery itself and
9 as a consequence the old Battery instruction, which normally
10 would follow Aggravated Battery would not need the Battery
11 definition, but this says bodily harm and I think that is
12 sufficient. I do not object to it in its present form and do
13 not request that you give the old definition of it, of
14 intentional touching, etc. etc. etc. Alright?

15 THE COURT: That is easier. Take Assault out.
16 Plea of Not Guilty, Reasonable Doubt and Burden of Proof.

17 Reasonable Doubt?

18 MR. EDMUND: Yes, sir, no objection.

19 MR. HOGAN: There is one possible problem with that one.
20 It says the presumption stays with him through the Information.
21 Do you want to put Indictment and Information?

22 THE COURT: We should say that, shouldn't we? On line
23 three. The presumption stays with the Defendant as to each
24 material allegation in the Indictment or Information, so we
25 can keep them separate?

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1 MR. HOGAN: Yes, sir.

2 THE COURT: Any objection to that, Mr. Edmund?

3 MR. EDMUND: No, sir.

4 THE COURT: Now Single Defendant, Multiple Counts or
5 Informations. Any objection to that?

6 MR. EDMUND: No objection.

7 THE COURT: Defendant's Statement. We certainly have
8 those. No problems?

9 MR. EDMUND: No, sir.

10 THE COURT: Weighing the Evidence. We always have to
11 wrestle with which of the last five do we give. I believe the
12 first five are standard, but let's start by checking them to
13 make sure that they are correct. They look alright to me.
14 At first glance, it strikes me that all ten of these ought to
15 stay in this case. I think they are all applicable.

16 If you agree, they all stay?

17 MR. EDMUND: I agree.

18 MR. HOGAN: Your Honor, if we could just have a minute.

19 I don't think we had anybody that received any money.

20 THE COURT: Preferred treatment or other benefit.

21 Mr. Edmund has suggested or attempted to suggest that Ms. Gurley
22 did. You may argue whether that is fruitful or not.

23 MR. HURM: Suggestion and evidence is two different things,
24 Judge. There is no evidence of that.

25 THE COURT: I think we would be foolish to leave that out

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1 in a case of this magnitude.

2 MR. HURM: How about seven? Pressure or threat?

3 THE COURT: I think Mr. Duckett's statements are going
4 to be argued by Mr. King were pressured or threatened. I
5 am going to leave them all in, so we take out the second
6 option of Weighing the Evidence. The first option has all
7 ten with the last paragraph.

8 We have an expert witness instruction.

9 MR. EDMUND: It doesn't say anything about him being from
10 out of town with a briefcase.

11 THE COURT: They left that one out.

12 MR. HOGAN: We will include that in if you will put in
13 there anyone that has less than five years experience shouldn't
14 be believed. We would be glad to do that.

15 THE COURT: Any objection to the Expert Witness?

16 MR. EDMUND: No, sir.

17 THE COURT: Defendant Testifying, of course, is
18 appropriate.

19 MR. EDMUND: Yes, sir, no objection.

20 THE COURT: Any objection to Rules of Deliberation?
21 I have a problem with this one.

22 MR. HURM: Number five.

23 THE COURT: Number five. This is what we raised last
24 week.. I think we need a significant amendment to number five.
25 Let me look at the standards in a capital case. In the front

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1 of my jury instructions there is a whole model of capital case
2 and it seems to me when I received that Eleventh Circuit
3 opinion, I went back and compared it to the model for the
4 capital case and made a big red note around that one right
5 there. Yes. In my book, it is of all strange letters,
6 XLVIII. It is in the front. They did not change number five
7 at all. My version shows October 1985 in the lower left,
8 shows that number five has never been revised and I think we
9 need a revision in number five, based upon that case and I
10 think that that is fundamental error that couldn't be cured
11 even if Mr. Edmund didn't object.

12 Now, let me give you some thoughts. This is a strange
13 case. It seems to me this is applicable with regard to the
14 Capital Sexual Battery. That is just, we give it if we were
15 just trying the Capital Sexual Battery case. Perhaps five
16 could read: Your duty as to the charge of Capital Sexual
17 Battery is to determine if the Defendant is Guilty or Not
18 Guilty in accord with the law and it is the Judge's job to
19 determine what the proper sentence would be as to that charge,
20 if the Defendant is guilty. So that is number five. Then I
21 think we need to tailor a number six that goes to the
22 penalty instructions that we give. If you look at the penalty
23 instructions in the model case, they read, for example:
24 Final decision as to what punishment shall be imposed rests
25 solely with the Judge. The law requires you to render an

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1 advisory sentence as to what punishment should be imposed.
2 It seems to be we could pick that up and with a little work on
3 it, forced a number six or come up with a number six. Six
4 could read: Your duty as to the First Degree Murder as to the
5 Defendant, if the Defendant is guilty or not guilty in
6 accord with the law. That would be fine. Then we pick this
7 right up from here. Final decision as to what punishment
8 shall be imposed rests solely on the Judge. However, you are
9 required to render an advisory opinion. That is on L of the
10 standard jury instructions.

11 In the second paragraph under Penalty Proceedings,
12 Capital Cases, Preliminary Instructions.

13 MR. HOGAN: That is in the hypothetical case?

14 THE COURT: Yes. It is not that whole instruction, but
15 see where it starts on the third line of the second paragraph?
16 It starts with final decision?

17 MR. HOGAN: Okay.

18 THE COURT: What do you think about that as a general
19 principle, Mr. Edmund? We can play with the words all we want.

20 MR. EDMUND: Yeah, Judge, I know we have to be this careful
21 with them. I think the way you outlined it is the way that
22 it would be sufficiently careful and it doesn't say anything
23 that isn't correct.

24 THE COURT: Alright, let's start slowly, because these
25 ladies down here have to get it. Take our number five as it is

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1 right now and it reads: Your duty... insert after duty...
2 as to the charge of Capital Sexual Battery and then it just
3 reads on... is to determine if the Defendant is guilty or
4 not guilty in accord with the law. It is the Judge's job...
5 insert as to that charge... to determine what a proper sentence
6 would be if the Defendant is guilty. Alright, that would give
7 us five.

8 Then we are going to insert six and before we even do it,
9 change your numbers and make six seven and seven eight and
10 eight nine.

11 Alright, now, let's insert six. Let me go slowly.
12 Your duty as to the charge of First Degree Murder is to
13 determine ... etcetera. It is the rest of the sentence.
14 Is to determine if the Defendant is guilty or not guilty in
15 accord with the law. Then stop right there. Turn to page L
16 of your standard jury instructions and insert that whole
17 paragraph that begins, actually it is the second sentence of
18 the paragraph that begins: Final decision as to what
19 punishment shall be imposed rests solely with the Judge of this
20 Court. However, the law requires that you, the Jury, render
21 to the Court an advisory sentence as to what punishment should
22 be imposed upon the Defendant. That whole paragraph, except
23 for the first sentence.

24 I gave this language thought in light of that decision
25 and determined this is appropriate. This isn't stressing that

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1 their advisory opinion isn't important. Are we together
2 on that?

3 MR. EDMUND: Ahum. (Affirmative response)

4 THE COURT: Everybody agree?

5 MR. EDMUND: And we have already told them the maximum
6 and minimum penalties, so they know where we go after that.

7 MR. HOGAN: That's right. That should be the same as
8 on page seven... Should we throw in there the final decision
9 as to what punishment shall be imposed upon a conviction of
10 First Degree Murder rests solely with the Judge of this
11 Court?

12 THE COURT: That doesn't bother me. You want to put that
13 in?

14 MR. HURM: It is outlining again it is just ...

15 THE COURT: Let's put that in. That's fine.

16 MR. HURM: The paragraph on page seventy-seven.

17 THE COURT: We can look at it either way. It is again
18 on seventy-seven. It is numbered two. The first sentence is
19 going to be left out.

20 Any comments or objections to the rest of the Rules of
21 Deliberation?

22 MR. EDMUND: No, sir.

23 THE COURT: I have one. Bear with me and I hope I am
24 not making mountains out of molehills. Go to our renumbered
25 seven. Which used to be six. Okay? Perhaps we should say

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1 "Whatever verdict you render as to guilt or innocence must be
2 unanimous." Otherwise, if we get to the penalty phase, we do
3 not require unanimous verdict there. It wouldn't bother me,
4 except we have two cases inter-related here. Anybody have
5 trouble with what I am saying?

6 MR. EDMUND: I got trouble. Say it again, please, sir.

7 THE COURT: Number seven now reads: Whatever verdict
8 you render must be unanimous. That is, each juror must agree
9 to the same verdict. That is not going to be true if we get
10 to the penalty phase of the capital case.

11 MR. EDMUND: And what was your ...?

12 THE COURT: Whatever verdict you render as to guilt or
13 innocence must be unanimous. Alright.

14 MR. EDMUND: Alright, sir.

15 THE COURT: Any problem with that anybody? And it is
16 going to come up several times. After the word "render"
17 as to guilt or innocence. Okay? No objections to that.

18 MR. EDMUND: No, sir.

19 THE COURT: I have reached Cautionary Instruction.

20 MR. EDMUND: No objection.

21 THE COURT: Okay. I have got typos in my Venue
22 instruction. Some wierd little things after crime and in
23 was. Presuming those are retyped.

24 Any problem with that after retyping it?

25 MR. EDMUND: No, sir.

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1 THE COURT: Now, bear with me here. I always shuffle
2 the jury instructions here, just to move this little
3 instruction on the Verdict and the Verdict form ahead of the
4 Submitting Case to the Jury.

5 MR. EDMUND: I like that.

6 THE COURT: If you do it otherwise, it is backwards
7 and you will forget it. I forgot it once and always changed
8 it since then. So we move the little Verdict instruction
9 up. Not the Verdict Form, but the one that reads Verdict
10 on the top.

11 Alright, I would suggest a change here. I would say
12 "Only one verdict may be returned as to each crime charged."

13 MR. EDMUND: Yes, sir.

14 THE COURT: Again, I would put in "This verdict must
15 be unanimous as to guilt or innocence."

16 MR. EDMUND: How about "each verdict"?

17 THE COURT: Yes. Each verdict must be unanimous as to
18 guilt or innocence.

19 That is all of you must agree to the same verdict.
20 Then it would be "verdicts" in plural, must be in writing and
21 for your convenience, the necessary forms of verdict have
22 been prepared for you. Does that sound right?

23 MR. EDMUND: Or you could just change the to each and
24 the rest of it would read okay.

25 THE COURT: That is true. Either way.

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1 MR. EDMUND: Plural verdicts.

2 THE COURT: Alright, now we have the verdict form itself
3 as to Indictment. Any objection to that?

4 MR. EDMUND: No, sir.

5 MS. ALBON: Do you want to add the charge on the bottom
6 of the case number?

7 THE COURT: Yes, we always do. It isn't on there.
8 Yeah, we should put it in. We always do. Just put the
9 charge in.

10 And then the verdict form as to the Information. We
11 know we are going to change it. We are going to take out
12 B. We are going to take out D. We are going to re-letter
13 C as B. And E as C. And put the charge in the top.

14 Any objection?

15 MR. EDMUND: No, sir.

16 THE COURT: Then we have the Submitting Case to the
17 Jury instruction. Any objection to it?

18 MR. EDMUND: No, sir.

19 THE COURT: Now we have the Defense proposed Circumstantial
20 Evidence instruction. This is the old standard circumstantial
21 instruction, correct?

22 MR. EDMUND: It is, Your Honor, with not any changes
23 that I am aware of.

24 THE COURT: Alright.

25 MR. HOGAN: We object to it, Judge, on the basis of the

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1 Supreme Court found it appropriate to remove it, the old
2 instruction, from the standard instructions and makes no
3 exception to cases that where the prosecution introduces
4 circumstantial evidence. I believe it is covered adequately.

5 MR. EDMUND: I believe it is covered adequately where?

6 MR. HOGAN: In the standard instructions.

7 MR. EDMUND: Where?

8 MR. HOGAN: First of all, I don't try to second guess
9 the Supreme Court, but it is in here.

10 THE COURT: Where is the place in the book, if you
11 recall, where that used to be?

12 MR. EDMUND: I don't know, Judge.

13 MR. HOGAN: It says in the index, "No charge given".

14 THE COURT: I just found that. It seems to me they
15 have some minor discussion in the standard instructions as
16 to why they didn't give it. Maybe I am dreaming that.

17 Alright, what is your argument, Mr. Edmund?

18 MR. EDMUND: Three fold, if it please, Your Honor.
19 First, that in capital cases the premeditation is determined
20 from the jury's evaluation of the "circumstances", and I
21 suggest, Your Honor, that in all capital cases, the circum-
22 stantial evidence instruction is proper and necessary. It
23 could be in a capital case limited to as far as argument is
24 concerned, the circumstances upon which the determination of
25 premeditation could be made by the Jury as opposed to the case

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1 as a whole, that is number one.

2 Number two, there is an obligation upon the Trial Court
3 to properly instruct the jury in each and every case before
4 the Court based upon the evidence of that particular case
5 before the Court. Now, Your Honor, in denying the Motion
6 for Directed Judgment of Acquittal, made a factual finding
7 with regard to reasonable hypothesis or theories and you
8 concluded with the statement that, "I find that to be ...
9 I don't want to say that... "I deny your Motion and find
10 a Jury question." ,at the conclusion of your denial where you
11 indicated that you were taking the circumstances presented
12 by the State in the light most favorable to the State and as
13 a whole there is at this time, in the mind of the Court, no
14 reasonable hypothesis of innocence. I deny your Motion and
15 find a Jury question.

16 I think that the Court recognized in that statement
17 the totality of the circumstantial evidence to this case
18 and coupled with... coupled with it in your mind, yes, it is
19 a circumstantial evidence case and yes, it is a Jury question
20 as to whether it is a circumstantial evidence case and yes,
21 the Jury needs an instruction on circumstantial evidence.

22 Now, I think this is one of those rare cases if it please
23 the Court, where not only can each of the factual situations
24 withstand the circumstantial evidence argument, but that the
25 case in its totality can stand the circumstantial evidence

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1 argument. So on every corner of this case, there is a
2 requirement that in order to effect the proper outcome of
3 this trial, and I think we do seek justice that the Jury
4 must be instructed on the circumstantial evidence law in
5 general in the State of Florida. Notwithstanding the Supreme
6 Court withdrew it. It only withdrew it as a standard
7 instruction and no instruction to the Court not to give a
8 jury instruction. Every day courts give instructions that are
9 not included in the standard instructions that are applicable
10 to the case before them at the time.

11 MR. HOGAN: Judge, I think they withdrew it because it
12 is confusing and the standard instructions talk about evidence,
13 how to consider evidence, how to weigh evidence, and what
14 evidence to consider and not to consider and how they are
15 evaluated. There is no place in this instruction or anywhere
16 else that I am aware of that says that these instructions
17 don't adequately cover cases of great magnitude or First
18 Degree Murder cases and I think these are the cases that we
19 certainly plan to have the Jury hear. We argued our case
20 and planned our case based on the law as we understand it and
21 know it and spelled out in the jury instructions, and I don't
22 think that the Supreme Court would have removed that
23 instruction had it felt other than I feel, and I think that
24 when they give the instruction on Weighing the Evidence, they
25 certainly cover all the different aspects of how to view the

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1 evidence from the witness stand and then also other places
2 in the instructions, and I don't think it is necessary and
3 I think it is confusing.

4 THE COURT: Who has for me the Supreme Court's ... there
5 is somewhere a recitation that the Supreme Court made about
6 why they withdrew that instruction.

7 MR. HURM: Your Honor, on page XII, twelve, Judge
8 Atkins concurring. I have to look earlier but he says,
9 "I dissent to the proposed change of instructions of reason-
10 able doubt. The elimination instruction of circumstantial
11 evidence, except at the whim of the trial Judge."

12 MR. EDMUND: Except what?

13 MR. HURM: At the whim of the Trial Judge.
14 That is the dissent. I need to find... here it is...
15 this is on page VI, six. "We note the criminal law
16 section of Florida Bar approved the instruction as proposed
17 except for the elimination of the instruction on circumstantial
18 evidence. We find that circumstantial evidence instruction
19 is unnecessary, especially the treatment afforded circumstantial
20 evidence has previously been eliminated in our civil
21 standard jury instructions of the Federal Court, cited at
22 348 US 121, Criminal Law Section, criticism of this deletion
23 rests upon the assumption that an instruction on reasonable
24 doubt is inadequate and that an accompanying instruction of
25 circumstantial evidence is necessary, the U. S. Supreme Court

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1 has not only rejected this view, but has gone even further
2 and they cite to the Court saying that the instruction on
3 circumstantial evidence, where adequate instructions are
4 given for reasonable doubt, an additional instruction of
5 circumstantial evidence is confusing and incorrect.
6 The elimination of the current standard instruction of
7 circumstantial evidence did not totally prohibit such
8 instruction if the Trial Judge, in his discretion feels that
9 such is necessary under the peculiar facts of the specific
10 case. However, giving of the instruction of reasonable
11 doubt, burden of proof in our opinion, renders an instruction
12 of circumstantial evidence unnecessary.

13 MR. EDMUND: I am not going to remove from the Court
14 that jurisdiction to give the proper instruction.

15 MR. HURM: Your Honor, that is just for cite purposes.
16 That was the opinion filed April 16, 1981, for the record,
17 numbers 57,734 and 58,799, Order and Opinion of the Supreme
18 Court of Florida, Adopted Florida Standard Jury Instructions
19 in Criminal Cases.

20 MR. HOGAN: I think what they were trying to say, Judge,
21 is the instructions try to encompass and get across to the
22 Jury the fact that circumstantial evidence can and is good
23 evidence and when you allow a special instruction on circum-
24 stantial evidence, it makes it suspect in and of itself.
25 I don't think that is the law. I don't think that is what the

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1 Supreme Court thinks and has said, and I don't think that is
2 the instruction that the Jury ought to receive.

3 MR. EDMUND: If there was ever a case to which this is
4 directly applicable, it is this case. A well connected chain
5 of circumstances is as conclusive proving a fact as positive
6 evidence, and we are talking about the single fact that we
7 proved them, and the Supreme Court is not going to withhold
8 from the Trial Judge what is really an obligation to give
9 an instruction that is appropriate to the facts of each
10 case before the Court at that time.

11 MR. HOGAN: The Supreme Court said that they left an
12 option, but that they felt it was unnecessary.
13 Our position is that it is unnecessary.

14 MR. HURM: And confusing.

15 MR. EDMUND: It is certainly not confusing and it is
16 more than necessary, if it please the Court, in light of
17 all of the reference there has been to circumstantial
18 evidence. Circumstantial evidence is a unique type of
19 animal. It, by its very nature, is suspect. By the fact
20 that it is suspect, it was determined at some point in time
21 that if there were two reasonable theories to it, then they
22 had better be examined very closely. That is about what it
23 amounts to.

24 MR. HOGAN: I think both sides are free to argue the
25 circumstantial nature of the case, Judge. I don't think

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1 an instruction would lend anything to the Jury to aid them
2 in making their decision.

3 THE COURT: Bear with me just a few minutes.

4 MR. EDMUND: Could I step out and get some water, please?

5 THE COURT: Yes, sir.

6 (WHEREUPON, MR. EDMUND LEAVES CHAMBERS MOMENTARILY)

7 THE COURT: I am going to give you from now until
8 one o'clock to do any research you want to do on the issue
9 of giving the circumstantial evidence instruction.

10 It is conceivable there is an out-of-state case; that
11 there is a case somewhere that would lead some guidance.
12 I understand both your arguments. I know that they took it
13 out and there are statements about it being confusing. There
14 is also a remark in there that the Trial Judge can give it
15 in an appropriate circumstance. It is not a never can be
16 given. Surely this is the ultimate circumstantial evidence
17 case, with the ultimate potential penalty.

18 If you all want to make an attempt to find some case
19 somewhere and what I am saying is perhaps in some other state
20 their Supreme Court withdrew a circumstantial evidence
21 instruction and then decided in a case like this it should be
22 given. That is the proverbial needle in a haystack, but if
23 we can find anything to help me, I'll ask you to try to do
24 that between now and one.

25 Let's talk briefly about ... I am going to reserve ruling

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1 on that one.

2 Let's talk briefly about how we might propose to proceed.
3 These are called thoughts. I suspect that given our time
4 frame, we will have done our closing arguments and instructed
5 the Jury in the four o'clock range. Somewhere around four
6 o'clock this afternoon.

7 Let me tell you that what I intend to do is submit the
8 case to the Jury at that time. Whatever time it is, as long
9 as it is in that ballpark, right around four o'clock, and
10 let them deliberate until about 6:00 o'clock and then I will
11 send them to be sequestered and bring them back at nine
12 o'clock in the morning. We will open court just to have them
13 come out and continue their deliberations. That is a mere
14 formality, but I think we ought to do that, with the Defendant
15 present.

16 Then we will await their verdict. If they convict the
17 Defendant of First Degree Murder, I intend to go to the
18 penalty phase immediately unless I hear strong objections.

19 MR. HOGAN: Are we to the thought part yet? Is it
20 etched in stone?

21 THE COURT: No, nothing is etched in stone for sure.
22 Go ahead.

23 MR. HOGAN: My only... the one thing I would request
24 is rather than I think I understand what you are saying,
25 if you don't reach a verdict, you are going to be sequestered.

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1 why can't we tell them your hotel rooms are already... you
2 are checked in. They are there. Work as long as you want
3 to. If you don't reach a verdict, that is where you are
4 going to stay. I really don't see that that... how that
5 poses much of a problem.

6 THE COURT: I just beg to differ with you. I see that
7 as a potential significant problem. I am not going to do
8 that. I am going to stop at six o'clock. Now, what say you
9 about going into the penalty phase immediately if he is
10 convicted of First Degree Murder?

11 MR. EDMUND: By immediately, you would mean if they
12 would convict this afternoon, we would go tomorrow morning
13 and give me some time?

14 THE COURT: Oh, yes.

15 MR. EDMUND: Then I have no problem with that.

16 THE COURT: Let's assume we will be more likely to get
17 a verdict on the time frame I have announced tomorrow.
18 I would want both sides to be ready to go thereafter, right
19 into it.

