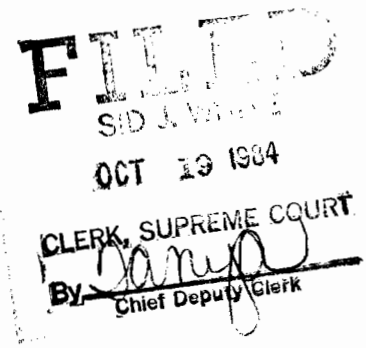
IN THE SUPREME COURT OF FLORIDA

JASON DEATON, Appellant, vs. STATE OF FLORIDA, Appellee.	)	CASE NO: 65,437

BRIEF OF APPELLANT

Appeal from the Circuit Court, 17th Judicial Circuit, in and for Broward County, Florida
Judge Leroy Moe



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PRELIMINARY STATEMENT

The Appellant, JASON DEATON, was the Defendant in the trial court of the Circuit Court of the 17th Judicial Circuit, the Honorable Leroy Moe presiding; Appellee, State of Florida, was the Plaintiff in the trial court. They will be referred to in this brief as the Appellant or Appellee or State.

STATEMENT OF THE CASE

The Appellant, JASON DEATON, was arrested on the instant charge in Tennessee, and was indicted by the Broward County Grand Jury for first degree murder for the killing of Santi Campanella, and the robbery of the same victim. (Record Vol. 11, p. 1678). On April 24, 1984, a trial by jury began in Broward County, with the stipulation that a Motion to Suppress Statements would be held midway through the trial. (Tr. vol. 1, p. 4). The Motion to Suppress was denied (Tr. vol. 2, p. 234), as was Appellant's Motion for Judgement of Acquittal at the end of the State's case (Tr. vo. 5, p. 904) and at the end of all of the evidence (Tr. vol. 7, p. 1223).

The Appellant was found Guilty as charged to the first degree murder and robbery counts (Tr. vol. 8, p. 1370), at which time he was adjudicated Guilty. The same jury that heard the trial then heard arguments by both counsel regarding the sentencing recommendation, and the jury, by a vote of eight to four, recommended that the death sentence be applied. (Tr. vol. 8, p. 1408). A pre-sentence investigation was ordered, and the sentencing was set for June 7, 1984. After hearing comments by both sides, the trial court read a letter regarding capital punishment and, without further elaboration on aggravating circumstances or the facts surrounding such circumstances, the court imposed the death penalty. (Tr. vol. 8, p. 1424).

Appellant's Motion for New Trial was denied (Record vol. 11, p. 1762), and this timely appeal followed. (Record vol. 11, p. 1776).

STATEMENT OF THE FACTS

In April of 1983, fifteen-year old Rita Callahan and fifteen-year old Marjorie Shannon ran away from their respective homes and made their way to Fort Lauderdale, Florida, where they met fifteen-year old Tammy Lambert and where all three eventually met Appellant, JASON DEATON, and co-defendant Kerry Dean Hall. (Tr. vol. 2, p. 286, vol. 3. p. 444, and vol. 5, p. 571). While collectively living off of prostitution proceeds and the kindness of strangers, (Tr. vol. 2, p. 319, vol. 3, p. 506, vol. 4, p. 614) discussions began regarding the desire to leave Florida and the need for money and a car to do so. (Tr. vol. 2, p. 288, vol. 3, p. 447). It became known in this circle that co-defendant Hall had an homosexual "trick" or customer who owned an automobile, and conversations then turned to separating the "trick" (victim Campanella) from his money and car. (Tr. vol. 2, p. 292, vol. 3, p. 447). At that time, on approximately May 27, 1983, the conversation between Appellant and co-defendant Hall turned to planning the strangulation death of Campanella on the next night, near Searstown, Fort Lauderdale, Broward County, Florida. (Tr. vol. 2, p. 293). To those ends, Appellant took an electrical cord from a lamp in a hotel, commented that "the cord should do the trick," and hid it in his shirt). (Tr. vol. 2, p. 294).

