

IN THE SUPREME COURT OF FLORIDA

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ANTON D. MEYERS

Appellant,

CLERK, SUPREME COURT

By

[Signature]
Chief Deputy Clerk

v.

CASE NO. 85,617

STATE OF FLORIDA,

Appellee

_____/

APPEAL FROM THE CIRCUIT COURT OF
THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE

This case is an appeal from Meyers' conviction of first degree murder and sentence of death imposed by the Circuit Court of Seminole County, Florida.

On May 19, 1993, the Seminole County Grand Jury indicted Meyers for the first degree murder of Kathleen Engels. In pertinent part, the indictment reads as follows:

Anton Daryl Meyers on or about the 24th day of May, 1987, or the 25th day of May, 1987, did unlawfully kill a human being, to-wit: Kathleen Engels, by cutting or stabbing Kathleen Engels with a sharp object and said killing was perpetrated by said Anton Daryl Meyers from a premeditated design to effect the death of Kathleen Engels, or any human being, in violation of Section 782.04(1), Florida Statutes, and during the commission of said offense, Anton Daryl Meyers carried, displayed, used, threatened or attempted to use a weapon, contrary to Section 775.087(1), Florida Statutes.

(R 0005). A jury was duly selected, and, on June 3, 1994, trial commenced. (TR 644). On June 17, 1994, the jury returned its verdict finding Meyers guilty of first degree murder as charged in the indictment. (TR 2624-25).¹ After the jury had returned its verdict, Meyers stated to the Court, outside the presence of the jury, that he wanted no mitigation put on at the penalty phase of

¹Meyers specifically refused to waive the statute of limitations as to any potential lesser included offenses. (TR 646; 2456-58).

his trial. (TR 2630-31).

The penalty phase proceedings were postponed until August 22, 1994, for various reasons, which included the completion of a mental state evaluation of Meyers for the purpose of determining his competency to waive the presentation of mitigating evidence. (TR 2699-2700). The mental state evaluation found that Meyers was competent to make that decision. (TR 2700). The penalty phase began on that same day, and concluded with the jury's unanimous recommendation that Meyers be sentenced to death. (TR 2832).

On February 17, 1995, a further sentencing hearing was held at which the State filed a sentencing memorandum and presented brief argument. (R 1683). At that time, Meyers again stated that he wanted no mitigating evidence presented other than that which had been presented to the advisory jury. (R 1683).²

The final sentencing hearing was conducted on March 17, 1995. (R 1684). At the conclusion of that proceeding, the trial court followed the jury's recommendation and imposed a sentence of death. (R1689). In finding that death was the proper penalty, the sentencing court found two aggravating circumstances: that Meyers had previously been convicted of another felony involving the use

²Despite Meyers' protestations, trial counsel presented mental state testimony at the penalty phase. (TR 2768 et seq).

or threat of violence to the person, and that the murder of Kathleen Engels was committed while Meyers was engaged in the commission of, or attempting to commit, or escape after committing a sexual battery. (R 1684-5). Notice of appeal was filed on April 21, 1995, and the record as supplemented was certified as complete on January 5, 1996.

STATEMENT OF THE FACTS

The State does not accept the incomplete and argumentative statement of the facts set out in Meyers' initial brief. The State relies on the following statement of the facts and upon such additional facts as are set out in the argument section of the answer brief.

Introduction

Because of the unusual complexity of the facts of this case, the following synopsis of the facts is included for the convenience of the court.

Fourteen-year-old Kathleen Engels was last seen in the early morning hours of May 25, 1987. She was with Meyers at that time. That afternoon Kathy's grandparents, with whom she lived, began trying to contact her at thirteen-year-old Lorna Brown's home, where Kathy was to be spending the night. When Kathy's grandparents spoke to Lorna's mother, she realized that Kathy had not gone home and

began to look for her. Mrs. Brown sent Lorna to ask Meyers if he knew where Kathy was. Meyers told Lorna (and later the investigating officer) that Kathy had asked him to take her home, and that he had borrowed his sister's car to do so. However, according to Meyers, he and Kathy stopped at a convenience store on the way to Kathy's house and that he talked with two girls while Kathy used the pay telephone. When he looked back at the phone booth, Kathy was gone.