20 Then, let's... I am just assuming the worst, and I know
21 that I won't be misunderstood on the record...let's assume
22 that the Jury recommends death. My thoughts then would be
23 after a full blown penalty phase, to order a PSI, postpone
24 sentencing for a period of thirty to sixty days, because it
25 takes that long to do a PSI. Then come back for a sentencing

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1 hearing. That is as to the Capital Sexual Battery and as to
2 the First Degree. I realize that my hands are technically
3 or not technically, are totally tied as to Capital Sexual
4 Battery. There is no question as to what you can give there.
5 It is what it is. There is a question and an interesting
6 one as I pondered it through, just trying to think things
7 through to their logical conclusion, whether that would be
8 given consecutively or concurrently to whatever else might
9 be imposed and what those reasons might be. I suggest
10 everybody to give some thought to that.

11 (1) We have the new Carawan decision with regard to
12 whether or not it could be imposed consecutively.

13 (2) Would that ... does it make any difference? I
14 suggest to you in my mind it could make some difference. It
15 sounds absurd, but I will share my thoughts with you on that.
16 This isn't presuming anything. This is thinking ahead, alright?

17 Presume the Jury recommended Death and the Court imposed
18 Death. It would seem absurd to then impose life with the
19 minimum mandatory twenty-five consecutive to a death penalty.
20 That is a logical absurdity. Except and unless some Appellate
21 Court reversed the death penalty and sent it back life with
22 a minimum mandatory twenty-five and then they would be
23 stacked. Otherwise, they would be concurrent and that makes
24 a substantial amount of difference, I think. I think you are
25 going to need to look at whether or not they even can be

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1 stacked legally, and then of course, you would both argue
2 to me whether they should be stacked. If we ever get that
3 far, alright?

4 It comes up, I guess, in a sense, less illogically if
5 the Jury recommends life and I give him life on a First
6 Degree Murder; then it comes up even as a matter of logic,
7 is it life on the Capital Sexual Battery consecutive or
8 concurrent? Whether or not that is permissible.

9 That is how far I have tried to think it through and
10 I don't have any answers. I am just raising questions for
11 you all to consider.

12 Alright. I think we know where we are going. I'll be
13 back at one o'clock. Oh, I do anticipate one more thing.
14 The way we will probably go, and let's talk about this on
15 the record real quickly. I am sorry. The State has
16 indicated they want two hours. I gave them an hour and a
17 half. They are first and last. We all agree on that, do
18 we not?

19 MR. EDMUND: Yes, sir.

20 THE COURT: Are we going to take a shot at going straight
21 through closing arguments with no jury break? We are talking
22 about a total of two and a half hours?

23 MR. EDMUND: Not after lunch, Judge.

24 THE COURT: Where would we be appropriately break then.
25 That is my question.

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1 MR. EDMUND: I would request that you break after the
2 State's initial argument. Being sandwiched is bad enough.
3 Taking a shot and then taking a break and people are
4 uncomfortable is bad enough and then I think that people are
5 going to be uncomfortable, bathroom etcetera, take a break
6 after the State finishes its first and then go on through.
7 If they want to break again after my argument, I don't
8 quarrel there, except I do feel like pushing me into that
9 second x amount of time is (1) gives the State a triple
10 barrel as opposed to a double barrel shot at us.

11 THE COURT: Why don't we do this. This sounds as fair
12 as I can imagine it. Take a break after the State's first
13 shot; take a break after the Defense; and during that
14 second break, we can firm up these jury instructions, and then
15 we can go to the State's second shot and right into jury
16 instructions. How about that?

17 MR. EDMUND: That gives everybody a break both ways.
18 No problem with that.

19 (WHEREUPON, WE ARE IN RECESS AS TO THE CHARGE CONFERENCE
20 IN CHAMBERS)

21 (WHEREUPON, COURT CONVENES IN CHAMBERS AT 1:30 P. M.)

22 THE COURT: Alright, do we have any more argument on the
23 question of whether or not the Court is going to give a
24 circumstantial evidence instruction?

25 MR. EDMUND: No, sir.

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1 MR. HURM: Just for the record, Your Honor, after looking
2 through the annotation in ALR4th, what I gathered from
3 scanning through that is the trend seems to be in favor of
4 no necessity of giving the instruction on circumstantial
5 evidence cases. It is a split of authority concededly
6 into several different camps, depending on the circumstances.
7 Whether the entire case is based on circumstantial evidence;
8 whether it is merely corroborative; whether there is any
9 direct evidence at all; whether there is no reasonable
10 hypothesis of innocence from the evidence; and our argument
11 would be that it should not be given in this case, because
12 it is adequately covered by the reasonable doubt instruction,
13 which is the standard by which all the evidence should be
14 judged. To give a separate instruction would only serve to
15 give the jury an impression that there is a separate burden
16 on the State with regards to circumstantial evidence and
17 would tend to confuse them, and also, we would argue that
18 the evidence in this case has shown absolutely no reasonable
19 hypothesis of innocence to explain the evidence. There is
20 no explanation other than guilt of the Defendant himself,
21 when he was on the stand, offered no explanation of some of
22 the key points of the evidence against him; that being the
23 tire track and the fingerprints. He just said he didn't know
24 how they got there and offered no explanation. Based on that,
25 we would argue that the circumstantial evidence should be

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1 judged by the same standard as is all other evidence and
2 it is adequately instructed in the reasonable doubt
3 instruction and we would oppose the giving of the circum-
4 stantial evidence instruction.

5 THE COURT: Mr. Edmund, you haven't had a chance to
6 make a record of it, too.

7 MR. EDMUND: If it please, Your Honor, I would cite
8 to the Court the order and opinion of the Supreme Court
9 adopted Florida Standard Jury Instructions, 57,734 to
10 58,799, and the opinion filed April 16, 1981, under the
11 heading: Criminal Instructions, Generally".

12 The Court held the elimination of the current standard
13 instruction on circumstantial evidence does not totally
14 prohibit such an instruction if a Trial Judge, in his or
15 her discretion feels that such is necessary under the
16 peculiar facts in this specific case.

17 I suggest, Your Honor, that there could not be a case
18 with a more peculiar set of facts that are directly applicable
19 to the instruction on circumstantial evidence, and I suggest
20 to the Court that it is not up to the Defendant on the witness
21 stand to comment on conflicts in evidence, comment on
22 reasonable hypothesis of guilt or innocence, but that is
23 based upon the facts and the Jury's consideration of those
24 facts and a number of those matters were argued, Your Honor,
25 at the time of the Motion for Directed Judgment of Acquittal.

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1 I don't think I will belabor Your Honor. We have talked
2 and discussed it.

3 THE COURT: My decision is over objection of the State,
4 I am going to give the circumstantial evidence instruction
5 as requested by counsel for the Defendant.

6 My specific reasoning for purposes of the record is as
7 follows: I think the law in Florida is clear that as a
8 minority state and out of step with the Federal System
9 entirely, the Trial Judge is required, at the close of the
10 State's case, to direct a verdict of innocence in a
11 circumstantial evidence case if there is a reasonable
12 hypothesis of innocence.

13 I think that when I Ruled that there was, as to me,
14 the Court, no reasonable hypothesis of innocence, and ruled
15 that that was a Jury question, then I ruled that the Jury
16 should follow the same standards that I follow. The only
17 way we can apprise the Jury of that standard is to read them
18 the circumstantial evidence instruction which tells them what
19 that standard is. It is found nowhere else in the Standard
20 Florida Jury Instructions.

21 I am aware that the Supreme Court withdrew the Circumstantial
22 Evidence instruction from the Standard Jury Instructions
23 several years ago. They certainly did not substitute in
24 its place a note to the Judge that you should never give a
25 circumstantial evidence instruction. They left it up to the

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1 Judge to give in certain appropriate cases. In my opinion,
2 if ever there was a certain appropriate case, it is this
3 case. In my opinion, the entire evidence is circumstantial.
4 In my opinion, my Williams Rule decision as I have said
5 previously was a close call. It is obvious the Defendant
6 faces the ultimate penalty and I think out of the sense of
7 fairness, I will give the Defense' circumstantial evidence
8 instruction, over noted objections of the State.

9 We have more jury instructions to look at, but that is
10 a matter of cleaning up typos and we can do that during one
11 of the two breaks or both of them.

12 Okay, see you downstairs in just a minute. Are you all
13 both prepared on your final argument?

14 MR. HOGAN: Yes, sir.

15 MR. EDMUND: Yes, Your Honor.

16 (WHEREUPON, COURT RECONVENES IN COURTROOM AT 2:02 P. M.)

17 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

18 THE COURT: We had one more matter come to our attention.
19 My bailiffs get a gold star for this one. Tomorrow is
20 school bond vote day. Everybody goes to vote on multi million
21 dollar school bond here. I have got the Court Administrator
22 checking to see if we can get these jurors absentee ballots
23 or arrange for them to vote in the courthouse. They do vote
24 in the precinct downstairs. If we can't solve this problem
25 between now and second break, we may not deliberate today.

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1 You understand the nightmare we would create if we
2 begin deliberations. Every single one of those fourteen
3 jurors that wants to vote would have to be taken to their
4 precinct and I don't want to do that.

5 Our planning, just in terms of when we start deliberations
6 is up in the air until I get an answer back from the Supervisor.

7 MR. HURM: I would certainly think that they will allow
8 them to vote absentee.

9 THE COURT: I wanted to make you aware of that. That is
10 what we have been working on the last few minutes.

11 (WHEREUPON, BENCH CONFERENCE ENDS)

12 (WHEREUPON, DEFENDANT ENTERS COURTROOM AND IS PRESENT
13 WITH HIS COUNSEL, MR. EDMUND)

14 THE COURT: Gentlemen, do we have anything further
15 before we bring the Jury back?

16 MR. EDMUND: No, Your Honor.

17 THE COURT: Counsel prepared for closing arguments?

18 MR. HURM: The State is prepared, Your Honor.

19 THE COURT: I think that we have at least understood
20 that the limitations are an hour and a half per side total.
21 The State has first and last.

22 MR. HURM: Your Honor, I will take the first and Mr. Hogan
23 the last. I anticipate taking thirty minutes and I would
24 like a five minute warning before that time has elapsed, if
25 the Court would be so kind.

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1 THE COURT: Any objection to that procedure, Mr. Edmund?

2 MR. EDMUND: No, Your Honor.

3 THE COURT: Alright, including their splitting their
4 argument between attorneys?

5 MR. EDMUND: Yes, sir.

6 THE COURT: Alright, bring the Jury back, please.

7 (WHEREUPON, JURY ENTERS COURTROOM AT 2:05 P. M.)

8 THE COURT: Welcome back, folks. Be seated, please.
9 We had a few additional matters comes up that we had to
10 attend to. I am sorry that we are starting back so late.
11 Can each of you assure us that you did abide by our
12 admonitions over the lunch hour?

13 JURORS: Yes, sir.

14 THE COURT: Ladies and gentlemen, counsel at this time
15 will make their final arguments to you. The attorneys, in
16 making these arguments, will be commenting upon the testimony
17 you have heard and the evidence that has been presented in
18 this case. They, as you, will be recalling the evidence
19 that has been presented. They will not intentionally try
20 to mislead you. However, if their recollection of the
21 evidence differs from what your recollection is, you must
22 follow your own recollection. These final arguments are not
23 to be considered by you as evidence in this case or
24 instructions on the law. They are, however, intended to help
25 you better understand the contentions of each side and the

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1 issues you are to decide. You should give both sides your
2 close attention.

3 Mr. Hurm?

4 CLOSING ARGUMENT

5 BY MR. HURM:

6 If it please the Court, Mr. Edmund.

7 Ladies and gentlemen, it is appropriate and fitting
8 that this trial come to its close and you begin your
9 deliberations on today, the day after Mother's Day. It was
10 the day after Mother's Day, one year ago, Teresa McAbee
11 went to the Circle K to buy a pencil. It was that Monday
12 night, the day after Mother's Day, when Teresa didn't return
13 home. We saw Teresa's mother on the stand. You heard
14 they were close and this is the photograph that was given to the
15 police officer, a police officer when she came up missing.
16 And yet Teresa never returned to her mother that day.

17 The next thing her mother found out about Teresa was
18 she had been found lying in a lake, strangled, drowned,
19 after being lured by this man, a man who wore the badge and
20 uniform of the Mascotte Police Department. This man who used
21 the badge of his authority to lure that little girl into his
22 police car for sexual purposes; who took her down to that
23 lake; who molested her; sexually assaulted her; and then
24 strangled and killed her.

25 It is fitting that we should finally finish this today.

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1 It all comes down to you. It all comes down to this.

2 Two weeks, many hours spent in this courtroom; nearly fifty
3 witnesses have testified; over a hundred separate exhibits
4 have been introduced into evidence; some of those consisting
5 of many pieces of evidence. Probably a hundred and fifty or
6 possibly two hundred separate pieces of evidence have been
7 introduced for your consideration.

8 In a few moments you will be instructed on the law by
9 Judge Lockett and it all comes down then to you. In your
10 deliberations and as we discussed at voir dire, it comes down
11 to the evidence that you have heard and the law that you must
12 apply to that evidence, and that is how you reach your
13 verdict in order for it to be a lawful verdict.

14 Let's talk about that. Your focus in your deliberations
15 must be on those two things: the law and the evidence.
16 Nothing else must influence you in deliberating your verdict.
17 Not the argument of counsel, not sympathy, not bias, not
18 prejudice, not your feelings about the lawyers, none of those
19 things should come into play at all. The law and the evidence
20 and your good, common sense that you brought in this courtroom
21 two weeks ago when we began. That is what must guide you in
22 your deliberations.

23 Members of the Jury, Judge Lockett will instruct you as
24 to the law that you must apply to the evidence and that you
25 must follow in order to reach a lawful verdict. You all

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1 promised both sides, the State and the Defense, during jury
2 selection, that you would follow the law and would obey the
3 law. Now, he will give you in detailed fashion the law that
4 must be applied in this case. I just want to touch on a
5 few of the things that he is going to mention to you.

6 First, he is going to tell you that we have the burden
7 of proof and as Mr. Hogan told you during voir dire, we
8 accept that burden, and we expect you to hold us to that
9 burden.

10 The Judge is going to tell you that we have the burden
11 to prove beyond a reasonable doubt basically two things:
12 (1) That the crimes with which the Defendant had been charged
13 were committed; and secondly, that the Defendant and I will
14 use this symbol, the triangle, to symbolize the Defendant,
15 committed the crimes.

16 Now, you can see just from looking at that, that we are
17 already half way there, because the evidence does not dispute
18 the crimes were committed. As a matter of fact, I dare say
19 that Mr. Edmund won't dispute the types of crimes committed.
20 Capital Sexual Battery, in that the Defendant unlawfully
21 injured the sexual organ of Teresa McAbee in an attempt to
22 commit Sexual Battery upon her. The evidence is clear on
23 that. Her sexual organs were injured.

24 And secondly, as to the First Degree Murder, that Teresa
25 McAbee is dead. There is no doubt about that, as this picture

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1 illustrates. Teresa McAbee is dead. That her death was
2 caused by criminal act and that her death was done, the
3 killing was done in a premeditated manner.

4 Members of the Jury, Judge Lockett is going to explain
5 premeditation to you in detail. The important thing to
6 remember is that premeditation does not equal plan. There is
7 no requirement that the State prove that the Defendant
8 planned to murder Teresa McAbee before he took her down
9 there. Premeditation can be formed that quickly. (Whereupon,
10 Mr. Hurm snaps fingers) The time it took him to put his hands
11 around her little neck and began to strangle her, until she
12 went to unconsciousness and then the time it took him to
13 put her in that lake where she drowned. All the sufficient
14 time for him to reflect on his actions and sufficient time
15 for him to form the premeditation that we have to prove.

16 We are half way there. We know the crimes were committed.
17 The only question and the only issue in this entire case is
18 that of the identity of the person who killed her. That of
19 the identity of the person who sexually battered her.

20 The evidence has shown beyond a reasonable doubt that
21 person is James Duckett.

22 Now, the Judge is going to tell you that our burden of
23 proof is to prove these two things beyond a reasonable doubt
24 and we talked about reasonable doubt in jury selection and
25 one of the way it was characterized was a doubt with a reason

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1 attached to it, where you would say, "I have a doubt as to
2 whether the Defendant is guilty. I have a doubt as to whether
3 the Defendant or the State has proved all the elements beyond
4 a reasonable doubt. I have a doubt and that doubt is because
5 X." There is a reason for that doubt.

6 Judge Lockett will instruct you that a possible doubt
7 is not a reasonable doubt. A speculative doubt, one where
8 you have to speculate as to what might have happened or
9 what could have happened or what did happen. Any time you
10 have to speculate, that is not a reasonable doubt. An
11 imaginary doubt, one you just conjure up in your mind,
12 that doesn't arise from the evidence, but just an imagined
13 doubt is not a reasonable doubt.

14 Finally, he is going to tell you that a forced doubt
15 where you go back in that jury room and you say, "I don't
16 want to find him guilty no matter what the evidence says",
17 and therefore, I am going to force a doubt. That is not
18 reasonable doubt. If you do that, you will not be following
19 the law.

20 If you get back in that jury room and you are deliberating
21 and you begin to say, "Maybe this" or "Maybe that", or you
22 begin to say, "What if this happened?" or "What if that
23 happened?". You are speculating. You are imagining. Those
24 are not reasonable doubts.

25 The bottom line is if you have an abiding conviction of

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1 guilt, then you should find the Defendant guilty.
2 An abiding conviction. I looked those terms up in the
3 dictionary. I am not going to tell you the Judge will
4 instruct you on this, as to the definitions, but Webster's
5 Dictionary defines abiding as being stable. In other words,
6 your conviction that he is guilty is a stable conviction,
7 and Judge Lockett will instruct you there must be one that
8 doesn't waiver or vacillate. You don't go back and forth on,
9 but a stable conviction.

10 And then what is a conviction? Well, the same Webster's
11 Dictionary says it is a strong persuasion, so I would submit
12 to you that under the instructions that Judge Lockett will
13 read to you, if you have a stable, strong persuasion, based
14 on the evidence, that this man committed the crimes he has
15 been charged with, then you have an obligation to come back
16 with a verdict of guilty to both of the charges: First
17 Degree Murder and Capital Sexual Battery.

18 As I said, the only issue in both cases is the identity
19 of the Defendant. Now, this case, you heard in jury
20 selection about circumstantial evidence and we talked about
21 circumstantial evidence and you may remember my example of
22 a little boy who mows the grass. Noone sees him cut the
23 grass. But when the homeowner returns after having promised
24 this boy \$10.00 to cut the grass, when the homeowner returned
25 there are grass clippings on the boy's legs; he is perspiring;

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1 the grass has been cut and there is a smell of burned
2 gasoline in the air and I said, even though noone had seen
3 him cut the grass, none of you ... you all told me you
4 wouldn't withhold the \$10.00 from him, because there wasn't
5 an eye witness.

6 The only eye witness in this case, members of the Jury,
7 is dead. Teresa McAbee. And she can't tell us how it
8 happened to her, but all the circumstances... all of the
9 circumstances point to one conclusion, and that is that
10 James Duckett committed these crimes.

11 The Judge will give you an instruction on circumstantial
12 evidence and listen closely to it. One thing he is going to
13 tell you in there, circumstantial evidence is good evidence
14 and that a chain of circumstances put together is just as good
15 as direct evidence or eye witness testimony and I submit that
16 circumstantial evidence when you think about it, you should
17 think about it as a chain and if one circumstance is gone
18 then the chain is broken. Or whether it is like a rope.
19 How is a rope constructed? Fiber wrapped around fiber
20 wrapped around fiber. You can make a rope that big around
21 and if one fiber is cut, or two or five or ten, it does not
22 reduce the strength of that rope and in this case, in this
23 case, Mr. Hogan told you there is no criminal or perfect
24 criminal case. There is no way that we can come up here and
25 address every single question that comes into your mind.

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1 Because we can't answer every single question because there
2 is no eye witness, because Teresa McAbee is dead, we don't
3 know exactly how this occurred. We can't point to a specific
4 spot of ground and say, "This is where he did it", but what
5 we know is it was in the general area of the pumphouse.

6 Because there are unanswered questions, those are not
7 reasonable doubts. Maybe one or two of the fibers are not
8 there, but it does not lessen the strength of the State's
9 case.

10 Now, the Judge will also instruct you on how you should
11 regard the prior similar acts or wrongs or crimes on the part
12 of the Defendant. You heard three girls get up here and
13 testify that on prior occasions this Defendant had put them
14 into his police car, using his badge of authority, in
15 uniform, on duty, during the midnight hours, within a mile
16 radius of the Circle K. He had driven them to abandoned
17 areas and there he tried or had succeeded in performing sex
18 acts upon them.

19 You heard three girls testify to that. The Judge is
20 going to tell you that you need to regard that only as it
21 concerns Capital Sexual Battery, not as it concerns the
22 Homicide, and that can help you determine whether or not you
23 feel that the Defendant is the one who did this. It points
24 to him as the guilty party, because who else ... who else had
25 done what was done to Teresa McAbee before? Who else had

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1 picked up and put a little girl into his police car? Who else
2 while he was in uniform and while he was on duty? The
3 Defendant. Three separate occasions testified to you by
4 three girls, until they got to the courthouse to testify,
5 had never met each other. There was no conspiracy between
6 the three of them. They didn't know each other. And it was
7 remarkable, was it not, the consistency of their accounts of
8 what happened? Very similar accounts. Those circumstances
9 point to the Defendant and only to the Defendant.

10 Now, what of the evidence? What have we seen the
11 evidence in this particular case to show? Well, when I came
12 in opening statement, I told you we were going to prove certain
13 things. I believe that we performed that function. I told you
14 we were going to prove that the Defendant's tire tracks were
15 down near that pumphouse where her little body was found.
16 You heard testimony the tire tracks were found from the point
17 of the pumphouse, all the way around the road, until there
18 were tracks right here leading out onto Sunset, going this
19 direction. We proved that.