On the next day, approximately May 28, 1983, Appellant and co-defendant Hall were seen in a car with a third person driving down the beachfront road in Fort Lauderdale (Tr. vol. 2, p. 296), and the Defendant and Hall returned to the hotel approximately an hour later. Upon their return, the Appellant and Hall told the three girls, Callahan, Shannon, and Lambert to go to the car and to bring a towel, which they used to clean blood from the inside of Campanella's maroon Chrysler. (Tr. vol. 2, p. 297, vol. 3, p. 459, vol. 4, p. 579). After cleaning up the car, all five persons immediately left to drive to Tennessee, a trip which was financed with $80.00 taken from Campanella as well as with Campanella's American Express credit card, which was used throughout the trip. (Tr. vol. 2, p. 301).

During the meandering trip northward, the five people stopped at a Foxmoore store in Knoxville, Tennessee and attempted to purchase clothes with the American Express credit card (Tr. vol. 1, p. 87, 100, vol. 2, p. 306). While driving to the eventual destination in Tennessee, the Appellant supposedly made statements regarding his strangling of Campanella with the electrical cord, and the difficulty in killing the victim. (Tr. vol. 3, p. 455, 456). Eventually, the five arrived in Tennessee, at which time the co-defendant, Hall, led them to a cistern/well in Loudon County, Tennessee, where the body of Campanella was hidden. (Tr. vol. 4, p. 660).

After disposing of the body, all five of the people went to a lake where the trunk of the car was washed out, and where a Rhone County deputy found the floor mat and lug wrench from the trunk with blood on them. (Tr. vol. 2, p. 265-266).

After disposing of the body, the five people traveled to Arkansas, where all three of the girls were arrested for loitering at a truck stop (Tr. vol. 2, p. 366-367).

The Appellant and co-defendant Hall continued on in their travels, returning to the Knoxville, Tennessee area where Hall attempted to sell a stolen camera in a camera shop. (Tr. vol. 1, p. 142, 154). The police were called regarding the stolen camera and noticed the victim's car in the parking lot which had been listed as stolen. (Tr. vol. 1, p. 114). Also, Oak Ridge, Tennessee officer Duckett had noticed an article in the paper about a missing person from Fort Lauderdale and made an independent connection between the missing Campanella and the vehicle seen in the mall. (Tr. vol. 1, p. 110-112).

When Defendant and Hall reentered the stolen Chrysler, they were stopped and arrested by the Tennessee police. (Tr. vol. 1, p. 116). After the initial arrest, the Appellant was taken to the Oak Ridge, Tennessee jail where he gave an initial story of the victim offering a job in Texas (Tr. vol. 3, p. 391-392, 395). Fort Lauderdale police officers Rice

and Patterson then flew to Tennessee and, late on the same evening, June 8, 1983, Patterson and Rice had an initial contact with Appellant at the jail, resulting in an immediate conflict between Appellant and the gruff and intimidating Officer Patterson (Tr. vol. 3, p. 407, 412). On the next day, June 9, 1983, co-defendant Hall was interviewed and apparently made incriminating statements, leading to an interview with the Appellant. After being assured that Patterson would not be present, Appellant made numerous incriminating statements regarding the death of the victim, including tape recorded statements. (Tr. vol. 3, p. 422, vol. 5, p. 772).

While there was no contention about the cause of death, set at strangulation by Dr. Kintler (Tr. vol. 2, p. 249), Dr. Ongley, a pathologist presented by the Defendant, strongly contested the time of death based upon the amount of decomposition, opining that it was not reasonably possible that the victim was killed in Fort Lauderdale on May 28, 1983, as the State alleged. (Tr. vol. 6, p. 948). Also in support of the Defendant's position that the victim was killed in Tennessee, in self defense after attack by a knife (Tr. vol. 7, p. 1102-1103), was the testimony by Rose Hall and Ellen Harmon that, as late as May 29, 1983, they both saw Campanella alive in Tennessee with the Appellant and co-defendant Hall. (Tr. vol. 6, p. 1007, 1041).

Other facts will be cited throughout the brief as appropriate.

POINT I

THE CUMULATIVE EFFECT OF THE TRIAL COURT'S EVIDENTIARY RULINGS REQUIRE A NEW TRIAL.

Throughout the course of the trial, the trial Court committed error in various evidentiary rulings, the cumulative effect of which require reversal in the instant matter.