Kathy Engels' body has never been found. However, statements by Meyers to inmates with whom he was incarcerated establish, in graphic detail, the true facts of his attempted sexual battery and murder of a fourteen-year-old child. Photographs of injuries sustained by Meyers, which were taken shortly after Kathy's death, corroborate his statements that she resisted violently before he was able to kill her by slashing her throat. Despite Meyers' implications that Kathy merely ran away and never returned, there is utterly no evidence to support that suggestion. Kathy did not take her purse with her when she was dropped off at Lorna's neighborhood, nor did she take any personal items with her. Her bank account has shown no activity at all since May 24, 1987.³

³This synopsis is taken, in large part, from the State's sentencing memorandum. (R 1672-79). All factual assertions

The Guilt Phase Facts

Lorna Brown grew up in Sanford, Florida, and knew Kathleen (Kathy) Engels from school. (TR 701-2). Lorna, Kathy, and Alethea Turner all knew each other from school and did things together away from school. (TR 703).⁴ Lorna also knew Meyers because he lived in her neighborhood and was friends with Gary DeMay, who was also a friend of Lorna's. (TR 703-4). Lorna last saw Kathy on Memorial Day weekend [May 24, 1987] of 1987, when they met at a convenience store near Lorna's home. (TR 705). Autumn Pemberton, who was another acquaintance of Kathy's, was also at the store when Kathy's grandparents dropped her off there. (TR 709). Meyers was also present at the convenience store at that time. (Id.). After Kathy's grandparents left the store, Lorna and Kathy stayed at the store for five to ten minutes, and then walked back toward Lorna's home, accompanied by Autumn and Meyers. (TR 709-10).

The group first stopped at Autumn's house, where Kathy called her grandparents. (TR 711).⁵ Lorna, Kathy, and Meyers then left

contained therein are set out in detail below, as are the citations to the record.

⁴These three girls were in the eighth grade at the time of Kathy's murder (TR 703), and were 13-14 years old at that time.

⁵As is set out in more detail later, Kathy resided with her grandparents.

together, and, during the course of conversation, Meyers told the two girls that he could get beer for them. (TR 712). Meyers lived up to his promise by purchasing two six-packs of beer, which the group then took to Meyers' house. (TR 713). Over the next one-and-one-half to two hours, Lorna consumed one-and-one-half to two beers, and Kathy consumed two or three beers. (TR 714). The three then left Meyers' house, stopped briefly at DeMay's home, and ended up at Lorna's home. (TR 715-16).

Lorna's parents owned a janitorial business in 1987, and, as a consequence, kept unusual hours, often going to work between midnight and two o'clock in the morning. (TR 716-17). Lorna and Kathy went into Lorna's house, while Meyers remained outside. (TR 717). However, at some point Kathy became concerned that Lorna's mother would be upset with her presence and went back outside to wait with Meyers near the house. (TR 717). Lorna's mother left for work at about midnight, after checking on Lorna and asking if she wanted to go with her to work. (TR 718). Lorna declined, and went back outside as soon as her mother had left. (TR 719). Lorna, Kathy and Meyers then went back to Meyers' house, where more beer was consumed. (TR 719). Shortly before 2:00 a.m., Lorna went back to her home, so she would be there when her father woke up to leave for work. (TR 719). When she entered her home, she was surprised

that not only Kathy but also Meyers had followed her inside. (TR 720). Lorna's father found Kathy and Meyers hiding in the closet in Lorna's bedroom and became angry. (TR 721). Meyers ran for the door after being discovered, while Kathy left in a somewhat less hurried fashion. (TR 722). Lorna's father did not know Kathy on sight, but when Lorna explained who she was, Lorna, her father, and her brother attempted unsuccessfully to locate Kathy. (TR 722-24).