20 There was one set of tire tracks. Why is that significant?
21 Because the rain as testified to by a deputy, as well as
22 Professor Spiegel, who is a Forensic Meteorologist, the rain
23 had come down very hard about seven o'clock that night and
24 then it tapered off by nine and hard rain, common sense will
25 tell us, would have obliterated tracks that had been made prior

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1 to the rain coming. So we know those tracks were made after
2 nine o'clock that night. I promised to you that we would
3 prove that those tracks were made by a car with tires very,
4 very similar to the Defendant's. You heard Mr. Kingery
5 testify, from the F. D. L. E., and these are just two
6 photographs that you will be able to take back to the jury
7 room with you, and you can take all of this as well, but
8 when you put those photographs side by side, there is just
9 one conclusion. There are no dissimilarities. Mr. Kingery
10 said there were none that he, as a professional, could find
11 whatsoever. As a matter of fact, remember when he testified
12 and this is a known tire track taken from at the shop from the
13 Defendant's car; remember when he testified that these little
14 lines right in here were about the first thing to wear out
15 as a tire was driven and miles put on the tire? They were
16 the first to wear out. They were the smallest. You examine
17 both of these photographs, of the knowns and then the
18 unknowns, all those little lines are still existing.

19 He said there were no gross imperfections in the tires
20 in either the known of Duckett or the unknown.
21 Mr. Edmund said, "Well, you didn't get the whole entire
22 circumference of the tire, yet Mr. Kingery pointed out on
23 re-direct it is seldom, if ever, that a criminal was
24 conscientious enough and thoughtful enough to leave that kind
25 of a clue for the police as he leaves the scene. He is going

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1 to make sure that he has got the entire circumference of one
2 tire outlined so that every inch could be examined, to be
3 compared.

4 I promised you we would prove the tire tracks were there
5 and we have. There were only four other tires similar to
6 that that we know were in Mascotte, and they were on the other
7 Mascotte police car and that might be significant except
8 we know for a fact without any doubt whatsoever that Mascotte
9 police car was not moved from the night of May 11th until
10 after May 12th.

11 So as we look at the Defendant and the circumstances,
12 first the tire tracks point to him and point to his guilt.

13 What else did I promise that we would show? I promised
14 you that we would show that he was missing during the
15 murder and we had testimony that he was given a 10-4 check
16 at 10:50, ten minutes to eleven, at night; five minutes after
17 Joyce Reynolds testified she saw the Defendant with Teresa
18 at the Circle K, at 10:45. Remember what jogged that in her
19 mind? The video receipt. She said, "I rented a video game
20 to some people as he came into the store.". Five minutes
21 later, a 10-4 check was done and then he was not heard from
22 again, nor was he seen, for an hour and twenty minutes, until
23 ten minutes after twelve when Groveland's Don Campbell called
24 him on the radio to tell him that Mrs. McAbee was waiting for
25 him at the Groveland Police Department and to go down to the

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1 Mascotte Police Department.. So he was missing.

2 We promised we would prove that, and we have.

3 What else? Well, I have already talked about the prior
4 similar acts where he lured other young girls into the
5 police car for the purpose of sexual immoralities. He made
6 passes at them; tried to kiss them; fondled their breasts and
7 actually had oral sex with one; all young teenagers.
8 We have proved that. That was something that I didn't promise
9 you. So it is more than what I promised you for proof.

10 What else? Who was the last person seen with Teresa?
11 The Defendant. He was the last one to see her and remember
12 when he was on the stand and Mr. Hogan asked him, "Didn't you
13 say at one time 'I was the last one to see her alone'", and
14 he said, "Yeah, I said that, but I was mistaken.". Members
15 of the Jury, I would say that is what is called a Freudian
16 slip. He was the last one to see her alive, because he
17 killed her.

18 We know, even without his Freudian slip, that he was the
19 last one to see Teresa. Gwen Gurley testified that she
20 watched him call Teresa to the car. Teresa got in the car
21 and then the car pulled around the corner and went down
22 Talbott. Gwen could see two heads in the car. Let me just
23 stress one thing with regard to Gwen's testimony. She is a
24 convicted thief. There is no doubt. She is serving prison
25 time. She was not a nun, who came in here to testify.

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1 As a matter of fact, if we got to choose witnesses to crimes,
2 we probably wouldn't haven't chosen Gwen Gurley, but don't
3 you think if she was going to make up some testimony, she
4 would make up a little bit better testimony than that? Don't
5 you think that if she was going to make it up, she would say,
6 "Yeah, absolutely I could say it was the Defendant and I
7 could say it was Teresa in the car.". She couldn't say that.
8 What she testified to was, "Where I was, I could just see
9 that there was two people in there and the one in the passenger
10 side was a small person.". She couldn't say it was a girl
11 or a boy, but the Defendant was last seen with Teresa. We
12 have proved that.

13 We have proved the fingerprints. And the significance
14 now, and Mr. Edmund made points in his questioning of
15 witnesses and so forth, and even in his opening statement,
16 which I will get to in a minute, that there are unknown
17 fingerprints on this hood and that is true. So what? This
18 isn't a typical fingerprint case where we are trying to
19 attach the Defendant to a scene by showing his fingerprints
20 were there. The significance of this hood, and what was
21 found on the hood, is not that the Defendant's prints were
22 there or that anybody else's prints were there. He was
23 writing tickets that night and somebody could have leaned up
24 on it. The significance of this is that Teresa's fingerprints
25 were there and noone, noone saw her on the hood.

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1 There was testimony that she never even got to this side
2 of the hood. She was standing over here near the spotlight
3 and then the Defendant took her by the arm and put her in the
4 passenger side. He himself said, "No, she didn't get on the
5 hood.". That is the significance of this, and not just that
6 they are there, but also the position of the fingerprints as
7 I told you in opening statement, and Jennie Ahern demonstrated.
8 They showed that that little girl was up on that hood with
9 her hands back. She was four feet ten inches tall. These
10 are her little blue jeans. She wasn't very tall. There was
11 no way physically possible for her to stand on the ground
12 next to that car and manage to make those fingerprints all
13 the way back toward the middle of the hood. She had to be
14 sitting on that car and do you think for a minute, ladies and
15 gentlemen, that if she had gotten on that car hood, as the
16 Defendant said, and it was hot, that she would have stayed
17 there long enough to make those moving motions with her hands
18 back like this? Of course not. Common sense says that if
19 she touched that hood and it was hot, she would have jumped
20 right back off and there was that one print. That's it.
21 Jennie Ahern said there was a scooting motion. Palm prints
22 first where she lifted herself up on the car and then her
23 hands went back and there was a scooting motion.

24 We proved the tire tracks. And then we proved probably
25 the most damning piece of evidence that we have shown.

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1 The Defendant's pubic hair in Teresa's panties. Remember
2 the testimony? The panties were swept and one hair was
3 found? That hair was recovered in the crotch of Teresa's
4 panties. We are not talking about outside on her shirt.
5 We are not talking about on her pants, or on her head.
6 We are talking about inside the crotch of her panties. And
7 that hair, I promised you in opening statement, Special Agent
8 Malone would testify that in his opinion, it was the
9 Defendant's. And that is exactly what he testified to.
10 He said they were microscopically indistinguishable. So
11 we have proved our case, and then some.

12 Now, I wrote down some things that Mr. Edmund proved,
13 said he was going to prove and I just want to go through them
14 very quickly. My time is running out.

15 He said he would prove that the Defendant completed his
16 report with the victim in the car. We have seen no evidence
17 of any report whatsoever by the Defendant. He said he would
18 show that the Defendant looked for Teresa all night, so, in
19 fact, what did the evidence show? That the Defendant went
20 back to running radar by five o'clock in the morning. Not
21 moving radar, as Mr. Edmund tried to suggest, stationary
22 radar, by the Defendant's own admission. He wasn't beating
23 the streets as Brady had told him to do. He was running
24 radar. Why? He knew where Teresa was. He put her there.

25 The poster, Mr. Edmund said, was given to Shirley Williams

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1 at the Circle K was bad, and he told you that Shirley
2 Williams was going to say, "Yes, it was bad. You couldn't
3 tell anything from it.". Did you hear any evidence whatsoever
4 of that? Even when the Defense put Shirley Williams back
5 on the stand and she testified exactly the same things, the
6 truth, that she testified to when we put her on the stand.
7 She said the Defendant brought the poster and said, "Don't
8 put it up. It is bad.", but she looked at it and it looked
9 fine and he said, "I'll bring you another one later.", and
10 he never came back. Now, isn't that interesting? The
11 store where Teresa was last seen and he doesn't want her to
12 put the poster up. He comes up with this hairbrained, "Well,
13 she was a new person and she needed to have reference to it.".
14 Mr. Edmund said the Chief called the Defendant at nine o'clock
15 at his house and told him not to come in. As a matter of
16 fact, the Defendant himself said that wasn't true.
17 That he had been called and nothing was said about him coming
18 in until the second phone call an hour later about ten
19 o'clock, and then he said, "Well, do I have to come in,
20 do you want me to come in?" Then the Chief said, "No, it is
21 not necessary now.". The Defendant just rolled over and went
22 back to sleep. Rolled over and went back to sleep. Six months
23 on the police department, a rookie; the first major crime he
24 has ever been involved in. If he was innocent. And yet he
25 just rolled over and went back to sleep when he was told the

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1 little girl who he had done a missing persons report on
2 was found dead, a homicide victim, and he just rolls over
3 and goes back to sleep. And even when he does go to the
4 scene, he first takes the time to take a shower and have
5 his wife style and blow his hair dry.

6 THE COURT: Five minutes, Mr. Hurm.

7 MR. HURM: Thank you, Your Honor. He said he was going
8 to prove to you that Gwen Gurley could not have seen what she
9 said she saw and that Shirley Williams' car was parked where
10 Grace Gurley said the Defendant's car was parked. What did
11 you hear? Grace Gurley testified that she was right here
12 and she saw the Defendant pull up right here next to the
13 dumpster and pick Teresa up. Shirley Williams testified
14 that she pulled right there. That was her parking place.
15 Not here. Not where Gwen Gurley or Grace Gurley said the
16 Defendant's car was, but right here.

17 Mr. Edmund told you that he was going to prove that she
18 was killed and then her shirt was changed. Joyce Reynolds
19 told you that this is the shirt that Teresa was wearing when
20 she last saw her and you saw Joyce Reynolds when this shirt
21 was pulled out. She started to cry, because she remembered
22 the little girl wearing this shirt the last time Joyce saw
23 her alive. And that there was another blue-green shirt. Well,
24 we produced that for you as well and this was found at
25 Teresa's house where she had taken it off from an earlier

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1 time when she had been at the Circle K that night.

2 Members of the Jury, no proof that the homicide occurred
3 elsewhere as Mr. Edmund said he would prove. He said he would
4 show you that someone offered to swap wives with the
5 Defendant. We would have objected. That is not relevant
6 to anything. So what? So what? What proof was there of
7 that?

8 He talked about a flip-flop near the body and you can
9 see that flip-flop in this picture. It is right here, and
10 you heard testimony that there was algae growing all over
11 that flip-flop. That hadn't just been put there with the
12 body. That is why it was discarded. Mr. Edmund wants you
13 to believe that the Sheriff's Department intentionally
14 disregarded that evidence, because they focused on this
15 man. The reason they focused on this man, ladies and
16 gentlemen, is because every piece of evidence... every piece
17 of evidence... pointed to his guilt and they did their job
18 and that was to investigate him and that is why we are here
19 today, is because every piece of evidence points to the guilt
20 of that man.

21 Mr. Edmund told you that the evidence would prove beyond
22 all doubt that his client was innocent. Now, I submit to you
23 that there has been no evidence of that whatsoever. The
24 evidence in this case proved beyond all doubt that the
25 Defendant is guilty. To believe him innocent, you must believe

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1 that forty-five people, most of whom aren't known to each
2 other, Mexicans, and F. B. I. Agent, F. D. L. E. Agents,
3 a Forensic Weatherman from South Florida, a Medical Examiner,
4 police officers, civilian witnesses, a bar owner... all
5 people who have no connection to each other, some how got
6 together and conspired and decided that James Duckett was
7 going to be hung up for this crime and they all got up here
8 and lied.

9 Remember Mr. Hogan, talking to Mr. Duckett, well then,
10 this person must be lying too, if they disagree with you.
11 Isn't that right, Mr. Duckett? The Defendant said, "Yeah,
12 that's right. They are lying too.". We have a whole list
13 of liars. Just the Defendant telling the truth, according to
14 him. You have to believe that they all conspired and lied
15 and you have to believe that they made up all this evidence.
16 All this evidence points to him.

17 Members of the Jury, your common sense tells you that
18 can't be done. The Defendant is presumed innocent and
19 doesn't have to prove himself innocent, but he is presumed
20 innocent only until that presumption is overcome by the
21 evidence beyond a reasonable doubt, and that has been done.
22 That has been done.

23 Members of the Jury, in closing, I urge you, based on the
24 law you are about to hear; based on the evidence that has
25 been presented in this case, and I have just touched on the

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1 surface. I have just touched on the surface. I haven't gone
2 through all of the evidence. Why the Defendant came up to
3 the Police Department on a side road instead of Highway 50,
4 which would have been the normal route from Bay Lake, where
5 he said he was. I haven't touched on many things, but
6 based on this evidence, there is no doubt... no reasonable
7 doubt that he did not commit these crimes and I urge you
8 with a verdict of guilty of First Degree Murder and guilty
9 of Capital Sexual Battery. Make James Duckett get out of
10 that chair and by your verdict, make him march up here and
11 stand in front of Judge Lockett to answer for the despicable,
12 unspeakable, horror of the crimes he has committed, and
13 tell Teresa McAbee's mother on this day after Mother's Day,
14 that her little girl's death is not going to go searching
15 for justice any further.

16 THE COURT: Thank you, Mr. Hurm. Pursuant to our
17 agreement, gentlemen, we are going to take a ten minute
18 recess at this time. If you would, Mr. Bailiff, please.

19 (WHEREUPON, JURY LEAVES COURTROOM AT 2:38 P. M.)

20 THE COURT: Mr. Hurm, Mr. Hogan, have you received
21 the retyped jury instructions yet?

22 MR. HOGAN: No, sir. They may be outside.

23 THE COURT: Check about those during this break if you
24 would. If you have them, let me know and we can start working
25 on them upstairs during the break. Mr. Bailiff, please.

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1 (WHEREUPON, DEFENDANT IS TAKEN FROM COURTROOM AT
2 2:39 P. M.)

3 (WHEREUPON, COURT IS IN RECESS AT 2:39 P. M.)

4 (WHEREUPON, COURT CONVENES IN CHAMBERS)

5 THE COURT: The State has retyped a new set of
6 instructions. I would like to get through them all. I
7 don't know, I would actually like to try to get through them
8 all, even if I go a little longer than ten minutes. I told
9 them, so we don't have to beat this anymore.

10 MR. EDMUND: Yes, sir.

11 THE COURT: Alright, we typed the front page, retyped it.
12 Any objection to the retyped front page?

13 MR. EDMUND: No, sir.

14 THE COURT: We did not need to retype the second page,
15 so we will keep it. We didn't need to retype Introduction
16 to Homicide, so it stays with us. Justifiable Homicide
17 has no changes, so it stays with us. We made a slight change
18 in Excusable Homicide. The word unlawfully was changed to
19 unlawful. Any objection to the retyped?

20 MR. EDMUND: No, sir.

21 THE COURT: We did not need to retype Murder in the
22 First Degree, so it stands. We waffled on the giving of the
23 Maximum and Minimum Penalties. Do I hear any objection to
24 giving those?

25 MR. HURM: We were unable to find anything, Your Honor,

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1 on the break concerning that, but in light of the instructions
2 further on with regard to the fact they are going to be asked
3 to give an advisory opinion if they come back guilty of Murder,
4 we felt it was probably not even... I mean it is inconsequential
5 in light of that.

6 THE COURT: Do we want to give it or not? I will abide
7 by your mutual consent if we have it.

8 MR. EDMUND: I feel we have to give it.

9 THE COURT: I am going to give it.

10 MR. HURM: I prefer not to give it.

11 THE COURT: In it goes. We didn't retype the Lesser
12 Included Crimes face sheet for First Degree Murder, so it
13 stays in. Nor did we retype Murder in the Second Degree, so
14 it stays. We did retype Manslaughter and we changed the
15 word "act" in numbered paragraph two to culpable negligence.
16 Everything else should be the same, but let's read it again
17 to be sure it is the same. Any objection to the retyped
18 Any objection to the retyped Manslaughter instruction?

19 MR. EDMUND: No, sir.

20 THE COURT: We did not retype the Statement of the
21 Charge as to Sexual Battery, so it would stand. We retyped
22 the Williams Rule.

23 MR. EDMUND: No objections.

24 THE COURT: We retyped the Capital Sexual Battery
25 instruction.

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1 MR. EDMUND: No objections, sir.

2 THE COURT: We retyped the Lesser Included Crimes
3 instruction to show Simple Battery as the lesser to Capital
4 Sexual Battery.

5 MR. EDMUND: Yes, sir.

6 THE COURT: Any objections?

7 MR. EDMUND: No, sir.

8 THE COURT: The Simple Battery stands. We retyped the
9 Plea of Not Guilty, Reasonable Doubt, to insert in the third
10 line, "Indictment or" before the word "Information".

11 MR. EDMUND: Yes, sir, no objections, sir.

12 No objection, Your Honor.

13 THE COURT: Single Defendant, Multiple Counts or
14 Informations was not retyped. Defendant's Statement was not
15 retyped. Weighing the Evidence was not retyped.

16 I thought next goes the Circumstantial Evidence
17 instruction. Do you agree that is the proper place to put it?
18 After Weighing the Evidence?

19 MR. EDMUND: That will suit me, Your Honor.

20 THE COURT: Any objection to my putting it there, under-
21 standing you don't want it at all?

22 MR. HURM: That is fine. That is fine. No objection.

23 THE COURT: The Expert Witness instruction was not retyped.
24 It goes in next.

25 Defendant Testifying was not retyped. It goes next.

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1 Rules of Deliberation were retyped and let's look at
2 this carefully now. That retyped five isn't exactly what I
3 wanted. I'll pen it in or have it retyped. The second
4 sentence, I thought we would say, "It is the Judge's job
5 as to that charge, to determine what a proper sentence would
6 be if the Defendant is guilty.". We missed that.

7 MR. HURM: In addition, there is a typo. There are two
8 prepositions "to" in the first line of five.

9 THE COURT: Yes, strike one of those twos in the first
10 line of five. In the second, gents, the sentence is, "The
11 Judge's job as to that charge". Do we agree with that,
12 Mr. Edmund?

13 MR. EDMUND: Alright, sir.

14 THE COURT: We'll retype this one one more time if you
15 would. I don't want to pen that in. This is important.

16 It appears to me that number six is done correctly.

17 MR. EDMUND: Yes, sir.

18 MS. ALBON: Judge, you want, "It is the Judge's job as
19 to that charge"?

20 THE COURT: Yes, ma'am. I don't see any other problems
21 with that one, do you all?

22 MR. EDMUND: No, sir.

23 THE COURT: Any other problems with any of this
24 instruction?

25 MR. EDMUND: No, sir. No objection.

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1 THE COURT: Alright. The Cautionary Instruction we did
2 not retype, so it stays as it is. We lifted the typos out
3 of the Venue instruction. We agree with that as typed?

4 MR. EDMUND: Yes, sir.

5 THE COURT: We retyped the Verdict instruction.

6 MR. EDMUND: Yes, sir, no objection.

7 THE COURT: We retyped the Verdict as to the Indictment
8 just to place the charge up in the upper right hand corner.

9 MR. EDMUND: Yes, sir. No objection, sir.

10 THE COURT: We retyped the Capital Sexual Battery for the
11 same reason only.

12 MR. HURM: Yes, sir. We took out the lesser...

13 THE COURT: We took out two of them, B and D. Do we
14 agree with the retyped form?

15 MR. EDMUND: Yes, Your Honor.

16 THE COURT: Submitting the Case to the Jury was not
17 retyped. with that slight additional correction, will we have
18 any other objections, suggestions, or corrections?

19 MR. EDMUND: No objections, Your Honor.

20 THE COURT: Alright, folks, take care of that and we
21 will take one more short break before Mr. Edmund's closing
22 and Mr. Hogan's final for the State and smooth that one
23 instruction up and go right into jury instructions. Okay?

24 Thank you very much.

25 (WHEREUPON, WE ARE BRIEFLY OFF RECORD AND THEN BACK ON

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1 RECORD AS FOLLOWS:)

2 THE COURT: On the voting issue, what we found out so far
3 is from the Supervisor of Elections that the jurors will be
4 allowed to vote as absentees. We have one remaining issue
5 to be resolved, whether they will bring the absentee ballots
6 over here or whether or not we will have to take the jury
7 in a group to the Supervisor's Office, which is right down
8 stairs in the new courthouse building. I asked the Court
9 Administrator to advise the Supervisor I would much prefer to
10 bring the ballots over here... prefer that. I think we will
11 have that resolved by the second break and be able to do it
12 that way. We will talk about that one last time before we
13 do it. Okay?

14 (WHEREUPON, WE ARE IN RECESS AS TO CHAMBERS)

15 (WHEREUPON, COURT RECONVENES AT 3:05 P. M.)

16 THE COURT: Folks, if you bear with us, the reason that
17 we are having to take such long recesses this afternoon is
18 we are trying to make arrangements for the jurors to vote by
19 absentee ballot tomorrow with regard to the school bond issue
20 and that is taking a little doing with the Supervisor of
21 Elections Office and what have you, but we are slowly getting
22 there.

23 (WHEREUPON, DEFENDANT ENTERS COURTROOM AND IS PRESENT
24 WITH HIS COUNSEL, MR. EDMUND)

25 MR. EDMUND: Let me know at thirty, Your Honor.

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1 THE COURT: Thirty?
2 Anything before we bring the Jury back, gentlemen?

3 MR. HOGAN: No, sir.

4 MR. EDMUND: No, Your Honor.

5 THE COURT: Mr. Bailiff?

6 (WHEREUPON, JURY ENTERS COURTROOM AT 3:08 P. M.)

7 THE COURT: Welcome back, folks. Be seated, please.

8 Can you assure us you did abide by our admonitions?

9 JURORS: Yes, sir.

10 THE COURT: Thank you. That's fine. Mr. Edmund?

11 CLOSING ARGUMENT

12 BY MR. EDMUND:

13 If it please, Your Honor.

14 Ladies and gentlemen, I want to thank you and so does my
15 client, Bob, the Court, everybody for your kind attention
16 throughout this trial. Without jurors, our system of juris
17 prudence the courts could not perpetuate.