During the course of the trial, the trial Court heard Appellant's Motion to Suppress statements allegedly given to various police officers by the Appellant. After hearing the testimony, including testimony by the Appellant, the Motion was summarily denied by the trial Court (Tr. vol. 2, p. 234). The denial of the Motion to Suppress was error by the trial Court. Initially, the Appellant was arrested in Tennessee by Officer Duckett, was given his Miranda rights, and was questioned. (Tr. vol. 1, p. 116, Vol. 3, 389). The Appellant was questioned initially, and gave a story regarding his being picked up by the co-defendant and the victim at the beach in Fort Lauderdale, and leaving to take a job with the victim. (Tr. vol. 3, p. 291-292). When the Appellant was questioned a second time, he was again given his rights and told the same story. (Tr. vol. 3, p. 395). After the second interrogation was terminated, the Appellant was left alone until Officers Rice and Patterson arrived in Tennessee from Fort Lauderdale, and spoke to the Appellant late in the evening on June 8, 1983. It was at this

time that the Appellant first came in contact with Sergeant Patterson, who has a gruff, harsh and authoritarian manner, leading to immediate dislike between himself and the Appellant, according to officers who witnessed the confrontation (Tr. vol. 1, p. 187, vol. 3, p. 407). More important than this coercive mannerism was the fact that the other officers, particularly Detective Foust, saw that Patterson came on like a bad guy and that Patterson told something to the Appellant, although it was not heard what it was (Tr. vol. 3, p. 412, 416). The Appellant testified that Patterson came in immediately and threatened the Appellant with the organized crime affiliations of the victim's family, stating in essence that if Appellant got out of jail, he would be killed due to such connections. (Tr. vol. 2, p. 217). This organized crime connection to the victim's family was not an exercise in imagination by the Appellant, as various officers involved in the investigation testified to similar information. Officer Duckett testified that Patterson mentioned that the victim's family was very powerful with organized crime connections (Tr. vol. 1, p. 189, 193), and further testified that the Appellant had asked about these organized crime connections and was concerned about them (Tr. vol. 1, p. 190). At the Motion to Suppress, Officer Rice, (Patterson's partner from Fort Lauderdale) testified that he was contacted by Tennessee authorities regarding the fact that the Appellant's life would be in danger because of the organized

crime connections of the victim's family (Tr. vol. 2, p. 210). Detective Foust testified that he had heard rumors that the Appellants were afraid of the organized crime ties and were similarly afraid of the wealth of the family. (Tr. vol. 3, p. 416-417). Finally, later in the trial, Officer Duckett testified that the Appellant actually was concerned enough to ask Officer Duckett about the connections of the family soon after Appellant's contact with Patterson. (Tr. vol. 4, p. 726). From this testimony, it is clear that the climate surrounding the interrogation of the Appellant by Rice and Patterson (the officers who took the taped statements) was coercive, making the trial Court's finding of a free and voluntary statement unreasonable.

Similarly, it cannot be overlooked that, upon his initial contact with Rice and Patterson late in the evening on June 8, 1983, the Appellant, according to the testimony of the officers, was very hostile and nasty toward the officers (Tr. vol. 2, p. 208), resulting in the Appellant's cursing the officers, asking them why they were bothering him, and informing them that he told them all he knew, and terminating the conversation. (Tr. vol. 4, p. 692). This termination was punctuated with the Appellant spitting upon Patterson. (Tr. vol. 5, p. 755).

After Appellant terminated the interrogation of June 8, 1983, the officers, undaunted, returned for another interrogation the next morning, clearly uninvited. To further clarify

the coercive nature of the prior evening's encounter, Appellant's initial statement dealt with his fear of Patterson and his need for assurance that Patterson would not return. (Tr. vol. 3, p. 432, p. 415-416). Not only was it clear, factually, that the Appellant exercised his Fifth and Sixth Amendment rights on the evening of June 8, 1983 by terminating any further uncounseled interrogation, but the statements regarding his fear of Patterson the next morning clarified the coercive atmosphere which existed at the time. This Court, as the Supreme Court, has always set a very high standard of proof for the waiver of constitutional rights, particularly in situations regarding custodial interrogation. See Tague v. Illinois, ___U.S.___100 S.Ct. 652 (1980); p. 653. Further, and more importantly, the Appellant's exercise of his Fifth and Sixth Amendment rights by terminating the late-night interrogation shows that the officers acted improperly and illegally by their initiating further contact with the Appellant as was specifically prohibited by the U.S. Supreme Court in Edwards v. Arizona, ___U.S.___; 101 S.Ct.(1981). The Court in Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321 (1975), held that:

