

## Case Brief

Crim Law - Homicide, First and Second Degree Murder

Hughes, 2/14/15

### Identity of Case

State v. Bingham, 719 P.2d 109 (1986)

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### Summary of Facts/Procedural History

Bingham got on the bus with Leslie Cook, a "retarded adult." They got off a bus together in a small town, visited a grocery store and two residences, then walked out to the middle of nowhere where he raped and strangled her. Testimony during trial: strangulation takes 3 to 5 minutes to kill, stopping before that point would render her unconscious. All rape occurred pre-mortem. Conviction for aggravated first degree murder, appealed based on the sufficiency of the evidence for premeditation, remanded for new sentencing for 2<sup>nd</sup> degree murder.

### Statement of the Issue

Can premeditation occur during the act?

### Holding

No, premeditation must occur before the act, no matter how brief it is (note, statute was changed after a few more cases like this one).

### Reasoning

The prosecution's theory, as understood by the majority opinion, was that the defendant wanted to have sex with the victim and needed to kill her in order to do so. He was strangling her and realized if he kept going he would kill her, and did so.

There are a few problems with this theory. Time alone is not an indication of premeditation, other factors (although they can also be circumstantial) must be shown. But more importantly, there was other circumstantial evidence of premeditation - read the story above - that the prosecution left out of its theory. What on earth was he doing with this woman? He took her out to a secluded place. The totality of the circumstances equals premeditation.

### Evaluation