18 With juries, we come as close to justice as you can come
19 anywhere in the world, but only with juries who will follow
20 the oath they took at the commencement of the trial, as
21 Mr. Hurm said, and that is if you will judge this case based
22 on the facts and the law, and that you will, in fact, apply
23 the law that His Honor tells you you must apply and will send
24 back to the jury room with you in writing; the facts you have
25 heard over the last seven or eight or nine days or ten days of

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1 this trial.

2 The Judge is going to tell you that even if you don't
3 like the law, it is the law and you must follow it. One of
4 the tragedies of this case, certainly it can't exceed the
5 tragedy of Teresa's death, because nothing can exceed the
6 tragedy of Teresa's death, but one of the tragedies of this
7 case is that James Duckett with probably eighteen hours or more
8 to think, could have said two things and done one thing and
9 he would not have been a suspect in this case. Had he simply
10 said, "I drove my car through there looking for the little
11 girl", there would have been no more ado about the tire
12 tracks. Had he said at some point in time at the Circle K
13 or wherever, Teresa sat on the hood of my car, hot or other-
14 wise, there would have been no fingerprints of any consequence
15 as far as the State of Florida is concerned. And had he
16 washed his automobile as was sometimes his habit, there would
17 have been no fingerprints on that automobile at all. And we
18 would not be here today. Three things by a man who was just
19 out of, by six months, the police standards school where they
20 taught him about fingerprints; where they taught him about
21 collection of evidence; where they taught him about the
22 importance of evidence; where they taught him about the
23 investigation of crime scenes. Yet he gave no thought
24 of covering, if it was a cover, by saying, "I drove through
25 where the little girl was.". He gave no thought to covering,

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1 if it were covering, to say at some point in time Teresa sat
2 on the hood of my car. And he gave no thought to the ultimate
3 covering of washing the automobile and washing the fingerprints
4 off of that automobile. And we are, as Mr. Hurm said, back
5 to the point of circumstantial evidence being the face of
6 this case. Every piece of evidence broken down is circum-
7 stantial. The Court is going to give you an instruction on
8 circumstantial evidence. Again, that you will have with you
9 in the jury room and Mr. Hurm, who would agree, quoted the
10 circumstantial evidence instruction to you, but only to a
11 degree. And not that important part that the Courts have
12 concluded is how you must apply the law of circumstantial
13 evidence.

14 The Judge is going to read this to you. Circumstantial
15 evidence is legal evidence and any fact to be proved may be
16 proved by such evidence. A well connected chain of circum-
17 stances is as conclusive in proving a fact as is positive
18 evidence. Its value is dependent upon its conclusive nature
19 and tendency. Circumstantial evidence is governed by the
20 following rules: (1) The circumstances themselves must be
21 proved beyond a reasonable doubt; (2) The circumstances must
22 be consistent with guilt and inconsistent with innocence;
23 (3) The circumstances must be of such conclusive nature and
24 tendency that you are convinced beyond a reasonable doubt of
25 the Defendant's guilt; and if the circumstances are susceptible

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1 of two reasonable constructions, one indicating guilt and
2 the other innocence, you must accept that construction
3 indicating innocence.

4 If the circumstances are susceptible of two reasonable
5 constructions, one indicating guilt and the other innocence,
6 you must... and that is where your oath comes in. You must
7 accept the construction indicating innocence. You must.
8 That is where, as I said, your oath comes in.

9 In this case, we are dealing with probably fifteen or
10 more items of evidence, each of which is circumstantial in
11 nature. (1) Is how the death occurred. On the guilty side.
12 On the innocent side. On the guilty side, there is nothing
13 I suggest to you, that would prove the identity of James
14 Duckett as far as the death itself is concerned, and that is
15 the only issue in this case, as Mr. Hurm says. There was a
16 Murder. There ain't no question about that. There was a
17 Sexual Battery. There ain't no question about that.
18 The single question is who did it. Did the death in any
19 way prove the identity of James Duckett? And I say to you
20 if you will do this when you get back into the jury room,
21 you can prepare your own chart and just lay it out, which
22 side is guilty and which side is innocent, but the death,
23 nothing to indicate James Duckett is the perpetrator of this
24 horrible crime.

25 On the other side, the Medical Examiner said this child

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1 died of strangulation and drowning at the same time.
2 Now, I suggest to you that we have all been laboring for some
3 point in time under the delusion that this child was strangled
4 from the front. If you will look at State's Exhibit #38,
5 and it is horrible to look at, but there is every indication
6 in State's Exhibit 38 that this child was strangled from the
7 rear. This child was strangled, I suggest to you, by the
8 testimony of the Medical Examiner and by the proof of the
9 prints and marks on this child's neck in Exhibit #38, while
10 in the water, where she died of strangulation and drowning.
11 That was said three separate times by the Medical Examiner.

12 James Duckett was not wet. Not disheveled. Not muddy.
13 Not anything to indicate that he participated in the death of
14 that child, if, in fact, you say it is reasonable that this
15 child was strangled from the rear, while face down in the
16 water and as the Medical Examiner said, drowned while being
17 strangled.

18 The next indication of his identity is that of Gwen
19 Gurley. Gwen Gurley said she saw Teresa get in the car and
20 the car drive away. ID of Duckett, but let's look at the
21 other side and you have to look at the other side to see if
22 the other side is a reasonable hypothesis, a reasonable
23 construction of innocence. On the other side, as Mr. Hurm
24 said, this girl is a thief. This girl is a juvenile, is in
25 jail as an adult. This girl two days after or less, the

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1 homicide, was aware of everything that she had ever became
2 aware of, including that Duckett was a suspect. But she waited
3 until she got in jail and six months later, has a total recall.

4 Now, we don't know if she got any favored treatment.
5 We don't know if she got any favoritism whatsoever, but we
6 do know that she spent five and a half months on a two year
7 sentence. Of a juvenile, whose record was so bad the State
8 Attorney's Office decided that she had to be prosecuted as
9 an adult. So certainly, there is a reasonable construction
10 that she had something to gain and not everything to lose by
11 that sudden recall six months later. She was with two people,
12 according to her testimony. Those two people, this being a
13 Shop and Go, being up on this corner, and Duckett was supposed
14 to have driven right by them, but neither of those people
15 corroborated in any degree that Duckett not only drove by
16 there, but when he drove by there, with someone else in the
17 automobile.

18 Remember Jessie and the other little girl, Vickie, who
19 were with her, who were hiding back up in the trees here,
20 and as far as whether she could see, ladies and gentlemen,
21 these bushes are in here; the car in fact was parked here;
22 and she claims that Duckett was parked out in here where she
23 could see the top of the automobile and see the lights on top.

24 Additionally, just how logical is it and how believable
25 is her story that a man who has now set in his mind that he is

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1 going to pick up and assault and rape and ultimately kill
2 a little eleven year old girl, who takes all the trouble to
3 hide in the dark, get in the automobile and drive his
4 automobile out into the light, out onto the street, again
5 through the light, and back on down in this direction.
6 Had he picked up the little girl for some ulterior motive,
7 had he made some plan to take her out to the lake or wherever
8 it is, because the lake, as you know, is right down in this
9 area, down here, about a mile or so away; the only logical
10 thing to do would be to back out onto Sunset and head South.

11 And now we come to the Dow child. Or girl. She is not
12 a child. She is twenty years old. She is not a little teen-
13 ager like Mr. Hurm wants you to believe of Dow. What did he
14 do? Well, he took me in a car, put his hands on my shoulder,
15 and he tried to kiss me. She says now that a few days later
16 James Cooper came by the house and said Duckett bragged around
17 the police station that he made a pass at you. Don't you want
18 to file a complaint against Duckett? She told you that on
19 direct examination and she told you that two or three times
20 on cross examination, because James Cooper came in here and
21 said she lied under oath. That he was rolling along slowly
22 one day when she and Rafael stopped him and told him this
23 story about Duckett having made a pass at Ms. Dow. You have
24 got to remember now Ms. Dow told you she was afraid of Rafael,
25 and she wanted to get home soon so Rafael wouldn't kick her out

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1 particularly with someone else. And yet Cooper tells you
2 she and Rafael stops him, but you got to remember one more
3 thing. Duckett was looking for Rafael to question him about
4 a crime that had been committed in Mascotte. Looking for
5 Rafael. What is the best way to get a police officer off your
6 back than to charge him with some offense such as that? That
7 he took her out and made a pass at her. But when it came time
8 to fish or cut bait and go down and file a complaint against
9 Duckett, she would not go down and file it, to give him an
10 opportunity to defend himself back then.

11 Now, I don't say to you that just because there are a lot
12 more words on that side of the page that that makes the
13 innocent side any stronger than the guilty side. I do though
14 say to you that if you look at it, you will find that in each
15 of these instances there is a construction that is in this case
16 much stronger than the guilt, but certainly is a reasonable
17 construction of my client's innocence.

18 The next person I suggest to you who gave evidence of
19 extreme importance in this case, is Ms. Upshaw. Took her in
20 the car; arm around shoulder; tried to kiss. Then took her
21 to the Jiffy Store. If he had done something wrong, would he
22 take her back into a well lighted area where people are going
23 to be and drop her off, or would he drop her off on a street
24 somewhere so she would not be seen getting out of his vehicle?
25 And nobody in that Jiffy Store who she claims was in that Jiffy

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1 Store, never came forward in this trial to testify that they
2 ever saw Ms. Upshaw get out of that car.

3 Bad reputation for truth and veracity, because of the
4 complaints in the City of Mascotte, and she, like Ms. Dow,
5 and they, like Ms. Ruetz, never came forward at the time it
6 occurred and Ms. Upshaw is lucky she didn't come forward at
7 the time that it occurred, because on the day she claims that
8 Duckett did this to her, on the night she claims that Duckett
9 did this to her, he wasn't on duty. On Friday, May 1st.
10 Not on duty.

11 And again, all three of them did not make this report
12 until this man was a suspect and it was all over the town and
13 he was no longer a police officer in that town, and Mrs.
14 Ruetz.

15 Oral sex, in police car, but not riding. Digital
16 penetration. Duckett say that it just didn't happen.
17 And in this case, I don't know a great number of things he
18 could do to prove that it did not happen.

19 You are going to have photographs of the automobile
20 of the interior of the automobile. See if it could have
21 happened as she said.

22 But I say to you, that the single most important
23 construction that is consistent with Duckett's innocence is
24 this. We have a twenty-eight year old, apparently virile,
25 with a good sex life at home, a police officer, who finds a

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1 girl who will perform oral sex, in his police car, in the City
2 of Mascotte. And ladies and gentlemen, this girl would have
3 you believe that three and one-half or more months passed
4 before he ever made another attempt to having her get into
5 that police car and perform that act, and I suggest to you
6 like Mr. Hurm did, call upon your common sense and your
7 knowledge of every day affairs and say to yourself, "that
8 goes past the ridiculous to the sublime". That is the greatest
9 impact and attack on this girl's credibility of all the other
10 facts that we might put up on this board.

11 The next thing that came along, I suggest to you, is the
12 hair. And the hair, ladies and gentlemen, we got Malone;
13 Malone being the expert from out-of-town, if you all recall,
14 and on this side, we have got Deborah Steger, from F. D. L. E.
15 I suggest to you, ladies and gentlemen, on this side we have a
16 professional witness. Twenty-five to thirty times a year he
17 goes around three days or more at a time testifying. We have
18 got a professional, I guess P. R. man, who spends other time
19 that when he is not testifying, out lecturing on serial
20 murders. I suggest to you we have a man who, because of his
21 busy schedule, hasn't picked up a book or been to a conference
22 or sat with anyone within ten years to determine what the
23 new procedures of hair examination are.

24 We have a man, ladies and gentlemen, who is so
25 egotistical that he sat here and told you and it isn't that I

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1 sneaked up on him, he sat there and told you he examined
2 hundreds of thousands of unknown hairs and I asked him how he
3 did it and how long it took him and he said two to three hours
4 on each one. He sat there and told you that he had 600,000
5 hours of work in a seventeen year period for the F. B. I.
6 which only had, ladies and gentlemen, 145,000 hours in seventeen
7 years. That is the ego of this man, who again, said to you
8 that he found twenty hairs, the only twenty that he examined,
9 whose characteristics were identical to the hair ... the
10 unknown hair. Debbie Steger said that would sort of boggle
11 your mind. Debbie Steger's report was inconclusive.

12 She told you how she worked and she told you how long
13 she had been examining hairs, though not how long she had
14 been a scientist.

15 She also told you that the new theory wasn't that you
16 look for similarities. You look for inconsistencies. Something
17 that Mr. Malone seemed not to recognize or know at all, and
18 when she asked for additional hairs, they told her to send
19 them back. Now, whether they told her to box them up and send
20 them back, like I said, I don't know, but they nevertheless
21 told her to send them back. She told you the procedure that
22 she used and obviously, she was as well versed or better in
23 her procedures than Malone. So I suggest to you that on this
24 side, we have a construction or theory that is consistent with
25 guilt, but on this side, we have a construction or a theory

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1 that is consistent with innocence.

2 As I said at the beginning, if there are two reasonable
3 theories to the case, one of them consistent with guilt and the
4 other consistent with innocence, under your oath that you swore
5 you would follow, you must accept the theory that is consistent
6 with innocence. It doesn't have to be equal. You don't have
7 to put it on the scale and have it balance. Only that it is
8 reasonable. Only that it is reasonable, and you must return
9 a verdict of not guilty.

10 You have got the fingerprints. You have got the guilt
11 and you have got the innocence. You have got the child's
12 prints on the hood. You have got Duckett's prints on the hood
13 and you have got unknown prints on the hood, but the child's
14 prints are dark. Duckett's prints are light. With the
15 exception of one print, I suggest to you, when he put his
16 hand on the side of the car by the antenna, and the unknown
17 prints are dark. Now, however you cut it, it rained up until
18 9:00 o'clock according to testimony of at least two witnesses.
19 The witness who testified from that stand, Ms. Ahern, and the
20 others, said that water, rain, etcetera, would wash away the
21 strength of the prints. The only conclusion being that
22 Duckett's prints got on there before the child's prints got on
23 there, or the unknown prints got on there, except for the
24 one by the antenna.

25 The child, I suggest to you, was obviously on the car,

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1 but when was she on the car? Is it conceivable that had
2 Duckett been the perpetrator of this offense and had this
3 child been on the car during some time while this offense
4 was being perpetrated, that one of a number of things wouldn't
5 have happened. Number one, again, calling your common sense,
6 isn't it common sense, don't we even say, "I was so mad. I
7 was so upset. I was so up tight. I was so excited, that my
8 hands were sweating.", and if Duckett is fixing to rape or
9 kill a little girl, wouldn't his hands be sweating? And
10 didn't the officers say, didn't the experts say, that when the
11 hands are sweating, that is when it makes dark prints? But
12 there is not a dark print of Duckett except by the antenna.
13 Not in that little girl's prints, but a very light print at
14 some point in there is Duckett's print.

15 No way of knowing which one got there first. No way of
16 knowing which were on top of the other. So I think it is
17 logical and you are supposed to be logical, to assume that
18 at some point in time, this little girl got on the car, but
19 that Duckett wasn't touching her, near her, or having anything
20 to do with her at that time, or his fingerprints would have
21 been just as dark as her fingerprints, and that car was there
22 for some period of time at or about 9:30 when he called
23 Pahaley or Pahalee, or whatever his name is, to tell him about
24 the black woman who was having trouble, and he was in and
25 out of the store and he was talking to the black woman and the

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1 child was running up and down, and during that period of time,
2 and how many times have children got up on your car? How
3 many times have adults got up on your car? And back down
4 off your car, without being raped and without being killed,
5 and in the parking lot. And if this heinous offense, and it is
6 horrible, occurred while that child was on that car and was
7 occurring when she was in Duckett's company, ladies and
8 gentlemen, there was no blood on the inside or the outside of
9 that car. That car was put in a black room and sprayed
10 totally. Even had it been washed, according to Mr. Taylor,
11 it would have showed up, but nothing showed up, so no sexual
12 battery took place when these fingerprints were put on his
13 automobile. I suggest that to you. That is the only logical
14 conclusion that you can come to. But certainly, the lack of
15 blood in the car and the lack of blood on the car had to be
16 put down on the innocent side of the ledger as a reasonable
17 construction and over here, I suggest to you, there is nothing.

18 Now, the tire tracks. They are at the scene. They
19 are consistent in tread design and width, with the tires on his
20 car and his car could have made them. On the other side, we
21 have two mud holes. From the photographs, we know that there
22 is no mud on his tires.

23 THE COURT: That is thirty minutes, Mr. Edmund.
24 I am sorry to interrupt.

25 THE COURT: Thank you, Judge.

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1 MR. EDMUND: From Randy Aleno, we know that those holes
2 were at least three inches deep, to the point that soil
3 samples were taken, because they expected the car they
4 knew the car that went through those mud holes and this car
5 did, whatever car made those tracks went through those mud
6 holes, would have the soil from the mud holes adhered under
7 the fenderwells. And these tires have come out of a mold
8 that has been used by the company that produces them since
9 1984. Back in '87, that is still three years worth of
10 production of those particular tires or tires with that
11 particular tread design.

12 Additionally, debris was taken from the interior of that
13 automobile and debris from the scene was sent to Gainesville.
14 Don't you know that had there been any connection whatsoever
15 somebody would have been in here from Gainesville waving that
16 flag and saying, "Hey, this is the same. It is alike. It is
17 there.", but no. So I suggest to you notwithstanding there
18 are more words there than there are here, that doesn't mean
19 that it shows greater degree of innocence than it does guilt,
20 but it shows a reasonable construction of innocence, and under
21 your oath, you must accept the construction that is consistent
22 with innocence. You don't have a choice. You told God you
23 would. That you have to do in order to perpetuate our
24 system. The system is full of checks and balances. Right to
25 presumption of innocence. And like the instructions the Judge

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1 is going to give you on circumstantial evidence.

2 Now, Teresa's shirt has become something of a ... I
3 guess a high point of this trial. Joyce said she had on the
4 brown and white shirt. As I recall, that is where the brown
5 and white shirt stops, until the child's body is found.
6 Joyce was questioned a number of days after the homicide when
7 everyone in town knew about the brown and white shirt. But
8 the mother says that when she got to the police station,
9 Duckett said it was a blue-green shirt and she says, "Yes,
10 knit". This shirt is no knit shirt. This shirt is not the
11 shirt either of them were referring to and let me ask you
12 this. How, unless when Duckett saw her at the Shop and Go
13 or the Circle K or whatever it is, would he know she even
14 owned the shirt near that color? Let alone a blue-green shirt
15 unless that is what she had on at the time, when he saw her
16 at the Circle K. And what fool is going to be taking a report
17 of a distressed mother over a missing child and volunteer
18 something out of the clear blue, "Well, the shirt was blue-
19 green". What fool would do that? What fool would take a
20 chance that the child would have a blue-green shirt or any
21 colored shirt close to blue-green? And tell the mother about
22 it, because the mother would jump on him like a duck on a
23 June bug. Now, I suggest to you that that conversation that
24 took place at the time that the missing child report was turned
25 in is one of the most critical and key conversations in this

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1 entire trial, because I suggest to you that it indicates that
2 this little girl, that the last time that Duckett saw her,
3 had on a shirt apparently of some similar color to this, or
4 at least it had a similar blue-green color in it, that the
5 mother said was a knit shirt. And I do think that at that
6 particular point, now the innocence starts outweighing, not
7 that it is necessary, the guilt.

8 And now we have the scene. At the scene we have the
9 body. And to identify Duckett, what do we have? Nothing?
10 Except the tire tracks to which I refer you back on the
11 other page, but on the other side, we have no signs of a
12 struggle, we have no debris, we have no blood, and oh, yes,
13 I put my foot in my mouth again and said she was bleeding
14 profusely, but the doctor said considerably and I suggest to
15 you considerably is considerably, but they conducted a grid
16 search at the scene and found no blood. Finally found a
17 pencil, but found no blood. No footprints. No indication of
18 a man holding something and moving his feet while he is
19 shaking, doing whatever he is doing. I suggest to you it all
20 took place down in the water, where there were slide marks
21 going down that bank. slide marks going down that bank,
22 according to Mr. Aleno, without leaving a footprint from which
23 they could get any sort of impression, but slide marks in that
24 mud. In that mud, and no mud on Duckett. Again, reasonable
25 and again consistent with innocence. Reasonable and consistent

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1 with guilt. But the law doesn't say they have to be equal.
2 The law doesn't have to say one instance has to be larger
3 than the other, only that it is a reasonable theory and under
4 your oath, you have got to follow the one that says innocent.
5 Just that simple.

6 And now we have got Duckett. And over here we have got
7 last to see alive. Statements. And I don't know what else
8 we have got. What else have I got written down here? I have
9 got nothing written down there. But over here I have got
10 no mud, no dirt, no mussed up clothes, no mussed up clothes,
11 no mussed up hair, calm demeanor. Same as always. Who had
12 just killed and raped a little girl. The same as always.
13 Nothing wrong with his clothing. Nothing wrong with his
14 shoes. Nothing wrong with his hair. Nothing wrong with his
15 attitude and his demeanor. Either he stripped naked before
16 he did anything to her, or Duckett is not the man and there is
17 never an indication that he striped naked. Or something would
18 have appeared at some point in time to him, his clothes, or
19 his car. I suggest to you nothing has and nothing did.

20 And the time. Now, the State brought someone here this
21 morning to say that he hadn't been heard from from 10:50 to
22 12:00... I don't know what it was ... 10 or 12:20? Or whatever
23 because it didn't mean anything. He also, ladies and gentlemen,
24 had not been heard from from 6:18 to 10:50, but that wasn't
25 such a big deal as far as the State is concerned, but Brady

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1 talked to him at 10:55 or just a very few minutes before the
2 news came on and told him where to go. And I suggest to you
3 that the Mascotte police officers might go all night and
4 never be heard from. If the Sheriff's Office was doing as
5 Captain Swails said it did, calling every hour, then why no
6 calls in between that period of time, on account of they don't
7 call every hour, and they still don't call some little municipal
8 police officer every hour. It just happened, somebody picked
9 up the mike and called him whether it was at 10:50 and then
10 he called and was talking again with the Groveland Police
11 Department at or about that time. Consistent with guilt?
12 Well, I don't know. Consistent with innocence? Yes.
13 Consistent with innocence? Yes.