> The critical safeguard identified in the passage at issue is a person's "right to cut off questioning". Id. at 474, 86 S.Ct. at 1627. Through the exercise of his option to terminate questioning, he can control the time at which questioning occurs, subjects discussed, and the duration of the interrogation.

> The requirement that law enforcement must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting. We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his "right to cut off questioning" was "scrupulously honored." P. 326.

The Appellant did everything possible to make it clear to the Detectives Rice and Patterson and Duckett on the evening of June 8, 1983, that the interrogation was over and he didn't want to be bothered again, from being rude to telling them that he knew nothing else to telling them that their case was an obscene collection to actually spitting on the officers. No other reasonable conclusion can be drawn from this testimony but that the interrogation and police contact was terminated by the Appellant. And yet, the police initiated contact and again advised the Appellant of his rights, which eventually resulted in the statements in question. It is clear that a valid waiver of his Fifth and Sixth Amendment rights cannot be shown simply by the fact that the Appellant responded to further police-initiated custodial interrogation, even if he has been further advised of his Miranda rights. Edwards v. Arizona, ___U.S.___, 101S.Ct. 1880 (1981), p. 1884. Further, and dispositive of this matter, it is the simple fact that once the Appellant expressed his

clear desire to end the interrogation, the Appellant is not to be subjected to further interrogation by the authorities until counsel has been made available to him unless he initiates further communications or conversations with the police. Edwards, supra, p. 1884-1885). Not only is it clear that the Appellant did not initiate further contact or conversation with the officers, but, quite the contrary, it is clear that the Appellant was still being intimidated by the presence of Detective Patterson and by the rumors of organized crime-related dangers to the Appellant making it impossible for this Court to reasonably find that the State sustained its burden of showing that the resultant statements were voluntarily made. DeConigh v. State, ___So.2d. ___, F.L.W. vol. 8, p. 153 (Fla. 1983). Therefore, the trial Court erred in allowing any of the resultant custodial statements whether taped or oral, to come before the jury. Since this error affects the constitutional rights of the Appellant under the Fifth and Sixth Amendment, this Court may not find this error to be harmless beyond a reasonable doubt if there is a reasonable possibility that the statements in question may have contributed to the Appellant's conviction. Palmes v. State,397 So.2d. 648 (Fla. 1981), p. 654. Therefore, a new trial is required.

The trial Court erred by allowing inflamatory photographs of the deceased and an actual videotape of the recovery of the body, despite the fact that there was a Stipulation by defense counsel as to the cause of death and the identity of the victim (Tr. vol. 2, p. 277-278, vol. 4, p. 701). Certainly the combination of still photographs and a videotape of the bloated, partially decomposed face of the victim result in the substantial danger of unfair prejudice which outweighs the arguable admissibility of such evidence. See Section 90.403, Florida Statutes. When this prejudicial effect is compounded by the Stipulation as to the cause of death and identity of the victim, the error is augmented, and reversal is required. See Dyken v. State, 89 So.2d 866 (Fla. 1956), Young v. State, 234 So.2d 341 (Fla. 1970).

The trial Court also erred by allowing evidence to come before the jury regarding unrelated criminal activity by the Appellant. Evidence was brought before the jury that the Appellant had possession of and helped sell a stolen camera in Tennessee (Vol. 1, p. 165), and that the Appellant participated in a robbery to get gas money in Fort Lauderdale (Tr. vol. 2, p. 330).Neither of these circumstances had any probative value to prove a material fact at issue, motive, intent or preparation, etc. and quite the contrary, these two instances solely proved bad character and criminal propensity as is prohibited by Section 90.404 of Florida Statutes. See also

Williams v. State, 117 So.2d 473 (Fla. 1960).