That afternoon, Kathy's grandparents called Lorna's home looking for Kathy. (TR 726). Ultimately, Lorna got in touch with Meyers and asked about Kathy. (TR 727). Lorna brought Meyers back to her home, where he spoke with law enforcement as well as with Kathy's grandparents. (TR 728). Meyers said that he had borrowed his sister's car and given Kathy a ride to a convenience store which was close to her house. (TR 728). Lorna has not seen or heard from Kathy since that night. (TR 731). Kathy never mentioned any serious problems, and never expressed any desire to run away from home. (TR 732). There was nothing going on in Kathy's life that would cause her to run away (TR 816), and she loved her grandparents very much. (TR 732). Prior to the night of her murder, Kathy did not know Meyers, who had told Lorna and her that he was nineteen years old. (TR 733; 817).

Robert Brown, Lorna's father, found Meyers and Kathy in his

daughter's closet during the early morning hours of May 25, 1987. (TR 822-4). He knows Meyers, and identified him as the individual he saw in Lorna's room. (Id.). He told Meyers and Kathy to leave, but, after he realized that Kathy was one of his daughter's friends, attempted unsuccessfully to locate her. (TR 826).

Autumn Pemberton [Kinnaird] lived down the street from Lorna Brown in May of 1987. (TR 833). Autumn knew Lorna both from school and from living in the same neighborhood, and also was acquainted with Kathy Engels. (TR 833-4). She also knew Meyers because he was the uncle of a good friend of her little sister's. (TR 834-5). On Memorial Day weekend of 1987, Autumn met Lorna at the neighborhood convenience store. (TR 836). Lorna was using the telephone, and Meyers rode up on his bicycle. (TR 836-7). Kathy's grandfather dropped her off, and the three girls, and Meyers, went to Autumn's house. (TR 838). Kathy used the phone to call her grandparents for permission to spend the night at Lorna's house. (TR 838). The group talked about getting money to buy beer, and Lorna went back to her house to get some money. (TR 839). Later on, the group went over to Meyers' house, where they drank some beer. (TR 840-41). Autumn stayed for 15 to 30 minutes and left. (TR 842). At about 11:30 p.m., she saw Kathy (outside her house) with Meyers, while Lorna was at her house waiting for her mother to leave for work.

(TR 843). Meyers went home to change clothes, while Kathy stayed at Autumn's house. (TR 844). Meyers returned a short time later, as did Lorna. (TR 844). Autumn saw Kathy and Meyers again at about 2:30 a.m., when they returned to Autumn's house and said that they had to leave Lorna's house. (TR 845). Kathy wanted to stay with Autumn that night, but Autumn refused because her mother was not there to give permission. (TR 845). At this time, Kathy was with Meyers, and Autumn saw Gary DeMay standing back at the road. (TR 846). Autumn saw Meyers again at about 5:00 p.m. that day when she and Lorna went to his house to ask if he knew where Kathy was. (TR 846-7). Meyers said that he had dropped Kathy off at a convenience store (a 7-11), but Autumn was not sure exactly which store he meant. (TR 847-8). Autumn has not seen Kathy since the early morning of May 25, 1987. (TR 846). Kathy never talked about running away from home and never said anything about being unhappy at home. (TR 843; 848).

Marie Hooper is Kathy's maternal grandmother. (TR 871). Kathy's mother died when Kathy was less than two, and Kathy lived with her grandparents from about age two until her death. (TR 872). In the early evening hours of May 24, 1987, Kathy received a call from Lorna Brown. (TR 875). Kathy asked her grandparents to take her over to Lorna's house, which they did. (TR 875-77). They saw

Lorna at the neighborhood 7-11 convenience store, and dropped Kathy off there. (TR 877).⁶ Kathy left her purse in the car, and, when her grandmother called to her and asked if she wanted to take it, Kathy replied that there was no need because she would only be there a short time. (TR 878). Kathy's grandparents were to pick her up in one hour. (TR 878). When Kathy was dropped off, Mrs. Hooper noticed a young girl and a male riding a bicycle in the parking lot of the 7-11. (TR 879).