14 Now, his lack of concern. Didn't come in. Didn't go
15 by home. Ladies and gentlemen, he did go by the home and he
16 saw the people standing out there, and you know an interesting
17 thing? Mrs. Zavala saw him between 11:30 and 12:00 coming
18 by before any report had been made. Mrs. Zavala. A lady who
19 lived in the house with the McAbees. Additionally, he saw
20 the people standing outside. And so testified. But more
21 importantly, he told the officers that back in May, and in
22 June, when they questioned him and interrogated him and again,
23 this last lady, Mrs. Fernandez, she saw him come by and
24 testified to that, as of yesterday, but he wrote two traffic
25 tickets. And so that means he wasn't looking for the little

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1 little girl. That means he had no concern, but the Sheriff's
2 Office, to whom he made a report at 12:50, was so concerned
3 that, ladies and gentlemen, the Sheriff's Office put it out
4 on the air at 7:00 A. M. and they were so concerned, ladies
5 and gentlemen, that although Pahaley was in the City of
6 Mascotte, they sent no deputy.

7 And Duckett told us from what the clerks at the Circle
8 K told him, he assumed the child was running the streets
9 every night anyway, but he never the less went about his
10 rounds.

11 Now, as the State said, this case is based entirely upon
12 circumstantial evidence and as the Judge is going to tell you,
13 you must apply the law of circumstantial evidence in the manner
14 and method in which he tells you and that is, in accordance
15 with that instruction. And I ask you to do this. Go back
16 there and yourselves, say, well, did Edmund put all the items
17 of evidence on the board and did he give us both sides of all
18 the items of evidence? Or are there others that he elected
19 to ignore, because he didn't want us to talk about them, and
20 if they are, stick them right in my ear, but don't hurt my
21 client with them unless truly they totally wipe out...

22 (WHEREUPON, MR. EDMUND TURNS PAGES ON BOARD)

23 Everything there. Everything there. Everything there.
24 And everything there. As well as, ladies and gentlemen,
25 everything there. Because unless you wipe all that out, those

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1 are reasonable theories consistent with my client's innocence,
2 and unless you wipe them out, you took an oath that you must
3 follow. And that oath says that you must accept the construction
4 that indicates innocence. It doesn't say you may. It doesn't
5 say you can if you want to. It doesn't say you can flip a
6 coin or take a vote. It says you must if there are two
7 reasonable theories to the case, one consistent with innocence
8 and one consistent with guilt, accept the construction that is
9 consistent with innocence, and return a verdict of not guilty.

10 Do your own chart, if you will, and see whether or not
11 I may have left out some things on this side, or for that
12 matter, this side, and before you take your first vote, read
13 those instructions again that the Judge gives you and then
14 after you take your vote, do this for me, because the
15 instruction on reasonable doubt will tell you that if your
16 mind vacillates or waivers, that is a reasonable doubt, and
17 I ask the Jury this. I ask that after you have taken the
18 vote, the first vote, the second vote, the third vote, or
19 the one hundredth vote, that you stop and sit quietly and
20 you not talk to one another, and I don't ask you to pray
21 on account that is between you all and God, and I don't ask you
22 to meditate, because I want you to let your mind go free on
23 what you have just done on your vote, and as you let your
24 mind run free on the vote that you have just written down,
25 throw up your hands or however you do it, whether it was guilty

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1 or whether it was innocent, if your mind waivers on did I do
2 the right thing; if your mind vacillates, is this right or is
3 this wrong; if those things occurred during this moment of
4 silence of letting your mind run free, then you have to go
5 back to the instruction on reasonable doubt that His Honor is
6 going to give you, because that waivering and that vacillating
7 is reasonable doubt as the Court has defined it to you and
8 as you, under your oath, have sworn you would apply. So no
9 matter what your vote was, whether it was a vote for guilty
10 or whether it was a vote for not guilty, if you are not sure,
11 if your mind waivers, if your mind vacillates, you have got to
12 say, "Hey, my mind is waivering and vacillating. Is yours?
13 Yup. Is yours? Yup. Is yours? Yup. Okay. " When twelve
14 of your minds are waivering and vacillating, then whoever is
15 the foreman must say, "Hey, we have got a verdict of not guilty,
16 because our minds are waivering and our minds are vacillating.
17 We took an oath that we would follow the law Judge Lockett told
18 us to follow."

19 Now start, if you will, from the presumption of innocence.
20 Apply, if you will, the circumstantial evidence. Put this down
21 on paper, if you will, and more than one time throughout your
22 deliberations, re-read the jury instructions, because you tend
23 to forget and that is only human nature to want to do what you
24 want to do. It is only human nature to want the law to be what
25 you think it is, but it isn't in all instances. And it very

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1 well may not be as far as reasonable doubt is concerned and
2 all of you said it really is a little foreign as far as the
3 presumption of innocence is concerned, and certainly the law
4 of circumstantial evidence had never entered your mind.
5 So before you vote, go back to those instructions and find out
6 whether or not you are applying the law that you swore to God
7 you would well and truly try the issues of the cause of the
8 State of Florida versus James A. Duckett, and a true verdict
9 render according to the law and the evidence, so help me God.
10 Return your verdict notwithstanding this horrible crime and
11 notwithstanding this child dying, and notwithstanding somebody
12 ought to go to the electric chair over this child dying, but
13 not James Duckett on a circumstantial evidence case where this
14 side of the ledger raises a reasonable doubt, ladies and
15 gentlemen.

16 Return your verdict of not guilty on both counts, because
17 whoever did one, sure did the other, but if you apply the law
18 of this case as you swore you would, you will find, notwith-
19 standing yesterday was Mother's Day and notwithstanding the
20 death of that little girl, and the horrible thing that was done
21 to that child, the State has not proved that James Duckett is
22 the person who did this horrible crime.

23 I thank you.

24 THE COURT: We are going to take another ten minute
25 recess. If you would, Mr. Bailiff, if the attorneys could

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1 come to the bench real quickly while the Jury is stepping
2 out, please.

3 (WHEREUPON, JURY LEAVES COURTROOM AT 4:00 P. M.)

4 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

5 THE COURT: My mind is waivering and vacillating.
6 Instead of giving this case to the Jury at 4:00 like I had
7 anticipated, we are talking 5:00. The options in my mind are
8 giving them that time frame, if we give it to them at five
9 I would like to go until seven. In other words, I had about
10 two hours in mind for this evening. The only other option
11 is not to give it to them at all until tomorrow and my
12 preference is going to go five to seven.

13 MR. EDMUND: I have no problem, sir.

14 MR. HOGAN: We agree, Judge.

15 THE COURT: We will go from five to seven. I don't intend
16 to take a break after Mr. Hogan's last and my instructions.
17 I intend to go right through them. I am going to charge you
18 all and this is serious and I expect you all to take some time
19 doing it, after I am through with jury instructions, we are
20 going to sequester the alternates. Mr. Bailiff made arrangements
21 in a separate sequestered room and we will have a bailiff with
22 them, so that they will not be tainted. I charge you all to
23 go through all the evidence, page by page, from one through
24 one hundred five and make sure every piece of evidence is
25 there and none other. Put all the evidence back in the bags.

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1 We did have at least a few pieces of evidence that were
2 mentioned and that were not admitted. I want to be sure those
3 don't go back, so that may take you all some time, but I want
4 to charge both to do that. Make sure the Jury gets all the
5 evidence and nothing else but.

6 MR. HOGAN: Okay.

7 MR. EDMUND: Okay.

8 THE COURT: I'll see you in about ten minutes.

9 MR. HOGAN: Do you want me to go over the final instructions?

10 THE COURT: We do need to look at that one last
11 instruction.

12 MR. HOGAN: Should we go up in chambers?

13 THE COURT: Actually, do you have it right now? It is
14 so simple, we can do it here. Why don't you come back. We
15 can take care of that one jury instruction before we even
16 break. Is this your retyped copy?

17 You can go ahead, Art.

18 (WHEREUPON, BAILIFF REMOVES THE DEFENDANT FROM THE
19 COURTROOM AT 4:02 P. M.)

20 THE COURT: It is the Rules of Deliberation, first sheet.
21 Any objection?

22 MR. EDMUND: No, Your Honor.

23 THE COURT: Alright. Thank you all. See you in ten
24 minutes.

25 (WHEREUPON, COURT IS IN RECESS AT 4:03 P. M.)

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1 (WHEREUPON, COURT CONVENES IN CHAMBERS)

2 THE COURT: Gents, this is nothing more than a continuing
3 discussion of how to allow jurors to vote. The word now from
4 the Supervisor of Election is that she is prepared to tender
5 to them Affidavits and Absentee Ballots, and let them vote
6 if you want them to do that now. The situation is, as I
7 understand it, she is sending her people her momentarily,
8 she wants two of her assistants to take these matters to the
9 Jury, presumably there might be some discussion about how you
10 fill out the Affidavit and those types of things with regard
11 to voting, and then they would vote and then that would be
12 that.

13 What concerns me is that we all know there is case law
14 with regard to having people talk to juries and all that
15 business. I read a case once, as I recall, where the whole
16 trial was reversed because a bailiff took a lunch order and
17 the Appellate Court said, "Well, we don't know what else they
18 might have talked about."

19 MR. HOGAN: That was while they were deliberating.

20 THE COURT: I know. We haven't reached the deliberations,
21 but we are also not far from it. I just want to get on the
22 record that this is what we are going to do. I want to bring
23 in the folks who are going to take the ballots in there and
24 make sure they do not discuss this case with the Jury at all.
25 They simply go about the mechanics of doing the Affidavits and

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1 the voting and as soon as that is finished, we can complete
2 the trial. Does anybody have an objection to the proposed
3 procedure?

4 MR. EDMUND: No, Your Honor.

5 MR. HOGAN: No, sir.

6 THE COURT: Okay, the other thing I haven't received
7 and we are at the moment of truth now, have you ever been able
8 to arrive at a stipulation with regard to the Rules of
9 Sequestration?

10 MR. HURM: We have talked together about it, Your Honor.
11 We didn't have a problem with the rules.

12 MR. EDMUND: We don't have any problem with the rules.

13 THE COURT: Alright, do you all have that sample that I
14 gave you, that I used in the other case?

15 MR. HOGAN: I think ours is over in our office.

16 MR. EDMUND: I didn't even bring mine in this morning,
17 sir. It is in my box, probably in the car.

18 THE COURT: I am going to ask you all to retrieve that
19 sample during this break. I'll take a few minutes more or
20 you can go while Mr. Hogan does his job.

21 MR. HURM: I hope I can find it.

22 THE COURT: If you can't, see Ms. Robin and she will find
23 it for you, I think, but essentially, I want to use that
24 then and just adopt it as the rules in this case. the main
25 thing I am concerned about is giving the bailiffs a copy so

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1 they understand what the rules are and how to do it.

2 So if you will take that on yourself, Steve, to either
3 find your copy or my copy and I can give a copy to the
4 bailiffs and they will understand what to do.

5 MR. HURM: This will probably take fifteen or twenty
6 minutes.

7 THE COURT: It may. Alright, would you have Ms. Stegall
8 come in, please.

9 (WHEREUPON, SUPERVISOR OF ELECTIONS ENTERS WITH TWO
10 ASSISTANTS)

11 THE COURT: Ladies, come on in, too, if you would,
12 please.

13 For the record, this is Ms. Imogene Stegall. She is the
14 Supervisor of Elections here in Lake County. If you would
15 give me these ladies' names.

16 MS. STEGALL: This is Mary Ann Allen, a Deputy Supervisor
17 and Robin Dixon, Deputy Supervisor of Elections.

18 THE COURT: I understand that you are going to go ahead
19 and set the situation up so that our jurors can vote by
20 absentee ballots now?

21 MS. STEGALL: Yes, sir.

22 THE COURT: I want to be sure who is going to actually
23 go in that room and talk with the jurors? All three of you
24 or just these two?

25 MS. STEGALL: However you would like for us to do this.

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1 THE COURT: I don't mind, either way as long as we are
2 absolutely clear that the only thing you all will discuss
3 with these jurors is this. How to fill out the Affidavits
4 and whatever they need to do with their ballots, collect those.
5 Absolutely no discussion of this case whatsoever. Not even a
6 passing comment with any juror about this case.

7 MS. STEGALL: We can all stay in the same room, if you
8 would like.

9 THE COURT: I would like that. There is enough room
10 in that jury room where you can all move around that table
11 and do their own balloting individually and not violate any
12 problem with secrecy of the ballot. Are we all clear on that
13 ladies?

14 No discussion about this case whatsoever. Not even
15 a passing reference. Not even a "how it is going".

16 MS. STEGALL: Yes, sir.

17 THE COURT: Just go in there and do your business.

18 MS. STEGALL: Yes, sir, we understand.

19 MR. CORBETT: Should I got with these ladies to the jury
20 room?

21 THE COURT: I would prefer that so that we are absolutely
22 assured that nothing else is done.

23 MR. HURM: Are you going to bring them out?

24 THE COURT: Why don't we just let them do it in the
25 room. Okay? Any objection to our procedure?

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1 MR. EDMUND: No, Your Honor.
2 MR. HOGAN: No, sir.
3 THE COURT: If you will let me know as soon as you
4 are completed, Ms. Stegall, he will take you to where the Jury
5 is now.
6 Do we have anything else?
7 MR. EDMUND: No, sir.
8 MR. HURM: I'll go find the copy of this.
9 (WHEREUPON, COURT CONVENES AS TO HEARING IN CHAMBERS)
10 (WHEREUPON, COURT CONVENES AT 4:38 P. M.)
11 (WHEREUPON, DEFENDANT ENTERS COURTROOM AT 4:39 P. M.)
12 THE COURT: Anything further before we bring the Jury back,
13 gentlemen?
14 MR. HOGAN: No, sir.
15 MR. EDMUND: No, Your Honor.
16 THE COURT: If you please, Mr. Bailiff.
17 (WHEREUPON, JURY ENTERS COURTROOM AT 4:40 P. M.)
18 THE COURT: Welcome back, folks. Be seated, please.
19 Can you assure us you have abided by our admonitions?
20 JURORS: Yes, sir.
21 THE COURT: Thank you very much. The State will conclude
22 their closing argument at this time. Mr. Hogan?
23 CLOSING ARGUMENT
24 BY MR. HOGAN:
25 Thank you. Ladies and gentlemen, how many miles do you

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1 think you all have walked coming out of that room? We
2 appreciate it. We appreciate your close attention which you
3 all paid.

4 I have watched you through the trial when I wasn't
5 standing up here and sometimes when I was, and I want to
6 thank you, each and every one of you, because I noticed each
7 and every one of you paid close attention and it is a good
8 feeling for me and the people that work with me, to know you
9 are taking your job seriously and you know it is a very
10 serious job.

11 A lot of work has gone into the case. A lot of work
12 goes into the presentation of the case and we appreciate your
13 paying attention to us.

14 There is a couple things I want to run through real
15 quick with regard to the jury instructions to make sure I am
16 clear on them and I am clear with you on it.

17 At one point, the Judge is going to give you a copy of
18 the instructions to take back to the jury room with you, so
19 don't try to memorize anything that I say or don't be worried
20 that you need to try to keep it memorized. It is twenty or
21 so pages and you will have a copy of it.

22 One of the things in the Statement of Charge he is going
23 to read you, the Defendant in this case is charged in the
24 Indictment with the crime of Murder in the First Degree,
25 in that on the 12th day of May, 1987, in Lake County, Florida,

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1 James Aren Duckett did unlawfully and from a premeditated
2 design to effect the death of Teresa McAbee, a human being,
3 kill and murder the said Teresa McAbee by strangling and/or
4 drowning, in violation of Florida Statute 782.04.

5 The one thing in there, it says May 12th. Obviously,
6 there is no way to know whether it was in the late evening
7 hours of May 11th, or into May 12th. That is not an issue,
8 and nobody has argued that to you, but I wanted to go over it
9 with you.

10 The other thing is this does, in fact, track the language
11 in the Indictment, which the Judge may also send back with you
12 and this is where it comes from. We don't have to prove
13 exactly what day it was in other words.

14 The Judge is going to tell you about other types of
15 homicides and he is going to tell you about Justifiable
16 Homicide, Excusable Homicide, and he is going to tell you that
17 Justifiable Homicide was committed, if let's say, someone
18 is breaking into someone's house and they kill the person that
19 is trying to kill them. In other words, self-defense type
20 Justifiable Homicide. That is not an issue in this case.
21 Mr. Edmund has agreed and we have all agreed that whoever
22 killed Teresa McAbee, we agree, that whoever killed her, raped
23 her and however killed her committed premeditated murder.
24 This is not Justifiable Homicide, which you will get an
25 instruction on. It is not Excusable Homicide, in other words,

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1 it is not a sudden combat situation between two men fighting
2 in a bar or something like that. It is not Murder in the
3 Second Degree. Mr. Edmund agreed on that. It is not a
4 Unintended Killing. This is a Premeditated Murder. We all
5 agree on that.

6 Even though you get an instruction on Second Degree
7 Murder, that is not really an issue in this case. This is a
8 First Degree Murder. Even though you will be getting an
9 instruction. Alright? You will also get an instruction on
10 Manslaughter, which tells you that it could be a negligent
11 killing as a result of Culpable Negligence. Certainly, this
12 is not a negligent act. It was an intentional act. In other
13 words, Teresa McAbee was not killed as a result of an accident.
14 Noone has argued that to you. So even though you get the
15 instruction, I am telling you and I am arguing that we all
16 agree that it is Premeditated act.

17 Now, one thing that you all could see with regard to the
18 Sexual Battery, and you may have heard it called Capital
19 Sexual Battery, well, years ago it used to have capital
20 punishment for someone who raped an individual as young as
21 Teresa McAbee. We no longer have capital punishment for
22 that crime, but it is still called Capital Sexual Battery.
23 Don't let that worry you and the Judge will worry about what
24 a penalty or sentence is involved with that particular charge.
25 It is still legally titled Capital Sexual Battery. That is the

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1 reason. It is nothing that should concern you.

2 You are also going to get what we call another lesser
3 included crime that goes along with Sexual Battery and that is
4 Simple Battery or Misdemeanor Battery. Where someone slaps
5 somebody and there are no real injuries occurred.
6 That is not being argued in this case. Mr. Edmund has agreed
7 that Teresa McAbee was raped or sexually battered. Even
8 though you get this instruction, it is not something argued
9 to you in the case. Okay?

10 As you can see, we are cutting these things down quite
11 a bit.

12 Another instruction you are going to get is an instruction
13 with regard to the Defendant's Statement. That instruction
14 goes to whether or not the Defendant gave his statement freely
15 and voluntarily. You saw Mr. Edmund stand up and stipulate
16 to that. This statement ... this instruction tells you to
17 consider whether or not it was given under duress and so forth,
18 but Mr. Edmund stipulated that it was freely and voluntarily
19 given. That is not an issue in this case. Everything he told
20 the detectives was freely and voluntarily given.

21 One thing that came to my mind when Mr. Edmund got
22 through writing on the board is something I recall from my
23 humanities class from Shakespeare that says, "Confusion now
24 has made its masterpiece", and I submit to you that Mr. Edmund's
25 closing argument was at least to me, somewhat confusing.

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1 Now, if you think of the evidence in this case, the proof
2 in this case, as a coin that was thrown into a tidal pool
3 and you look through that water and you can clearly see the
4 coin there, there is no reasonable doubt you can see that coin.
5 If you take a stick and stir that water up, the silt will arise
6 up and you can't see the coin for a few minutes, but when you
7 stop stirring, that silt is going to settle back down and the
8 coin is going to be there and you are going to be able to see
9 it. Now, I think we need to let the silt settle down when
10 Mr. Edmund got through, because there is a lot of evidence in
11 this case that he did not talk about. There is only one
12 reasonable conclusion that you can reach that what Mr. Edmund
13 has done and very well, and very proper, but what he has done
14 is he has taken each piece of evidence and attacked it.
15 He has taken the fingerprints and he attacked them. He took
16 the tire tracks and he attacked them. Take the pubic hair
17 evidence and he attacked it. But he has never addressed the
18 big picture. He has never addressed all the evidence taken
19 together. He never once told you, "Take all the evidence
20 together and find my client not guilty.". You know, what is
21 interesting to me, if you think back through his opening
22 statement, Mr. Edmund told you, "I want you to go back there
23 and come back in real quick. Real quick." Do you remember that?
24 "I want you to come back real quick with your verdict, because
25 I am going to prove my client innocent." More importantly, he

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1 said, "Take your time. Vote over and over. Read those
2 instructions over and over again." Now, in his closing
3 argument, you never heard about the algae covered shoe or
4 any other things that he was going to prove to you in his
5 opening.

6 What we have in this case is a lot of evidence and I have
7 made a list of some of them. Now, these things all go to
8 show that the Defendant, James Duckett is the one that committed
9 this crime. That is the only issue in the case. Everyone
10 agreed the murder of Teresa McAbee has occurred. That the
11 First Degree, Premeditated slow, strangulation death of
12 Teresa McAbee, an eleven year old girl, occurred.
13 The rape of eleven year old Teresa McAbee occurred. The only
14 issue in this case is whether the Defendant did it, and it
15 should be clear to you that there is no reasonable... there is
16 no reasonable explanation for all the evidence. There is no
17 reasonable explanation for the way he testified. There is no
18 reasonable explanation for the things he did.

19 Now, you may be able to say to yourself, "Well, maybe
20 he didn't do it", or "If this was this way, he didn't do it",
21 or "If another car had those same tires and had a chance to
22 be on the same road at the same time, he didn't do it",
23 but then you are speculating. I told you in voir dire and
24 Mr. Hurm told you in opening that this case was going to
25 require courage. It is a circumstantial case. The Judge is

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1 going to tell you that there is nothing wrong with circum-
2 stantial evidence. If you follow the law and you have
3 courage, and you uphold the law and you believe in the law,
4 and you take your oath seriously, then you are going to
5 return a verdict of guilty.

6 Let's go through some of these things. Now, before I
7 start this, I don't want you to think that I want you to
8 convict this Defendant based on any one piece of evidence,
9 because that is not what we are about. If we thought that,
10 we could have introduced one piece of evidence and sat down.
11 I want you to convict this Defendant, yes, but based on
12 everything you have heard in the trial, from day one until
13 the last witness, and if you don't believe one particular
14 piece of evidence, or you don't like one particular piece of
15 evidence, fine, but let's take the picture as a whole. Let's
16 take all the evidence.