This trial Court erred in preventing cross-examination of Marjorie Shannon, one of the State's runaway witnesses, regarding the reputation for truth and veracity of Rita Callahan, another runaway witness. It was established through her direct examination, that Shannon knew Callahan for a period of time, and spent a lot of time with her (Tr. vol. 4, p. 571), therefore, a proper predicate for such question regarding Callahan's reputation was present. Shannon was never asked questions regarding general moral character or specific acts of misconduct, both of which being improper areas of inquiry, but was asked only about the reputation for truth and veracity, which is proper cross-examiantion to show the believability of a critical State witness. See Pandula v. Fonseca 199 So. 358 (Fla. 1941), Chavers v. State, 380 So.2d. 1180 (Fla. 5th DCA 1980). Therefore, not only was the trial Court's exclusion of such question error, but such error by the Court violated basic Sixth Amendment rights of the Appellant to confront witnesses and to have effective assistance of counsel at critical stages of his trial, that being cross-examination of crucial State witnesses.

The trial Court erred in failing to conduct an in camera hearing regarding the State's failure to supply a tape recorded statement given by runaway Lambert upon her arrest (Tr. vol. 4, p. 566-567). It has been consistently held, since Richardson v. State, 246 So.2d 771 (Fla. 1971), that the trial Court must make the full inquiry into circumstances

surrounding a violation of the State's discovery obligation under Rule 3.220 of the Florida Rules of Criminal Procedure. Although the trial Attorney learned during cross-examination that Tammy Lambert gave a tape recorded statement in Arkansas upon her arrest, and that she reviewed that tape (Tr. vol. 3, p. 561-562), the Attorney's motion to prove such statement was summarily denied by the trial court (Tr. vol. 4, p. 567) without any inquiry into the circumstances of the State's failure to supply such statement. The trial court took no testimony nor heard argument from the prosecutor regarding the content of the statement in question or the circumstances surrounding the failure to prove such statement. As Tammy Lambert was a critical State witness in the case, it cannot be said that this error was harmless beyond a reasonable doubt. Chapman v. California, 386 U.S. 18 (1967).

The trial court erred in allowing testimony from clerks at the Foxmoor store in Tennessee regarding the attempted use of a credit card owned by the victim without there being any testimony regarding the identity of persons using such credit card (Tr. vol. 1, p. 85, 94, 96, 101). Without the identification link, the evidence was simply irrelevant to the case against the Appellant, and did nothing more than put prejudicial matter before the jury without connecting it to the Appellant.

As a result of these cumulative errors on the part of the trial court, a new trial is required for Appellant.

POINT II

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A CONVICTION, AND, A NEW TRIAL IS REQUIRED IN THE INTEREST OF JUSTICE.

In the case at bar, the Defendant's conviction was based entirely upon statements attributed to the Defendant, informally to three teenage runaway girls, Rita Callahan, Tammy Lambert and Marjorie Shannon, as well as statements given to various police officers. Although the Appellant conceeds the existence of a sufficient corpus delecti to properly admit such statements of the Appellant, it is Appellant's contention that the nature of the statements was such and that the evidence was insufficient to support a conviction.

As was discussed earlier, the statements given by the Appellant to the various police officers were tainted, and therefore should not have been admitted to the jury due to the coercive factors involving such statements and, due to the reasonable explanation of such factors given by the Appellant at the time of the Motion to Suppress. (Tr. vol. 2, p. 225, 228). Also, it must be remembered that many of the statements given by the Appellant were only partially inculpatory, showing aiding and abetting, at best. (Tr. vol. 3, p. 391, 395, 422, 433). These conflicting stories told by Appellant, that he was picked up by the co-defendant and the victim and was given a job (Tr. vol. 3, p. 392, 394)

(the first two statements made by Appellant) were followed by the Appellant's story that he was simply assisting the co-defendant and he was not trying in any way to kill the victim, but was just holding the victim when the co-defendant started assaulting the victim. (Tr. vol. 3, p. 422-423). As Detective Foust admitted, the Appellant never did kill Campanella. (Tr. vol. 3, p. 433). Later, more inculpatory statements given to Rice and Patterson were explained by Appellant's testimony as being the product of his fear of possible organized crime connections.