The Hoopers then returned to their home and, some time later, Kathy called and asked permission, which was given, to stay overnight at Lorna's house. (TR 881). When Kathy did not call by the next afternoon, Mrs. Hooper began calling the Brown residence. (TR 881). At about 6:30 p.m., Mrs. Hooper got in contact with Lorna's sister, who told her that Kathy and Lorna had gone out for a walk. (TR 882). Mrs. Hooper and her husband went over to Lorna's house, where they came in contact with Meyers. (TR 883). Meyers rode with the Hoopers to the Lake Mary Police Department, and told them about dropping Kathy off at the 7-11. (TR 884-5). Meyers told the Hoopers that the store was open when he dropped Kathy off, and that a number of people were around at the time. (TR 886). Meyers

⁶The neighborhood where Lorna, Autumn, and Meyers all lived is called "Carriage Cove". (TR 877).

also told the Hoopers that Kathy used the phone while he was talking to two girls, and that, when he turned around, Kathy was gone. (TR 886).

Mrs. Hooper has not heard from Kathy since May 24, 1987. (TR 889). When Mrs. Hooper began to suspect that something was seriously wrong, she went through Kathy's purse, where she found four dollars. (TR 889-90). When Mrs. Hooper last saw Kathy, she was wearing Reebok shoes that had been given to her by Amy Davis. (TR 890). Nothing was (or is) missing from Kathy's room, and her savings account has never been touched. (TR 890-91). So far as Mrs. Hooper knew, Kathy was happy living with her grandparents, and there were no problems in her life. (TR 891; 899). Mrs. Hooper went through Kathy's room, and found nothing to suggest that she had run away. (TR 892). Twenty-four dollars in cash were found in Kathy's dresser. (TR 892).⁷ Kathy's grades were good, and she was making plans for starting high school in the fall, having made the high school dance team. (TR 899).⁸

⁷The parties stipulated that Kathy withdrew no money from her bank account. (TR 1311).

⁸During cross-examination, Meyers asked about marijuana that had been found in Kathy's room. (TR 910). Kathy's brother, who also lived in the same house, admitted that the marijuana was his, not Kathy's. (TR 935).

Officer Frank Hilton of the Sanford, Florida, Police Department was assigned to the patrol division of that agency in May of 1987. (TR 936). Between 6:00 and 7:00 p.m. on May 25, 1987, he was dispatched to Lorna Brown's residence regarding a missing person report involving Kathy Engles. (TR 937). When Officer Hilton arrived, Kathy's grandparents were present in the Brown residence, as was the defendant. (TR 938). At that time, Meyers was not wearing a shirt, and Officer Hilton observed marks on Meyers' arms and chest that appeared to be the result of a fight. (TR 939). Meyers told Officer Hilton that he had given Kathy a ride to the 7-11 convenience store at County Road 15 and Lake Mary Boulevard. (TR 939). Because that location was within the city limits of Lake Mary, Florida, Officer Hilton referred the matter to the Lake Mary Police Department. (TR 940). Kathy's grandparents went to the Lake Mary Police Department, and gave Meyers a ride with them to that location. (TR 940).

Mansour Sirizi managed the 7-11 located at Lake Mary Boulevard and County Road 15 on May 24, 1987. (TR 946-7). According to his records, and a review of the store's transactions, Sirizi was certain that the 7-11 closed at 12:00 midnight on May 24, 1987, and was not open for business between the hours of midnight and five a.m. (TR 948-9).

James Fisher was Meyers' roommate off and on for approximately eighteen months in 1986-87. (TR 950-51; 967-68).⁹ On May 26, 1987, Meyers came over in the late afternoon or early evening to visit Fisher at his home. (TR 968-69). Meyers rode with Fisher to a landscaping job that Fisher was working on, and, after finishing at the job site, returned with Fisher to his home, where Meyers stayed for a while. (TR 970). Fisher noticed that Meyers' hands, fingers and thumbs were scraped up seriously, and that scratch marks were visible on Meyers. (TR 970). When Fisher inquired about the injuries, Meyers said that he had gotten into a fight with a "bum" and thought he had killed him. (TR 971-2). Meyers told Fisher that fight took place near a convenience store. (TR 972). Meyers also attempted to persuade Fisher to provide him with an alibi, but Fisher declined. (TR 973). Fisher then gave Meyers a ride to some place on Lake Mary Boulevard. (TR 974).

Amy Davis knew Kathy from living in the same neighborhood. (TR 1008-9). Kathy was like a little sister to Amy, and they stayed in touch after Amy moved. (TR 1010). Kathy was happy living with her grandparents, and had a good relationship with them, especially with her Grandfather. (TR 1010-1011). Amy knows of no problems between

⁹Apparently Fisher was essentially the "landlord" and rented space in his home to other individuals. (TR 953).