17 Alright, the Defendant stated he could see Teresa and
18 Salvador Calisto behind the dumpster from his position on
19 West Mohawk and North Sunset. That was his testimony. He
20 said that he could park up here by this mobile home and could
21 see down here behind this dumpster right here. Now,
22 the photographs that you have, and you look at them. You
23 remember this girl is 4'10" and you saw how short Salvador
24 Calisto was. He was the first little Mexican boy that came
25 in here and testified. Short, dark haired boy. Remember by

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1 the Defendant's testimony ... by the Defendant's testimony,
2 it was pitch black and you heard Investigator Gerard King
3 state that he couldn't even see the dumpster from here, much
4 less see behind the dumpster from here, but this man, this
5 Defendant, wants you to believe this is where he saw these
6 two people. This is what got his suspicion up. Simply not
7 true. What he did was he drove around the block, came up
8 Sunset, just as Gwen Gurley said, and pulled in behind the
9 dumpster coming from this direction. He saw the young,
10 slender girl. A young petite girl. We know he is attracted
11 to young, petite females. That is when he pulled into the
12 parking lot and started investigating and separating them.

13 Teresa could not be seen from behind the dumpster, West
14 of Mohawk and North of Sunset, because she is too short to be
15 seen from behind that dumpster. You have got some photographs
16 of it. You look at it. He said it was pitch black, dark,
17 and there was no light back there at that time. Going by his
18 testimony.

19 He was seen going around the block on Highway 50 before
20 talking to Teresa. Joyce Reynolds saw Teresa McAbee in a tan
21 and white striped shirt, the pull-over knit shirt at 10:45
22 P. M. Now, Mr. Edmund said everyone in town knew about the
23 brown and white shirt, within a few days of the homicide.
24 Well, there has been absolutely no testimony of that in this
25 case except for Mr. Edmund. Mr. Edmund testified to you that

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1 fact on closing arguments. No other witness. He tried to
2 get Detective Harris to say it but Detective Harris never
3 would say that, because it wasn't true.

4 You can consider how the witness acted when they testified
5 in court. You saw Mrs. Reynolds when I showed her this shirt,
6 tears rolled down her face and when was she certain of the
7 time of 10:45? Absolutely. Why? Because, she recalls
8 renting a video at that time, and she knew the specific video
9 receipt of one. I showed it to her. it is in evidence.
10 10:45, she saw Teresa McAbee in this shirt. Another interesting
11 thing about this shirt, the Defendant himself described this
12 shirt. Yes, it has got the colors greenish-blue. Where did
13 he get that from? From Mrs. McAbee? Trying to recall what
14 her daughter had on? The murderer is not going to verify and
15 not going to correct her and say, "Oh, no, it was tan and
16 white.". But how else did he describe the shirt? A knit,
17 pull-over shirt. This is the Defendant testifying to you
18 now. A knit pull-over shirt and I asked him, I said, "With
19 two buttons up here?" and he said, "Yes. Two buttons up here,
20 a knit pull-over shirt.". This is the shirt she had on at
21 10:45. This is the shirt she was murdered in. This is the
22 shirt that he put her hands around her neck and strangled the
23 life out of her, while she had it on. And that is why Joyce
24 Reynolds had tears running down her face.

25 Joyce Reynolds and Teresa at the Circle K Store at 10:45

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1 and she rented a video tape and we have got the video tape
2 receipt into evidence.

3 The Defendant stated that he put Teresa in the police
4 car so that he could talk to the Mexican, specifically
5 Salvador Calisto. Well, that is simply not true, based on his
6 prior statements. In his prior statements, he said, first of
7 all, several times you have heard me impeach him, that he
8 put her directly from the dumpster into the car and then he
9 said, no, he had all of them up by the spotlight of his
10 car, which is on the driver's side of the car, and if you
11 recall the fingerprints on the hood are on the passenger
12 side. Then he said, not me, not the other witnesses, the
13 Defendant said that he had them in front of the car by the
14 spotlight, all of them, until the Uncle Maximo Rubio arrived,
15 and then what did he do? When Maximo Rubio and Salvador
16 agreed when Maximo got there, that is when he put Teresa
17 in the car. Teresa McAbee never had a chance to get on that
18 car at the Circle K store. She never had a chance to. That
19 is by his testimony, and he did not disagree with me when I
20 showed him those prior statements. He said, "Well, yeah,
21 that could be true. He said to me, "Mr. Hogan, you believe
22 what you want." He would not dispute that and then on direct
23 examination, he said, well, maybe she sat on the car and it was
24 so hot and then she jumped off. Well, she sat there for a
25 long time, moving her hands back and forth, but nobody else

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1 saw her on that car. Salvador said, "No, she never got on
2 the car.". Maximinio said, "No, she never got on the car.".
3 She was seen in the car by several people. Maximinio and
4 Salvador.

5 As he was putting her in the car, what did he say to
6 Maximinio? He said, "You talk to Salvador and I'll take care
7 of Teresa." and he winked, because he had a petite, young girl
8 he was going to take care of.

9 The Defendant was seen parked next to the dumpster after
10 leaving the store. This contradicts his statement that he
11 went straight to the Mascotte Police Department or city Hall,
12 it is all the same thing, in the same building, to use the
13 bathroom. Gwen Gurley saw him go around the block, back down
14 Talbott this way and back up and pull up here on the side of
15 the dumpster. Now, he had had this girl in the car. He put
16 her out of the car. He wasn't going to drive off. Gurley saw
17 him put her right in the car. He went around the block and
18 changed his mind or whatever. We are not inside his head.
19 He drove around the block and came back around here and called
20 to her. Gwen Gurley comes back to the store, stopped by the
21 phone and heard it. Here again, folks, if you don't like
22 Gwen Gurley for some reason, which you may not be planning
23 on calling her up when this thing is over and invite her over
24 for dinner. I don't know. She is one little cog in the
25 story.

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1 Let's get something straight with Gwen Gurley. There is
2 no evidence she got any deal whatsoever. She got out of
3 prison after five and whatever ... six months, of a two year
4 sentence. That is a sad commentary about our prison system.
5 It certainly has nothing to do with the prosecution of this
6 case. There is no evidence of that.

7 Secondly, Mr. Edmund kept trying to say that she knew
8 about all the facts of the case two days after the homicide,
9 and failed to report it until October. Well, she testified
10 on the tape, and you saw her, that what spurred in her mind
11 was the Grand Jury Indictment in October when she saw that
12 storey, the police office and all the pictures on television.
13 That flicked in her mind. Two days after the homicide, nobody
14 knew who did it, much less Gwen Gurley.

15 So... his testimony to you, Mr. Edmund's, is wrong
16 because her testimony was she knew the little girl was missing,
17 but she did not associate the missing girl with the police
18 officer. She had seen them together, but did not know he
19 was a suspect until the Grand Jury indicted him.
20 She gained nothing, I tell you, and there is no evidence of
21 that, and I would agree five months of a two year sentence
22 is a sad thing, but that is a fact of life in every sentence.

23 Now, at this point, point #10, at some time shortly after
24 10:45, he claims he is at the Mascotte Police Department or
25 City Hall, it is all the same thing, using the bathroom.

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1 Point 11. Defendant called to Teresa over to his car.
2 Again, Gwen Gurley is the witness who then saw and heard the
3 Defendant's car left the final time. East on 50, back down
4 Talbott, back in the direction of Teresa's home and back towards
5 the lake. Now, at this point, if she was in the car, she
6 was probably in a panic, because she thought she was going
7 home, because she was heading back down Talbott and she lived
8 right down here.

9 The Defendant drove from the store with Teresa, South
10 in the direction of the lake. The Defendant's police car was
11 not seen by Teresa's mother during the hours from 11:00 to
12 12:00, that she drove around Mascotte looking for her daughter,
13 Teresa, or a policeman. Here is something interesting.
14 Mr. Edmund testified to you on closing, which is no place in
15 the evidence in this case, he said, "Tammy Zavala, Mrs. Zavala,"
16 he stood right about here and told you that she saw a police
17 officer between 11:30 and 12:00. She never testified to that.
18 Never. She testified about her barefoot prints down by the
19 lake. Her sister, Dorothy, testified Tammy had ridden around
20 during this time period, looking for Teresa. The only person
21 that ever said to you ever in this case was Mr. Edmund, during
22 closing arguments, and that is not evidence, folks.

23 Dr. Shutze testified Teresa died or was murdered ... he
24 said murdered, between 11:00 and 12:00 on 5/11/87, t he same
25 time period that noone saw the Defendant. Noone saw the

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1 Defendant. It is not significant what he did earlier that
2 night. I don't know if there were radio transmissions between
3 6:00 and 10:00 or not. That is not the point. The point of
4 the radio transmission is that certainly, certainly he wasn't
5 doing anything with the Sheriff's Office between 10:50 and
6 12:10, the same time period Mrs. McAbee is cruising that
7 entire city looking for her daughter, and doesn't see the
8 Defendant. Nobody saw the Defendant during that time period.
9 No radio transmissions.

10 Dr. Shutze said the rape and the murder of Teresa McAbee
11 occurred close in time due to the moderate bleeding of the
12 torn hymen and none on the clothing. Now, that has become
13 a big deal in this case. Mr. Edmund has made it a big deal
14 in this case, but you heard the expert testimony. There was
15 absolutely no blood in these panties and only a trace amount
16 of blood in her underwear, in her panties. How can that be?
17 She had these clothes on when she was found? The only
18 explanation to that is that she was not bleeding that much.
19 And we know that the murder and the rape... the murder,
20 the strangling, the drowning, all occurred close in time,
21 because there was no clotting in the wound. She was strangled
22 unconscious and then thrown in the water. Boom! Boom! Boom!

23 It all occurred down at Knight Lake. Now, another thing
24 Mr. Edmund said, there was two dimes and an empty lipstick
25 in her back pocket, because the girl had gone to the store

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1 to buy a pencil with an empty lipstick container, because she
2 is only eleven years old and she is just starting to pretend.
3 She is just starting to pretend to be a young woman. But that
4 is a sign of violence. That brand new pencil broken right
5 there beside the tire tracks. A sign of violence.

6 Let's think about something else. He kept saying, "Where
7 is the sign of violence? Where is the struggle?" Look at
8 these photographs. Look at this grassy area. It is not a
9 muddy area and everyone that has testified said it was a sandy
10 area. What happens to sand when it dries? It falls right off.
11 It was a sandy area. Not a muddy area. And this was all
12 grass. There would be no sign of a struggle unless it was
13 between two linebackers on a football team, or let's say, two
14 225 pound men, six foot tall, but let's say one of them is
15 six foot tall and weighed 225 pounds and has big hands and the
16 other one is 4'10", and weighs 80 pounds. Does this man have
17 to struggle to control this child? This baby? No. He is going
18 to lift her right off the ground. There is not going to be
19 any sign of a struggle, folks, because there wasn't one. When
20 the life was choked out of Teresa McAbee, there wasn't a
21 struggle. She never had a chance to struggle.

22 The Defendant stated his alibi here is he was driving
23 through the Presto lot between 10:30 and 11:00. You saw and
24 heard Ed Crumbley, the light colored young man that worked at
25 the Presto Store. He said he always made sure he saw the

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1 police officer come through his store every forty-five minutes
2 to an hour at the most, because he was worried working that
3 shift and Mr. Edmund kept poking at him, "Couldn't you have
4 been back in the cooler?". "No, I fill the cooler the next
5 morning.". "Could you have been mopping the floor?" "No,
6 they always shine the spotlight and blow the horn. I'm always
7 watching for them." He didn't see him. He didn't see him
8 during this time period. In fact, he said he didn't see him
9 on that date from 9:30 until 1:00 o'clock the next morning
10 when he came by with the poster. He took note of that, because
11 he was there alone in a convenience store and he noted that
12 Officer Duckett hasn't been by here from 9:30 to 1:00, because
13 he was working in a convenience store by himself. Where was
14 Officer Duckett? Not driving through Presto Store as he lied
15 to you and said. By the way, is Officer Duckett a liar?
16 Who is the liar in this case? He filled out this employment
17 application. It has on here that he was an Independent Life
18 agent. Reason for leaving: Pay. Nothing about stealing money
19 from thirty-six different insurance clients, I will label number
20 one. When I said, "You stole that money?". "Well, no, because
21 I paid it back. That means I didn't steal it." Does that mean
22 you breathe life back into the body of Teresa McAbee we
23 wouldn't have a murder?

24 Listen to the tape, the little cassette tape. He was
25 called at 12:10 by the Groveland police officer."Mascotte Four"

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1 he calls on the radio. There was a fourteen second delay.
2 You can sit for fourteen seconds in silence and then after
3 that fourteen seconds later, he says, "I am on Bay Lake Road."
4 Bay Lake Road. Out here. Bay Lake Road, he says. Now, the
5 only way to get from here to the Police Department is down 50
6 and to the parking lot from the Brooksville side or from the
7 West side of Mascotte, coming down Highway 50. But he is not
8 there, folks. He is down here. That is why he comes up from
9 this side of the Police Department as Mrs. McAbee said and
10 as Officer Pahaley said. And that is un rebutted. He was on
11 21. He was on Bay Lake Road. 22, your route from the back side
12 of the Police Department not off of Highway 50.

13 Now, Mr. Edmund jumped all over this officer, former
14 officer, Pahaley, about some conversation they had in the hall.
15 About what time he left Groveland and how long before Officer
16 Duckett got to Mascotte Police Department, but he never ever
17 disputed the fact... never ... never disputed the fact ... never
18 asked him to dispute the fact that Duckett came from the
19 back of the Police Department, because he did. That is what
20 Dorothy McAbee testified to. And that is because he was not
21 on Bay Lake Road. He was at Knight Lake. Brushing himself
22 off. Combing his hair somehow without the help of his wife.

23 After distributing the posters, the Defendant never
24 returned to the Jiffy Store, the Presto Store, the Circle K
25 Store, to see if anyone had seen Teresa McAbee. He took the

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1 posters by around 1:00 o'clock in the morning on an eleven year
2 old girl, whose mother is frantic and he never went back. He
3 never went back to check at the only places open in town.

4 This is the store where the girl was last seen and the store
5 the girl was known to frequent and he never went back.

6 The Defendant told Shirley Williams, at the Circle K
7 Store, not to put the poster up. That is true. He sure did.
8 He said, "I'll bring you another one. I'll bring you a better
9 one later." He never went back. He never brought her the
10 poster, and offered some lame brained excuse about her being
11 a new clerk and she should have the poster on the counter and
12 therefore, somehow have reference to it. What that means, I
13 do not know. But that is what he said. He never went back
14 to look for this little girl. He never went back to the place
15 that she would have been, because he knew where she was.
16 He knew that Teresa McAbee was right here where she had
17 splashed into that lake as he dropped the body that he no
18 longer had any use for.

19 Twenty-five. He went by the house at three o'clock in
20 the morning, but never went back there. You know what he did
21 after that? He never went back to the house after 3:00 o'clock
22 in the morning. He never drove past Teresa's home the rest
23 of the night, even though Sunset Street is one of the main
24 streets that goes through Mascotte. He never even went back
25 past her house. Never checked to see if she had come home,

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1 because he knew where she was. He refused to go down by
2 Knight Lake even after Shirley Fernandez said, "Go down by
3 Knight Lake.". He wouldn't go, so she took her baby and her
4 sister and the three of them walked down there barefooted.
5 Now, that makes absolutely no sense. This lake is right near
6 the girl's house. This is an area he knows is a trouble spot.
7 He has been down there investigating gunshots before. He
8 didn't go down there. He knew what was down there. He had
9 been down there a few hours earlier. See, that's not
10 reasonable. That is not reasonable to believe that he did not
11 go down there. That is not reasonable ... that is not a
12 reasonable doubt and it is not a reasonable hypothesis of
13 innocence. It is not reasonable to believe this man acted
14 the way he acted after this girl had been reported missing.
15 Absolutely unreasonable. For you to find him not guilty, you
16 have to assume innocence, based on these circumstances and
17 it is not reasonable. That lake is just down the street
18 from the girl's house and he knew about that road. He knew
19 about that road.

20 There was no Department policy about going off the paved
21 areas as was said in opening. Defendant declined Maximinio
22 Rubio's invitation to search their home, their trailer, the
23 two young Mexican men. He knew she wasn't there. In fact,
24 he said, "I trust you". He knew she wasn't there, and he
25 never returned to Maximinio's house after the initial visit.

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1 He never had checked to see if she had gone over there. He
2 knew she was at least friends of Salvador. He never even went
3 back over there. Unreasonable. That is unreasonable. The
4 Defendant did not look for Teresa all night, even though
5 Chief Brady had ordered him to. What did he do? He set up
6 stationary radar. Not moving radar as Mr. Edmund tried to
7 indicate. Stationary radar. We know at 5:25 he gave a
8 ticket. We know at 6:15 he gave a ticket, instead of looking
9 for Teresa. Think about this. Stationary radar. That means
10 he sat on the side of the road holding the little radar gun
11 however it works, waiting for someone to speed through
12 Mascotte, Florida. The first one that came by was at 5:25,
13 but we don't know how long he sat there before he got him.
14 We don't know how long he sat there after he got this one,
15 but we know he was there for almost an hour. That is not
16 reasonable.

17 Defendant often violated the rule concerning 10-49,
18 police business, civilians in his police car.

19 Number thirty-four. On three prior occasions, the
20 Defendant had engaged in or attempted sex with Shelby Dow,
21 Linda Upshaw and Kimberly Ruetz in his police car, in uniform,
22 in an isolated area. Now, you heard no logical reason why
23 three girls, who don't know each other, never met before,
24 would come into court and make up a story like that. Nothing
25 was even offered to you, reasonable or not.

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1 Why would these girls come... one come all the way down from
2 Virginia. That is not reasonable to believe that that just
3 didn't happen to them. That is the only explanation. Never
4 reported it until after he was arrested or after he was no
5 longer a police officer. You bet they never did. Three young
6 girls as far as they knew, by themselves, against the word of
7 a police officer. Sure they didn't report it until after
8 they knew he was locked up. They were afraid of him. And
9 with good reason.

10 Now, Mr. Edmund says that once the Defendant engaged in
11 oral sex with Ruetz, he waited for three months. First of all,
12 it wasn't three months. It was two months. It was the end
13 of February to the start of April, but that is a time period
14 that that girl moved to Center Hill and moved away from
15 Mascotte, and that certainly is not a reasonable doubt. She
16 came in here and testified and her husband sat in here.
17 She is pregnant. He had nothing to gain at all and he offered
18 no explanation for why she would have come in here and lied.
19 He just said, "She is lying. She is a liar. Ms. Dow is a
20 liar. Ms. Upshaw is a liar. Mike Malone is a liar. Salvador
21 is a liar. Maximo is a liar. Joyce Reynolds is a liar."
22 That is the only way that you can find the Defendant not guilty
23 of First Degree Murder. That is the only explanation they
24 offered to you, was everybody else was lying. That is the
25 only thing that was given to you.

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1 Now, these tires were mud and snow tires, and were sold
2 to the marked units in February of '87 by Ekiert Tire Center.
3 Those same tires on Defendant's police car matched the tracks
4 at the scene and there is no question about that. You don't
5 need an expert, although we had Randy Aleno and Mr. Gary
6 Nelson; a tire expert, Mr. Kingery from the Florida Department
7 of Law Enforcement, to tell you that these tire tracks matched,
8 but you can look at these pictures and see that.
9 You folks can see that.

10 Now, the unique thing about it here folks, these are mud
11 and snow tires. Mr. Ekiert's nine years, never even saw them
12 before. Okay? Now, if these tire tracks were not the end all
13 of this case and we didn't put the tire tracks on and sit
14 down, but it is a block from the building that circles the
15 Defendant. Each one of these blocks, fingerprints, tires and
16 everything else we have gone over so far, is a block that
17 surrounds it and each one of those blocks is held together
18 by the mortar of your common sense. Now, those tires are
19 a rare tire. A rare tire in Florida, and there is no question
20 about that. Those rare tires on that Mascotte Car #203,
21 which the Defendant says he was never down there, or not
22 down there since January. We don't know when, but certainly
23 not down there that night. He denied being down there even
24 though his tire tracks were down there. Tire tracks made prior
25 to the Defendant's shift... excuse me... not made prior to the

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1 shift, due to the hard rain. The other Mascotte police car,
2 Unit 204, was locked up and Duckett had the keys to it in his
3 pocket. That car's mileage log says that it was not moved
4 at any time on the 11th. May 10th was the last entry. The
5 next entry was May 12th. The other police car did not make
6 those tracks and he did not claim that it did, and he had the
7 other keys anyway. Those are the only tires we know of in
8 Florida with that design.

9 Teresa's fingerprints were on the hood of the car.
10 But you know, back on these tires, if you want to believe that
11 somebody else drove down there and committed this murder,
12 that somebody else has fingerprints on the hood of their car,
13 somebody else had tires so identical to the Defendant's
14 that they are indistinguishable, and somebody else has pubic
15 hair just like the Defendant's that it is indistinguishable,
16 and we have already reached the point that it is not reasonable
17 to believe anybody else did it. There is no other reasonable
18 hypothesis and reasonableness is what this is all about.

19 Fingerprints on the hood of the car. That is not disputed.
20 The only explanation you all heard was maybe. Why don't you
21 speculate folks and maybe she jumped on the hood of the car
22 at the Circle K, even though nobody else saw her up there.
23 Her fingerprints were on the hood of the car and they showed
24 that she was laid back in a prone position or nearly prone
25 position.

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1 Forty-three. He denied, at once point, in prior statements,
2 "I swear to God, that girl was never on the hood of my car."
3 Joyce Reynolds, Polly Carr, Salvador and Maximo never saw the
4 girl on the hood of the car. Never ever. She just wasn't
5 on the hood of the car. They didn't have a chance to see her.
6 The only place they could have seen her on the hood of the
7 car was down at Knight Lake. See? They didn't see her on
8 the hood of the car, because she wasn't on the hood of the
9 car and he said she wasn't on the hood of the car at the
10 Circle K.

11 Now, his pubic hair in the crotch of her panties. We
12 went back very carefully and retraced the steps. Yes, we
13 sent the hair to Lifecodes. We tried to get all the evidence
14 we could in this case and now we are criticized for it. But
15 that hair from the crotch of her panties went first to the
16 microscope of Ms. Steger and the second thing we did, was
17 to Mike Malone. Yes, we tried to do everything we could in
18 this case.