The statements supposedly made by the Appellant during the drive to Tennessee, as related by the three teenage runaways, were not only inherently unreliable, but, initially, these statements were directly contradicted by expert testimony regarding the time of death. Although the three girls stated that the killing was done in Fort Lauderdlae, Florida, with the body being placed in the trunk and driven to Tennessee, Dr. James Ongley, an expert pathologist presented by the Appellant testified that was not within the realm of reasonable medical possibility that the killing occurred in Fort Lauderdale on May 28, 1983, with the body being found on June 9, 1983, based upon the degree of decomposition present. (Tr. vol. 6, p. 948). Also directly contradicting the statements given by the runaways was the testimony of Helen Harmon and Rose Hall, both ladies testifying that they positively saw the victim in the

car in Tennessee after May 28, 1983, and that he was quite alive at the time. (Tr. vol. 6, p. 1007, 1044). These witnesses backed up and verified the Appellant's version of the incident showing a killing in self-defense which occurred in Tennessee as opposed to Fort Lauderdale, Florida. (Tr. vol. 7, p. 1099-1101).

Finally, regarding the statements of the runaways, the actual content of the statements and nature of the witnesses is very probative in this regard. Rita Callahan, the first runaway to testify, ran away from home when she was fifteen years old, hitchhiking to Fort Lauderdale. (Tr. vol. 2, p. 285). This was the third time that the fifteen year old ran away, other times her adventures taking her to Texas, California and Arizona with absolutely no money. (Tr. vol. 2, p. 315-317). Although denying prostitution, (Tr. vol. 2, p. 19-20), Callahan testified to going around the country and simply living off of strangers. Most importantly, it must be remembered that despite numerous opportunities, Callahan never told anyone of the killing nor of the body that was supposedly in the trunk of the car in which she was riding (Tr. vol. 2, p. 367). The second runaway, Lambert, also fifteen years old, also admitted to relying upon the kindness of strangers to live as she hitchhiked around the country (Tr. vol. 3, p. 443), admitting that she lived, with her friends, from prostitution. (Tr. vol. 3, p. 506). Lambert also did not tell anyone of the killings nor try to escape, despite many opportunitites to do

so. (Tr. vol. 3, p. 103, p. 562). Also, it's important to note that Lambert testified that there was never a plan by the Defendant to kill anyone, just to take the money and the car, and that the victim, Campanella, just died during the course of the robbery and beating. (Tr. vol. 3, p. 525, 534, 555).The third sixteen year old runaway, Shannon, also denied prostitution (Tr. vol. 4, p. 614-615), did not leave, and, more importantly, testified that there was no cord on the neck of the body when she saw it (Tr. vol. 4, p. 589), testified that the killing was accidental as the Appellant just lost control when he started to hit the victim (Tr. vol. 4, p. 636), and, that the Appellant was extremely remorseful to the point of contemplating suicide. (Tr. vol. 4, p. 635, 637).

Notwithstanding the insufficiency of the evidence to sustain a conviction and the insufficiency to show that the killing was done or even begun in Florida, the evidence produced at trial was of such a nature that a new trial is required in the interest of justice. While this Court is concerned with the existence of substantial competent evidence to support a verdict and judgement, including the jurisdictional question of where this killing occurred, such verdict and judgement must also be in accord with fundamental concepts of justice. Although this Court has recently eliminated the weight of the evidence as grounds for Appellate review and reversal, the vitality of the reversal in the interest of

justice was reiterated:

> That eliminating evidentiary weight as a ground for Appellate reversal, we do not mean to imply that an Appellate court cannot reverse a judgement or conviction "in the interest of justice." The latter has long been, and still remains, a viable and independent ground for Appellate reversal. Rule 9.140 (f), Florida Rules of Appellate Procedure (1977) provides the relevant standard:
>
> > In the interest of justice the Court may grant any relief to which any party is entitled.
>
> This rule, or one of its predecessors, has often been used by Appellate courts to correct fundamental injustices unrelated to evidentiary shortcomings which occurred at the trial. Tibbs v. State, 397 So.2d.1120 (Fla. 1981), p. 1126.