19 Forty-six. Now, Deborah Steger. I have no problem with
20 Deborah Steger, but at that time, she had two and a half years
21 or three and a half years when she testified, and she had
22 two and a half years when she examined the hair in June of
23 '87. She found similarities between all the Defendant's
24 known hair submitted and the hair from Teresa's panties.
25 Ms. Steger could not make a determination. She didn't say it

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1 was not his hair. She never suggested it was somebody else's
2 hair. She said she needed another sample, because she said
3 the samples she had was from too isolated an area and Randy
4 Aleno testified the sample that he pulled, the second sample,
5 he explained to you how he pulled the hairs from all the
6 different clock positions around the pubic area of the Defendant.
7 Remember he testified six, twelve, nine and three? That
8 sample was not sent back to Mrs. Steger. That sample was sent
9 to Mike Malone, the F. B. I. hair expert, who, from the
10 minute voir dire started, this man is jumping on Mike Malone,
11 because he knew ... he knew. He had the report. He knew
12 Mike Malone was going to come here and say that was James
13 Duckett's pubic hair. That is why he was jumping up and down
14 and screaming and that is why he was engaged in this personal
15 attack on Agent Malone, calling him a P. R. Agent and
16 criticizing him for being involved in investigations of serial
17 murders. He is screaming loud about the evidence hurting him
18 the worst, and that is to be expected.

19 Now, here is what he came up with. What if he had a
20 disease? Well, Deborah Steger and Mike Malone said there
21 was no evidence of disease in the hair and if he had a disease,
22 whatever it is that affects your hair, he would have told you
23 about it on the witness stand and not one word ... there is
24 no evidence of any hair disease. That is a red herring
25 thrown out.

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1 Forty-eight. Mike Malone, seventeen years with the
2 F. B. I. and thirteen years as a hair examiner. Nationally
3 recognized, that is true. We don't apologize for that.
4 A hair examiner. He found no dissimilarities. No dissimilarities
5 indistinguishable from the hair found in Teresa's panties
6 from that from the Defendant. Yes, he is the best there is.
7 We don't apologize for putting him on the witness stand.
8 Yes, he is nationally recognized. Yes, he has testified
9 twenty-five times a year, because he is the best. I don't
10 take one step back and I don't apologize at all for that. We
11 went for the best. We went for Lifecodes and DNA. We went
12 for the very best hair examiner there was. Absolutely.
13 And you heard from him.

14 If we would have sent the second hair samples to
15 Ms. Steger, he would have been up here saying, "two and a
16 half years experience". Now, here is something we haven't
17 heard from since Randy Aleno testified. Randy Aleno took that
18 hair to Dr. DeForest. Dr. DeForest is a Defense hair expert.
19 Hired by the Defendant. Where is he? Has he had anything to
20 add on it...

21 MR. EDMUND: Your Honor, I object on the grounds that is
22 not fair comment. We had a conference regarding whether or
23 not ...

24 MR. HOGAN: May we approach the bench?

25 THE COURT: Yes.

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1 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

2 MR. HOGAN: That certainly is a fair comment, Judge.
3 I researched it.

4 MR. EDMUND: Mr. Hogan provide me with...

5 THE COURT: It is Grammer, G R A M M E R. It is a
6 Ninth Circuit Court of Appeals Case at 513 Fed.2d 673, 1975.

7 Brief holding of the case, in a robbery case in Federal
8 Court, Prosecutor disclosure to Jury of existence of a Defense
9 fingerprint expert who was not called to testify by Defendant
10 was not impermissible nor was it impermissible to allow
11 Government to argue to the Jury the failure of Defense'
12 fingerprint expert to testify, left Government expert finger-
13 print testimony uncontradicted.

14 MR. EDMUND: I don't have any argument with that, but what
15 happens with that case where the State filed a Motion to Continue
16 in the last minute. The Motion to Continue said I just filed
17 a Witness List and those experts were not able to be deposed
18 and I acknowledged to the Court in the telephone conference
19 that I would then not call any of my experts and that is
20 when they withdrew their Motion to Continue and I ... you told
21 me you would see me Monday morning for trial. That is the
22 fact of this case, Your Honor. Whether I would have called
23 DeForest or not at this point in time, I am still debating
24 as of last night whether I made a mistake because of the way
25 this trial went. The reason with this man, as far as this

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1 record is concerned, was that telephone conference with
2 regarding to the Motion to Continue.

3 MR. HOGAN: That case said if he hires an expert and
4 doesn't call him, we can bring out that DeForest had the
5 hair taken to him by Randy Aleno, and we had some detail
6 from Randy Aleno about where the hair had been and so forth.
7 Certainly, I have the right to comment on it. He is the one
8 that went into detail about it.

9 MR. EDMUND: It was on his examination that anything
10 came out about DeForest. I certainly would not have brought
11 it out. It was brought out on the State's examination with
12 Aleno about DeForest. That is what we will fight. I am
13 not going to bring out somebody and give them a chance to
14 bring out the red herrings. The fact remains, I didn't bring
15 out DeForest with Aleno or anybody else. The fact remains
16 he was withdrawn as a witness, because they wanted to continue
17 the trial, because I had listed him.

18 MR. HOGAN: It doesn't change the facts. We have
19 commented on all the witnesses that we have found to call and
20 pointed out to the Jury they failed to call the other people
21 and all I am doing is saying he failed to call him.

22 MR. EDMUND: That is fine, but I have a reason and my
23 reason was so that they couldn't get a continuance. The Jury
24 needs to know that now.

25 MR. HOGAN: He called it a match. DeForest did and that

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1 is not the reason. We tell the Jury that and that is going to
2 be misleading to them.

3 MR. EDMUND: My reason was that you had filed your Motion
4 to Continue and the Court was going to grant your Motion. I
5 also had a fingerprint man. Do you want to talk about that?

6 THE COURT: One think we can't bring in is that I was
7 going to grant the State's Motion to Continue. Maybe I was
8 and maybe I wasn't. That is not on the record. My ruling is
9 Mr. Hogan has fair comment to point out that Dr. DeForest
10 wasn't called over Defense objection.

11 MR. HOGAN: Thank you, Judge.

12 (WHEREUPON, CLOSING ARGUMENT CONTINUES BY MR. HOGAN:)

13 MR. HOGAN: Dr. DeForest did not appear in this case.
14 The Defense never called Dr. DeForest.

15 Number Fifty. Defendant said he was willing to take a
16 polygraph test yet one year later, we sit here and we have
17 seen no polygraph results.

18 Fifty-one: When the Defendant received a phone call
19 on the morning of the 12th, to inform him that Teresa's body
20 had been found, he didn't even get out of bed. That is not
21 reasonable. Not a reasonable explanation for what was going
22 on.

23 Now, let's go back to the tire tracks just for a minute.
24 Steve reminded me... Mr. Hurm reminded me, we attempted to get
25 a soil sample. We did whatever we could think of for you

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1 or whoever the Jury was going to be in this case. That is
2 right. No positive results in the soil sample, but what do
3 we know about that Police Car #203? And this is the same dirt
4 road here with all this... we know that Unit 203 went down
5 this road two times on the morning of the 12th before it was
6 examined. What does that tell you about the type of soil, not
7 mud, not mud in there. What does that tell you about the soil?
8 Sand, when it dries, it falls off. You saw these pictures of
9 that car. Those tires are clean. Clean looking, because the
10 sand fell off. But also remember this. The Defendant
11 testified to you that twice during that evening of the 11th
12 or early morning hours of the 12th, he was down in the clay
13 pits. There is no clay on his tires either. The fact that,
14 yes, we tried to get more evidence, the soil samples, and
15 we didn't get a good enough. All it said was it was sandy
16 soil and it fell off. It didn't say anything. It didn't say
17 it wasn't there. It said the soil samples idea didn't work.

18 We tried to get a grass an foliage sample and didn't
19 get any positive results. It didn't say it wasn't there.
20 It was one of our ideas that didn't work.

21 We can't be criticized for trying every possible thing.

22 In the opening argument, Mr. Edmund talked about
23 a profuse amount of white hairs and he is the only place you
24 ever heard that from. He is not a witness in this case.
25 You need to make sure that you go back and you think about the

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1 testimony and the evidence and not what he told you or I
2 told you or Mr. Hurm told you.

3 Now, the most important instruction in this... in my
4 opinion, in this instruction package, has this sentence:
5 called Weighing the Evidence. It is up to you to decide
6 what evidence is reliable. You should use your common sense
7 in deciding which is the best evidence. You should use your
8 common sense, and folks, your common sense tells you one
9 thing. Your common sense tells you that Teresa McAbee was
10 killed on a grassy area. This is her body after it was
11 removed from the lake. There was no sign of a struggle.
12 There is no sign of blood. She wasn't bleeding, but it did
13 show nothing more than carefully put victim on the ground.
14 You are not going to see drops of blood in this grass and you
15 are not going to see signs of a struggle when there wasn't one.

16 Fifty-two. When he found out Teresa McAbee had been
17 murdered and raped, did he finally roll out of bed? Did he
18 finally roll his 225 pound body out of bed? He had his hair
19 blow dried.

20 Now, what we have in this case is a lot of evidence, more
21 than this. And what you have in this case, ladies and gentlemen,
22 is simply this. You have a set of tire tracks down by the
23 pond. Now, these tire tracks are from a unique style of tire.
24 Very rare in Florida. That tire is indistinguishable from the
25 tires on the Defendant's car. You can't tell them apart.

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1 One. Two. You have Teresa McAbee's fingerprints on the hood
2 of his car. As Mr. Hurm told you, I don't know who else
3 touched the car checking the oil or getting a ticket or
4 whatever, but we know Teresa McAbee was on the hood of that
5 car. Three. We have the Defendant's pubic hair in the
6 crotch of her panties. Now, it is not reasonable for anyone
7 of you ... it is not a reasonable hypothesis of innocence
8 as the instruction goes, for any one of you to think that
9 somebody else with the same unique kind of tires went down
10 to that lake with Teresa McAbee, at the same time, and we
11 know she died between 11:00 and 12:00 o'clock, the same time
12 he was missing, and raped her and then had the same pubic
13 hair and placed their pubic hair in the crotch of her panties.
14 Now, to believe that, you have to believe there is another
15 person with another set of tires just like his with pubic
16 hair just like his, that had the opportunity to rape and
17 murder her just like he did, and was in Mascotte, Florida,
18 and targeted the same girl at the same time. Same tires.
19 Same pubic hair. Same opportunity. That is not reasonable.
20 It is not reasonable for you to believe that. And that is
21 the big picture.

22 Now, the Defendant says he was clean. Sure he cleaned
23 himself up. There is a scuff mark leading down to the water.
24 Randy Aleno testified there is no way to tell how that was
25 made. Maybe he slipped throwing her into the water. We don't

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1 know. We will never know. We will never know and we are
2 never going to know for the simple fact that on the day after
3 Mother's Day last year, Teresa McAbee, who looked like this,
4 then looked like this, and here is your eye witness. And you
5 eye witness. She did tell you one thing. She told you she
6 was strangled. Maybe she was strangled from behind. We
7 don't know that. That is speculation, but if she was, she
8 is close to her home and don't you think that little girl
9 wanted to get away from there? Don't you think she wanted to
10 go home to her mother and don't you think someone could have
11 grabbed her from behind who weighed 225 pounds and lifted her
12 right off the ground and crushed that highway bone and
13 snuffed the life out of her? And there is only one person
14 on God's green earth who had the opportunity to do it,
15 with those tires and that pubic hair. He is sitting right in
16 the courtroom with us right now. And there is no way ...
17 there is no way he is going to move from that chair. If you
18 come back not guilty, out that door he goes. He deserves to
19 stand in front of the Judge, because Teresa McAbee trusted
20 a police officer, because an eleven year old girl trusted a
21 police officer. And she was taken down by that dark lake,
22 in an abandoned orange grove, her pants were pulled down,
23 her hymen was torn, and she was in pain and she tried to get
24 away or cried out or said, "I am going to tell my mother",
25 unlike the other three girls, and she was strangled.

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1 This man's hair had been done for him. His clothes done for
2 him. This man was proud of that power he had with that badge.
3 This man used that badge for sexual gratification, and used
4 that police car, and he took her down that dark, orange grove,
5 and he put his hands around her throat and he strangled her
6 to death and he threw her in that water where she finished
7 drowning and why? What had she done? She had violated the
8 curfew of Mascotte and at 10:45, the Defendant wants you to
9 believe that he left that store and went to the Mascotte
10 City Hall to use the bathroom.

11 Mike Brady, the former Chief told you as he looked over
12 there between 10:50 and 10:55, the same time the Defendant said
13 he was at City Hall using the restroom, and what did Mike
14 Brady see? Pitch black. No lights and no cars, because he
15 was not there folks. He was not there. Mike Brady was right.
16 He was not there. He was down by Knight Lake on Channel One,
17 and Mike Brady wanted to save his friend and former employee
18 and it didn't work. The Defendant told you he was on Channel
19 One, the Sheriff's Channel, and you know no transmissions.
20 Not on the channel.

21 When Mike Brady made that statement to you, did it
22 ring true? He wouldn't have got away. But if he is telling
23 the truth and his attempt, and he was at City Hall at the time
24 he says he was there using the bathroom, the Chief saw no cars.
25 The only reasonable conclusion from all this evidence is

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1 is quite simple. On that night, on May 11th, this Defendant
2 decided he was going to get another girl in the car, because
3 she had broken the curfew, and for that reason, he picked her
4 up and she didn't have a lawyer. She didn't have a Judge.
5 She didn't have a Jury. She had a police officer named
6 Duckett pick her up and put her in the car and took her down
7 to Knight Lake and he sentenced her to be raped and he
8 sentenced her for threatening to tell on him and taking away
9 his power, his Almighty power of the badge. She threatened
10 to tell when she was hurt. She threatened ... that was a
11 threat to him, so he sentenced her to die, and then after he
12 had served as Prosecutor, Judge and Jury, he served as
13 Executioner. And he put his hands around her throat and he
14 strangled her to death and threw her in the water. He broke
15 her highway bone. There wasn't a struggle. No need for a
16 struggle. There is only one...one reasonable explanation
17 for what happened. And why this Mother's Day was so different
18 for Dorothy McAbee than last year, and that is because James
19 Duckett, cold blooded killer, and there is no justification,
20 and if you folks analyze this evidence, you will reach the
21 only one reasonable conclusion and that is that he is guilty
22 as charged of First Degree Murder. You take whatever time you
23 need and do whatever you do to deliberate this case, but
24 return an honest verdict.
25

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1 INSTRUCTIONS TO THE JURY BY THE COURT:

2 Ladies and gentlemen, I am going to go over the Jury
3 Instructions with you at this time. I ask you to pay careful
4 attention to these instructions as you have to the testimony
5 throughout the course of the trial. I do advise you as the
6 attorneys did, a complete copy of these instructions will be
7 available for you when you retire to deliberate your verdict.

8 The Defendant in this case is charged in the Indictment
9 with the crime of Murder in the First Degree, in that on the
10 12th day of May, 1987, in Lake County, Florida, James Aren
11 Duckett did unlawfully and from a premeditated design to
12 effect the death of Teresa Mae McAbee, a human being, kill and
13 murder the said Teresa Mae McAbee by strangling and/or
14 drowning, in violation of Florida Statute 782.04(1)(A)(1);

15 In this case, James Aren Duckett is charged and accused
16 of Murder in the First Degree.

17 Murder in the First Degree includes the lesser crimes
18 of Murder in the Second Degree and Manslaughter, all of which
19 are unlawful.

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

22 If you find Teresa Mae McAbee was killed by James Aren
23 Duckett, you will then consider the circumstances surrounding
24 the killing in deciding if the killing was Murder in the First
25 Degree or was Murder in the Second Degree or was Manslaughter,

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1 or whether the killing was excusable or resulted from
2 justifiable use of deadly force.

3 The killing of a human being is justifiable homicide
4 and lawful if necessarily done while resisting an attempt to
5 murder or commit a felony upon the Defendant, or to commit a
6 felony in any dwelling house in which the Defendant was at the
7 time of the killing.

8 The killing of a human being is excusable, and therefore
9 lawful, when committed by accident and misfortune in doing any
10 lawful act by lawful means with usual ordinary caution without
11 any unlawful intent, or by accident or misfortune in the heat
12 of passion, upon any sudden and sufficient provocation, or
13 upon a sudden combat, without any dangerous weapon being used
14 and not done in a cruel or unusual manner.

15 I will now instruct you on the circumstances that must be
16 proved before James Aren Duckett may be found guilty of
17 Murder in the First Degree or any lesser included crimes.

18 Before you can find the Defendant guilty of Murder in the
19 First Degree, the State must prove the following three elements
20 beyond a reasonable doubt:

- 21 1. Teresa Mae McAbee is dead.
- 22 2. The death was caused by the criminal act or agency
23 of James Aren Duckett.
- 24 3. There was a premeditated killing of Teresa Mae
25 McAbee.

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1 "Killing with premeditation" is killing after consciously
2 deciding to do so. The decision must be present in the mind
3 at the time of the killing. The law does not fix the exact
4 period of time that must pass between the formation of the
5 premeditated intent to kill and the killing. The period of
6 time must be long enough to allow reflection by the Defendant.
7 The premeditated intent to kill must be formed before the
8 killing.

9 The question of premeditation is a question of fact to be
10 determined by you from the evidence. It will be sufficient
11 proof of premeditation if the circumstances of the killing
12 and the conduct of the accused convince you beyond a reasonable
13 doubt of the existence of premeditation at the time of the
14 killing.

15 The maximum penalty for the crime of Murder in the First
16 Degree is death.

17 The minimum penalty for the crime of Murder in the First
18 Degree is life imprisonment without possibility of parole for
19 twenty-five years.

20 In considering the evidence, you should consider the
21 possibility that although the evidence may not convince you
22 that the Defendant committed the main crime of which he is
23 accused, there may be evidence that he committed other acts
24 that would constitute a lesser included crime. Therefore, if
25 you decide that the main accusation has not been proved beyond

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1 a reasonable doubt, you will next need to decide if the
2 Defendant is guilty of any lesser included crimes. The lesser
3 crimes indicated in the definition of Murder in the First
4 Degree are: Murder in the Second Degree and Manslaughter.

5 Before you can find the Defendant guilty of Second Degree
6 Murder, the State must prove the following three elements
7 beyond a reasonable doubt:

- 8 1. Teresa Mae McAbee is dead.
- 9 2. The death was caused by the criminal act or agency of
10 James Aren Duckett.
- 11 3. There was an unlawful killing of Teresa Mae McAbee
12 by an act imminently dangerous to another and evincing
13 a depraved mind regardless of human life.

14 An act is one "imminently dangerous to another and
15 evincing a depraved mind regardless of human life" if it is an
16 act or series of acts that:

- 17 1. A person of ordinary judgment would know is reasonably
18 certain to kill or do serious bodily injury to another,
19 and
- 20 2. Is done for ill will, hatred, spite or an evil intent,
21 and
- 22 3. Is of such a nature that the act itself indicates an
23 indifference to human life.

24 In order to convict of Second Degree Murder, it is not
25 necessary for the State to prove the Defendant had a

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1 premeditated intent to cause death.

2 Before you can find the Defendant guilty of Manslaughter,
3 the State must prove the following elements beyond a reasonable
4 doubt:

5 1. Teresa Mae McAbee is dead.

6 2. The death was caused by the culpable negligence of
7 James Aren Duckett.

8 However, the Defendant cannot be guilty of Manslaughter
9 if the killing was either justifiable or excusable homicide
10 as I have previously explained those terms.

11 I will now define culpable negligence for you. Each of
12 us has a duty to act reasonably towards others. If there is
13 a violation of that duty, without any conscious intention to
14 harm, that violation is negligence. But culpable negligence
15 is more than a failure to use ordinary care toward others.
16 In order for negligence to be culpable, it must be gross and
17 flagrant. Culpable negligence is a course of conduct showing
18 reckless disregard of human life, or of the safety of persons
19 exposed to its dangerous effects, or such an entire want of care
20 as to raise a presumption of a conscious indifference to
21 consequences, or which shows wantonness or recklessness, or
22 a grossly careless disregard of the safety and welfare of the
23 public, or such an indifference to the rights of others as is
24 equivalent to an intentional violation of such rights.

25 The negligent act or omission must have been committed

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1 with an utter disregard for the safety of others. Culpable
2 negligence is consciously doing an act or following a course
3 of conduct that the Defendant must have known, or reasonably
4 should have known, was likely to cause death or great bodily
5 injury.

6 The Defendant in this case is charged in the Information
7 with the crime of Capital Sexual Battery, in that between the
8 11th and 12th day of May, 1987, in Lake County, Florida,
9 James Aren Duckett did, being a person eighteen (18) years of
10 age or older, unlawfully injure the sexual organs of Teresa
11 Mae McAbee, date of birth July 10, 1975, a person less than
12 twelve years of age, while in an attempt to commit Sexual
13 Battery upon said person, in violation of Florida Statute
14 794.011(2);

15 The evidence which has been admitted to show similar
16 crimes, wrongs or acts allegedly committed by the Defendant
17 will be considered by you only as that evidence relates to
18 proof of motive, opportunity, plan, or identity, on the part
19 of the Defendant, and only in your deliberation regarding the
20 Capital Sexual Battery charge.

21 Before you can find the Defendant guilty of Sexual
22 Battery upon a Person Less than Twelve Years of Age, the
23 State must prove the following three elements beyond a reason-
24 able doubt:

25 1. Teresa Mae McAbee was less than twelve years of age.

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1 2. James Aren Duckett was eighteen years of age or
2 older.

3 3. James Aren Duckett injured the sexual organ of
4 Teresa Mae McAbee in an attempt to commit an act
5 upon Teresa Mae McAbee in which the vagina of
6 Teresa Mae McAbee would be penetrated by an object.

7 In considering the evidence, you should consider the
8 possibility that although the evidence may not convince you that
9 the Defendant committed the main crime of which he is accused,
10 there may be evidence that he committed other acts that would
11 constitute a lesser included crime. Therefore, if you decide
12 that the main accusation has not been proved beyond a reasonable
13 doubt, you will next need to decide if the Defendant is
14 guilty of any lesser included crime. The lesser crime
15 indicated in the definition of Capital Sexual Battery is:
16 Battery.

17 Before you can find the Defendant guilty of Battery,
18 the State must prove the following element beyond a
19 reasonable doubt:

20 James Aren Duckett intentionally caused bodily harm to
21 Teresa Mae McAbee.

22 The Defendant has entered a plea of not guilty. This
23 means you must presume or believe the Defendant is innocent.
24 The presumption stays with the Defendant as to each material
25 allegation in the Indictment or Information through each stage

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1 of the trial until it has been overcome by the evidence to
2 the exclusion of and beyond a reasonable doubt.

3 To overcome the Defendant's presumption of innocence,
4 the State has the burden of proving the following two elements:

5 1. The crime with which the Defendant is charged was
6 committed.

7 2. The Defendant is the person who 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:

11 A reasonable doubt is not a possible doubt, a speculative,
12 imaginary or forced doubt. Such a doubt must not influence
13 you to return a verdict of not guilty if you have an abiding
14 conviction of guilt. On the other hand, if, after carefully
15 considering, comparing and weighing all the evidence, there
16 is not an abiding conviction of guilt, or, if having a
17 conviction, it is one which is not stable, but one which
18 waivers and vacillates, then the charge is not proven beyond
19 every reasonable doubt and you must find the Defendant not
20 guilty because the doubt is reasonable.

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

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

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

4 A separate crime is charged in the Indictment and in the
5 Information and while they have been tried together, each
6 crime and the evidence applicable to it must be considered
7 separately and a separate verdict returned as to each. A
8 finding of guilty or not guilty as to one crime must not
9 affect your verdict as to the other crime charged.

10 A statement claimed to have been made by the Defendant
11 outside of court has been placed before you. Such a
12 statement should always be considered with caution and be
13 weighed with great care to make certain it was freely and
14 voluntarily made.

15 Therefore, you must determine from the evidence that the
16 Defendant's alleged statement was knowingly, voluntarily
17 and freely made.

18 In making this determination, you should consider the
19 total circumstances, including but not limited to:

- 20 1. Whether, when the Defendant made the statement, he
21 had been threatened in order to get him to make it,
22 and
23 2. Whether anyone had promised him anything in order to
24 get him to make it.

25 If you conclude the Defendant's out of court statement

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1 was not freely and voluntarily made, you should disregard it.

2 It is up to you to decide what evidence is reliable.

3 You should use your common sense in deciding which is the best
4 evidence and which evidence should not be relied upon in
5 considering your verdict. You may find some of the evidence
6 not reliable, or less reliable than other evidence.

7 You should consider how the witnesses acted, as well as
8 what they said. Some things you should consider are:

- 9 1. Did the witness seem to have an opportunity to see
10 and know the things about which the witness testified?
- 11 2. Did the witness seem to have an accurate memory?
- 12 3. Was the witness honest and straightforward in
13 answering the attorneys' questions?
- 14 4. Did the witness have some interest in how the case
15 should be decided?
- 16 5. Does the witness' testimony agree with the other
17 testimony and other evidence in the case?
- 18 6. Has the witness been offered or received any money,
19 preferred treatment or other benefit in order to get
20 the witness to testify?
- 21 7. Had any pressure or threat been used against the
22 witness that affected the truth of the witness'
23 testimony?
- 24 8. Did the witness at some other time make a statement
25 that is inconsistent with the testimony he or she gave

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1 in court?

2 9. Was it proved that the witness had been convicted of
3 a crime?

4 10. Was it proved that the general reputation of the
5 witness for telling the truth and being honest was
6 bad?

7 You may rely upon your own conclusion about the witness.
8 A juror may believe or disbelieve all or any part of the
9 evidence or the testimony of any witness.

10 Circumstantial evidence is legal evidence and any fact
11 to be proved may be proved by such evidence. A well-connected
12 chain of circumstances is as conclusive in proving a fact as
13 is positive evidence. Its value is dependent upon its
14 conclusive nature and tendency.

15 Circumstantial evidence is governed by the following
16 rules:

- 17 1. The circumstances themselves must be proved beyond a
18 reasonable doubt.
- 19 2. The circumstances must be consistent with guilt and
20 inconsistent with innocence.
- 21 3. The circumstances must be of such a conclusive nature
22 and tendency that you are convicted beyond a reason-
23 able doubt of the Defendant's guilt.

24 If the circumstances are susceptible of two reasonable
25 constructions, one indicating guilt and the other innocence,

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1 you must accept that construction indicating innocence.

2 Expert witnesses are like other witnesses with one
3 exception. The law permits an expert witness to give his or
4 her opinion.

5 However, an expert's opinion is only reliable when given
6 on a subject about which you believe him or her to be an
7 expert.

8 Like other witnesses, you may believe or disbelieve all
9 or any part of an expert's testimony.

10 The Defendant in this case has become a witness. You
11 should apply the same rule to consideration of his testimony
12 that you apply to the testimony of the other witnesses.

13 There are some general rules that apply to your discussion.
14 You must follow these rules in order to return a lawful
15 verdict.

16 1. You must follow the law as it is set out in these
17 instructions. If you fail to follow the law, your
18 verdict will be a miscarriage of justice. There is
19 no reason for failing to follow the law in this case.
20 All of us are depending upon you to make a wise and
21 legal decision in this matter.

22 2. This case must be decided only upon the evidence that
23 you have heard from the answers of the witnesses
24 and have seen in the form of the exhibits in evidence
25 and these instructions.

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- 1 3. This case must not be decided for or against anyone
2 because you feel sorry for anyone or are angry at
3 anyone.
- 4 4. Remember, the lawyers are not on trial. Your feelings
5 about them should not influence your decision in this
6 case.
- 7 5. Your duty as to the charge of Capital Sexual Battery
8 is to determine if the Defendant is guilty or not
9 guilty, in accord with the law. It is the Judge's
10 job as to that charge, to determine what a proper
11 sentence would be if the Defendant is guilty.
- 12 6. Your duty as to the charge of Murder in the First
13 Degree is to determine if the Defendant is guilty or
14 not guilty, in accord with the law. Final decision
15 as to what punishment shall be imposed upon a
16 conviction of Murder in the First Degree rests solely
17 with the Judge of this Court; however, the law requires
18 that you, the Jury, render to the Court an advisory
19 sentence as to what punishment should be imposed upon
20 the Defendant.
- 21 7. Whatever verdict you render as to the guilt or
22 innocence must be unanimous, that is, each juror must
23 agree to the same verdict.
- 24 8. It is entirely proper for a lawyer to talk to a
25 witness about what testimony the witness would give

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1 if called to the courtroom. The witness should not
2 be discredited by talking to a lawyer about his
3 testimony.

4 9. Feelings of prejudice, bias or sympathy are not
5 legally reasonable doubts and they should not be
6 discussed by any of you in any way.

7 Your verdict must be based on your views of the evidence,
8 and on the law contained in these instructions.

9 Deciding a verdict is exclusively your job. I cannot
10 participate in that decision in any way. Please disregard
11 anything I may have said or done that made you think I
12 preferred one verdict over another.

13 It must be proved only to a reasonable certainty that
14 the alleged crimes were committed in Lake County, Florida.

15 Only one verdict may be returned as to each crime
16 charged. Each verdict must be unanimous as to guilt or
17 innocence. That is, all of you must agree to the same verdict.
18 The verdicts must be in writing and for your convenience
19 the necessary forms of verdict have been prepared for you.

20 I have them here and naturally, we will send them back
21 to the jury room with you. Nevertheless, I would like to go
22 over them with you. We have two sepatate verdict forms. You
23 must answer both of them.

24 The first form:

25 In the Circuit Court of the Fifth Judicial Circuit of the

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Javarez, Florida 32778

1 State of Florida, in and for Lake County, Case No. 87-1347-CF-
2 A-01, the State of Florida versus James Aren Duckett,
3 Charge: Murder in the First Degree. Verdict. We, the Jury,
4 find as follows as to the Defendant in the Indictment in
5 this case and there is an important instruction. It says:
6 Check only one. There are four choices, A, B, C, and D.

7 A reads: The Defendant is guilty of Murder in the First
8 Degree, as charged in the Indictment.

9 B reads: The Defendant is guilty of Murder in the Second
10 Degree, a lesser included offense.

11 C reads: The Defendant is guilty of Manslaughter, a lesser
12 included offense; and

13 D reads: The Defendant is not guilty of Murder in the
14 First Degree or any lesser included offense.

15 So say we all, dated this the blank day of blank, 1988,
16 with a line for the foreman's signature.

17 The other verdict form reads:

18 In the Circuit Court of the Fifth Judicial Circuit, of
19 the State of Florida, in and for Lake County, Case No.
20 88-262-CF-A-01, Charge: Capital Sexual Battery. The State of
21 Florida versus James Aren Duckett. Verdict.

22 We, the Jury, find as follows as to the Defendant in the
23 Information charged in this case: Again the instruction,
24 Check only one. Three choices, A, B, and C.

25 A. The Defendant is guilty of Capital Sexual Battery

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1 as charged in the Information.

2 B. The Defendant is guilty of Battery, a lesser included
3 offense.

4 C. The Defendant is not guilty of Capital Sexual Battery
5 or any lesser included offense.

6 So say we all, dated this the blank day of blank, 1988,
7 with another line for the foreman's signature.

8 In just a few moments you will be taken to the jury room
9 by the bailiff, Mr. Corbett. The first thing you should do
10 is elect a foreman. The foreman presides over your deliberations
11 like a chairman of a meeting. It is the foreman's job to
12 sign and date the verdict form when all of you have agreed on
13 a verdict in this case. The foreman will bring the verdict
14 back to the courtroom when you return. Either a man or
15 woman may be the foreman of a jury, obviously.

16 You bring the verdict forms back to the courtroom. The
17 foreman does not announce the verdict. You simply give the
18 verdict forms to the bailiff and then he will give them to
19 me.

20 Your verdicts finding the Defendant either guilty or not
21 guilty must be unanimous. The verdicts must be the verdict
22 of each juror, as well as of the Jury as a whole.

23 In closing, let me remind you that it is important that
24 you follow the law spelled out in these instructions in
25 deciding your verdicts. There are no other laws that apply

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1 to this case. Even if you do not like the laws that must be
2 applied, you must use them. For two centuries we have agreed
3 to a Constitution and to live by the law. No one of us has
4 the right to violate rules we all share.

5 Gentlemen, has the Court omitted any instructions the
6 Court advised counsel in the instruction conference it would
7 give in this cause?

8 MR. HOGAN: No, sir.

9 MR. EDMUND: No, Your Honor.

10 THE COURT: Are there any objections to the instructions
11 as given by the Court other than as stated at our conference?

12 MR. HOGAN: No, sir.

13 MR. EDMUND: No, Your Honor.

14 THE COURT: Thank you. Let's deal with some housekeeping.
15 You all may or may not have devined by now that Mr. Kratochvil
16 and Mrs. Martin are our alternate jurors for this trial.
17 The State of Florida requires twelve jurors to deliberate
18 and reach a verdict concerning this case. We are going to
19 ask you to remain with us. You will continue to remain with
20 us throughout the course of the trial. You will be sequestered
21 just as the regular jurors. You will stay with Mr. Bailiff
22 from this time forward. We have made arrangements to have
23 you in a separate room. You obviously, are not permitted to
24 meet with the regular jurors unless and until your use might
25 be. You will stay with Mr. Bailiff. I am not certain where

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1 the folks personal belongings are at this time, Mr. Bailiff.

2 I will let you take those two folks at this time and
3 get their belongings and take them to be sequestered.

4 MR. CORBETT: Can I approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, BAILIFF APPROACHES BENCH AND SPEAKS WITH
7 THE COURT BRIEFLY)

8 THE COURT: Folks, will you all come with Mr. Bailiff.
9 He is going to ask you to sit over here with him for just a
10 minute. Just the two of you. Watch your step, please.

11 He wants you to come over here with him, if you will,
12 and just sit in this other box.

13 Gentlemen, at this time, as to the remaining twelve
14 jurors, I propose to submit to the Jury a complete copy of the
15 jury instructions, the verdict form, an exact copy of the
16 Indictment and of the Information, a clean yellow pad, a pen
17 and all the evidence actually introduced into evidence. As I
18 advised earlier, I am going to charge counsel for both
19 parties to carefully go over the evidence with Madam Clerk
20 and make sure that all one hundred five pieces of evidence are
21 in fact, in evidence and those and none other go to the jury
22 room with the Jury for deliberation. Do I hear any objections
23 to my procedure at this time?

24 MR. HOGAN: No, sir.

25 MR. EDMUND: No, Your Honor.

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1 THE COURT: Alright, Mr. Bailiff, let's take these
2 folks back to the jury room.

3 (WHEREUPON, JURY LEAVES COURTROOM TO DELIBERATE AT
4 6:02 P. M.)

5 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT
6 6:04 P. M.)

7 (WHEREUPON, COURT IS IN RECESS AT 6:05 P. M.)

8 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

9 THE COURT: We have got six o'clock now. What are you
10 going to try to do, Steve? What arrangements have you made?
11 They don't know this, of course.

12 MR. CORBETT: I have made reservations for seven and I
13 am about to move up to eight.

14 THE COURT: I think we ought to go late and still give
15 them a two hour shot. Let's go until eight.

16 If you will change those to eight.

17 MR. HURM: Then you are going to just let them go at
18 eight? To the hotel?

19 THE COURT: Take them to the hotel.

20 MR. HURM: That is what I mean, yeah.

21 MR. CORBETT: I am going to let them check in. We will
22 get there about 8:30 and we will check in and then we will
23 eat down at Perkins from there. I will change all my times
24 right now.

25 THE COURT: Alright. They do not know this. They have

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1 no idea what time frame I am talking at this point. Noone
2 has told them. The last thing I want to do is give them a
3 time frame.

4 Let's say as to the attorneys and courtroom personnel,
5 let's stay in this building until seven. You never know what
6 quick questions you are going to get in between seven and
7 eight. If they have a question between seven and eight, they
8 are just going to have to wait, and we can go about our
9 business. Let's stay around here until seven. That is only
10 fifty-five minutes and then from seven to eight, you can go
11 about your business. If we get a question, we will go to
12 eight. I intend to bring them back in the morning, formally
13 convene court at nine, and just put them in the box and ask
14 them to resume their deliberations. Okay? Any problems?

15 MR. EDMUND: No, sir.

16 MR. HOGAN: No, Your Honor.

17 THE COURT: Gents, I have made up and I apologize for not
18 having copies yet, an Order regarding sequestration, which
19 I have not yet entered. I want to ask you all both to look
20 it over. If you want to state any objections or even just
21 to discuss it, fine. It follows almost exactly the proposed
22 rules we had given you with a few minor changes. Folks, if you
23 will just take a look at it and come back to me when you have
24 suggestions or corrections or say "Fine". I'll just wait to
25 hear from you. The main thing I want to do is have that for

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1 the bailiff to give to him so that he knows what the rules are.
2 (WHEREUPON, WE ARE IN RECESS AT THIS TIME)
3 (WHEREUPON, THERE IS A KNOCK ON THE DOOR BY THE JURY AT
4 6:55 P. M.)
5 (WHEREUPON, COURT CONVENES AT 6:57 P. M.)
6 (WHEREUPON, DEFENDANT ENTERS COURTROOM AT 6:58 P. M.)
7 THE COURT: Let the record reflect the Jury is not present
8 in the courtroom. The Defendant is present with his counsel.
9 The State is represented by counsel.
10 Mr. Bailiff advises that one person in the jury room has
11 requested the cassette player, is that correct, Mr. Bailiff?
12 MR. CORBETT: Yes, sir, Mrs. Warren.
13 THE COURT: As I normally proceed, my suggestion is going
14 to be to have Mr. Bailiff have the jury reduce to writing
15 so we can preserve it for the record exactly what they want.
16 Once we have that in writing, then we can talk about it and
17 make a decision. It seems to me there are at least two
18 options. They could want to hear the audio cassette or they
19 could be talking about the whole video cassette that we heard.
20 Could we agree to ask them to specify are they talking
21 about the audio cassette or video cassette player?
22 MR. HOGAN: I don't believe there is any video tape...
23 THE COURT: Gwen Gurley's testimony...
24 MR. EDMUND: Yes, Your Honor.
25 THE COURT: I am going to ask you to ask them to reduce

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1 their question to writing and make specific whether they are
2 talking about an audio or a video cassette player.

3 MR. CORBETT: Yes, sir.

4 THE COURT: Alright.

5 MR. CORBETT: They will knock on the door when they are
6 ready.

7 (WHEREUPON, JURY KNOCKS ON DOOR AT 7:02 P. M.)

8 THE COURT: Alright, we have a written question.
9 Dear Judge Lockett.... this will be part of the record...
10 Please give us the use of a tape player and some drafting tape
11 to put some evidence on the walls. No secret. It is signed
12 by Joseph DeClerk, Foreman. 5/9/88. I am going to ask that
13 we not publish to the media who the foreman is at this time.
14 That wouldn't be appropriate.

15 He wants a tape player. We still don't know if that is
16 an audio or a video tape player. Most people think that that
17 is a video tape, I mean audio, I think, to listen to something.

18 MR. HOGAN: If I recall correctly, I may have said that
19 you can listen to this audio cassette of the radio transmission.
20 That is in evidence. The tape itself is in evidence, as
21 opposed to the video tape, which is testimony. This is a piece
22 of evidence. It may be appropriate for them to listen to that.

23 MR. HURM: As a matter of fact, we also have the big
24 reel to reel that is also in evidence and they may want a
25 player to listen to those.

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1 THE COURT: If they are going to listen to them suckers,
2 we are going to be here until this time next year.

3 MR. HURM: Well, they can skip forward though because
4 the times are on there. You don't have to listen to all
5 forty-eight hours in order to get what they want.

6 MR. CORBETT: Judge, as he suggested, I told them that
7 he needed to specify what he wanted and he was holding the
8 cassette in his hand at the time.

9 THE COURT: Which one? The little one?

10 MR. CORBETT: The small cassette.

11 THE COURT: Alright, let's presume that he wants the
12 audio tape player. What do you say to their listening to the
13 audio tape again? The little one?

14 MR. EDMUND: The audio tape we have into evidence, the
15 transmissions.

16 THE COURT: The only thing they can play on what we are
17 going to give them is the little one, which is an excerpt
18 from the great big twenty-four hour tape.

19 MR. EDMUND: I don't have a problem with that, Your
20 Honor. No objection.

21 THE COURT: We are also ... do you have any objections to
22 ... they want some drafting tape. I take it masking tape, to
23 put evidence on the walls. Any objection to giving them that?

24 MR. EDMUND: No objection, Your Honor.

25 THE COURT: Alright, let's go ahead. You all have a player

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1 don't you? You used one. Do you know if you have any
2 appropriate tape? Masking type tape in your office?

3 MR. HURM: We might be able to check right here in the
4 officer.

5 THE COURT: I'll tell you what, Steve. We have a lot of
6 supplies right up here, upstairs, too. Let's see if we can't
7 round both those things up and I'll send it back to them.

8 MR. HURM: I've just got to run next door. Fred wouldn't
9 have a tape player back there in his office, would he?

10 THE COURT: I don't know. Fred is not here. Long gone.
11 Why don't you all get that one and look for some tape and
12 Steve will look for some tape here as well. Okay.

13 Do we need the Defendant anymore, Mr. Edmund, for any
14 reason?

15 MR. EDMUND: No, Your Honor.

16 THE COURT: File this request, please, ma'am.

17 (WHEREUPON, REQUEST FOR PLAYER AND TAPE IS GIVEN TO THE
18 CLERK OF THE COURT)

19 (WHEREUPON, DEFENDANT IS REMOVED FROM COURTROOM AT
20 7:05 P. M.)

21 (WHEREUPON, JURORS KNOCK ON DOOR AT 7:53 P. M.)

22 MR. CORBETT: Mr. DeClerk says all they can talk about
23 is how hungry they are and to tell you that.

24 (WHEREUPON, SPECTATORS ENTER COURTROOM)

25 (WHEREUPON, DEFENDANT ENTERS COURTROOM AT 8:00 P. M.)

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1 (WHEREUPON, BENCH CONFERENCE IS HELD AS FOLLOWS:)

2 THE COURT: One thing was just brought to my attention.
3 The Jury is going to be sequestered down at Best Western
4 Motel. Mr. Bailiff understands that is where you are staying.
5 Is that true?

6 MR. EDMUND: That is true, Your Honor.

7 THE COURT: That just happened. I am sure you didn't know
8 that. We hadn't told anybody where we were putting them.

9 MR. EDMUND: That is where we have been staying. As a
10 matter of fact, we checked and I told my secretary and we went
11 up to Mission Inn one night and went crazy with all that stuff
12 and come back to town.

13 THE COURT: I don't see any problem. You are just going
14 to avoid any contact.

15 MR. HOGAN: They are not going to be out running around
16 anyway.

17 MR. EDMUND: We are not. We are in our darn room and
18 stay there.

19 THE COURT: We are just going to leave that alone.
20 The second thing, it seems to me we are probably going to
21 tell the Jury this, "Don't discuss the case at all while they
22 are sequestered and not only while the alternates are there,
23 but they not need to in a room."

24 MR. HOGAN: Tell them the only time they can talk about the
25 case is when they are back in the jury room.

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1 MR. EDMUND: I agree with that.

2 MR. HOGAN: The only other problem I see Judge if we have
3 to somehow keep a control of the evidence and they have taped
4 a bunch of stuff up on the walls.

5 THE COURT: It is going to all come down and it is all
6 going to be locked up in the vault tonight. They can tape it
7 back up tomorrow.

8 MR. EDMUND: Is there any way we could lock the jury room
9 and put it on the record? It would save a lot of time and
10 energy.

11 THE COURT: There is a potential problem I do have.
12 Do you have any way you can lock that jury room where nobody
13 can get in there? Where the cleaning people could not get
14 in there?

15 MR. CORBETT: No, sir, they have access to it.

16 The cleaning people have master keys and there is no
17 way to lock that.

18 THE COURT: They don't have a master key to the vault.

19 MR. CORBETT: Everything except the vault.

20 THE COURT: We have got to put it in the vault.

21 (WHEREUPON, BENCH CONFERENCE ENDS)

22 THE COURT: Anything further before we bring the Jury
23 back, gentlemen?

24 MR. HOGAN: No, sir.

25 MR. EDMUND: No, Your Honor.

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