As the testimony of the teenage runaways bears the earmarks of falsehood and uncertainty, reversal is required. Council v. State, 149 So. 13 (1933), p. 14. See Williams v. State, 130 So. 457 (Fla. 1930), where first-degree murder conviction was reversed with this Court noting that the character and integrity of the witnesses go into a formula for determining the interest of justice; Troop v. State, 123 So. 811 (Fla. 1929), where a first degree murder conviction was reversed, despite the fact that two previous juries found Troop guilty; Ming v. State, 103 So. 618 (Fla. 1925), where a murder conviction was reversed despite the existence of two eyewitnesses.

POINT III

THE TRIAL COURT IMPROPERLY SENTENCED THE APPELLANT TO DEATH, AS NO FACTUAL FINDINGS JUSTIFYING SUCH SENTENCE WERE MADE.

In the instant case, the Appellant was sentenced to death as is reflected in the formal adjudication and committment orders entered in the matter (Supplemental Record, p. thereby giving this Court jurisdiction for review, yet, the sentence was facially improper and illegal, as there was no recitation of factual matters showing the appropriateness of the death sentence in the transcript of the sentencing (Tr. vol. 8, p. 1423 -1424), and, more importantly, there was no written sentencing Order signed by the trial court nor entered into the case record. Section 921.141 (3) specifically states, "If the Court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts that sufficient aggravating circumstances exist .... and that there are insufficient mitigating circumstances to outweigh aggravating circumstances." Further, Section 921.141 (3) specifically states that in each case in which the Court imposes the death sentence, the determination of the Court shall be supported by specific written findings of fact, based upon the circumstances dealing with aggravating, mitigating circumstances and upon the records of the trial and sentencing procedures. It is clear in the instant matter that this was

not done, as the sentencing hearing reflects only an improper argument by the State Attorney (dealing with a lack of remorse, a factor which has been excluded by this Court in Pope v. State, 441 So.2d. 1073 (Fla. 1983), and a subsequent reading of a letter by the Court before imposing the death sentence (Tr. vol. 8, p. 1423 -1424). The Court's mere statement that the aggravating circumstances outweigh the mitigating circumstances, made at the sentencing, (Tr. vol. 8, p. 1424) does not suffice to comply with statutory mandates set forth. When this insufficiency is coupled with the lack of sentencing Order signed by the trial Court and filed with the Clerk, it becomes clear that this Court is unable to review the sentencing procedure, and, more importantly, Section 921.141 (3) mandates the imposition of a life sentence:

> If the court does not make the findings requiring the death sentence, the Court shall impose a sentence of life in prison in accordance with Section 775.082.

Therefore, since there were no aggravating circumstances set forth in support of the death sentence in either the sentencing hearing or a later Order, and since there was no discussion of mitigating circumstances in conjunction with such aggravating circumstances, it is clear that the death sentence imposed was improper, and that the case must be remanded with an Order that a sentence of life in prison be imposed. Williams v. State, 117 So.2d. 473 (Fla. 1960).

As the trial court prohibited the questioning regarding Callahan's reputation for truth and veracity (Tr. vol. 4, p. 603), the character and integrity of a critical witness was never brought before the jury. Therefore, as a human life is involved, it is only just and right that another jury should pass upon the issues in this matter. Platt v. State, 61 So. 502 (Fla. 1913).

CONCLUSION

The cumulative effect of various evidentiary rulings by the trial Court prevented the Appellant from receiving a fair trial and, in fact, mandate the reversal for a new trial. Also, the evidence produced by the State was insufficient to sustain a conviction, and as a distinct matter, the interest of justice requires a new trial based on the inherently unreliable nature of the evidence produced.

Finally, the death sentence imposed on Appellant must be reversed, as there was no written Order of Sentence filed by the Court which outlined aggravating and mitigating circumstances, nor was there even an oral pronouncement at the time of sentencing of what, if any, aggravating circumstances were relied upon in the factual basis for such circumstances. Therefore, with there being no possibility of a death sentence being justified in the instant matter, Section 921.141(3) requires this Court to reverse the sentence of death.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 16 day of October, 1984, to the Attorney General's Office, 111 Georgia Avenue, West Palm Beach, Florida, 33401.

MICHAEL D. GELETY