Kathy and her grandparents. (TR 1011). When Amy moved from the neighborhood, she gave Kathy a pair of Reebok tennis shoes. (TR 1011). Those shoes were essentially identical to those bought by Amy's mother at the same time that Amy bought her shoes. (TR 1012). Amy has not heard from Kathy since May 25, 1987. (TR 1014). Amy further testified that Kathy would not run away, and did not want her brothers to leave her grandparents' home. (TR 1015; 1018).

Sandra Davis is Amy Davis' mother. (TR 1034-35). She knew Kathy from being a counselor at Lake Mary High School, and as a result of her daughter's friendship with her. (TR 1034-35). Kathy was a happy child who got along well with her grandparents. (TR 1035). Ms. Davis was aware of nothing to suggest that Kathy was unhappy with her grandparents, and described Kathy as a "good kid". (TR 1036). Ms. Davis testified that her daughter, Amy, gave a pair of Reebok tennis shoes to Kathy just before the Davis family moved. (TR 1037). Ms. Davis has not seen Kathy since May 25, 1987, and has had no contact with her at all. (TR 1039-40).¹⁰ Moreover, Ms. Davis testified that she talked with Kathy about her grandparents on numerous occasions. (TR 1040).

Tom Taggart was employed with the Lake Mary Police Department

¹⁰The shoes given to Kathy by Amy Davis had a hole in the upper (rather than the sole) of the right shoe. (TR 1044-45.)

in May of 1987. (TR 1046-47). Officer Taggart took photographs of the injuries to Meyers' body on May 28, 1987. (TR 1047). Officer Taggart identified the defendant, and identified the photographs that he took. (TR 1047-49). Those photographs were admitted into evidence. (TR 1049).

John Engles, Sr., is Kathy's father. (TR 1062). He has not heard from her since May 24, 1987, and has had no contact with his daughter of any sort. (TR 1063). Mr. Engles testified that he had a good relationship with his daughter, and that he loved her and she loved him. (TR 1063-64). In response to cross-examination questioning regarding Tim Engles (Kathy's older brother), Mr. Engles testified that Tim resides in New York State, and that he has never been out of contact with his son. (TR 1072-74).

Detective David Guilford, of the Lake Mary Police Department, was the lead investigator on this case. (TR 1076). Detective Guilford identified the pair of shoes that he collected from Sandra Davis, and those shoes were admitted into evidence without objection. (TR 1077-78).¹¹ Detective Guilford was involved in a number of ground searches for the victim's body, which was never found. (TR 1080-82). During the course of the investigation,

¹¹These shoes are the ones referred into Sandra Davis's testimony.

Detective Guilford learned of a locket that had been pawned by Jimmy Fisher. (TR 1089). Investigation determined that the locket was not connected to Kathy Engles.¹²

John Engles, Jr., lives in Lake Mary, Florida, with his grandparents, where he has resided since 1987. (TR 1094-95). John and his brother Tim, who were both older than Kathy, moved into their grandparents' home approximately six months before Kathy's murder. (TR 1095). Kathy and her brothers got along well, and John was not aware of any problems between Kathy and her grandparents. (TR 1096). Between 10:00 and 10:30 p.m. on May 24th, 1987, Kathy called her brother John on the phone and wanted him to obtain some marijuana. (TR 1096-97). John had never gotten marijuana or beer for Kathy prior to that time, and refused Kathy's request. (TR 1097). Kathy was not involved with alcohol or drugs so far as John knew, and he was certain Kathy was not under the influence of anything when she called him. (TR 1098). This incident was the only time Kathy ever asked John for marijuana. (TR 1099).

Dr. Thomas Hegert has been the medical examiner for Orange County, Florida, since 1955. (TR 1109-10). Dr. Hegert identified the photographs taken of Meyers' injuries, and testified that some

¹²Kathy's locket was found in her purse by her grandmother. (TR 924).

of the injuries may have come from fingernail scratches, and that the injuries are too uniform to be scratches caused by trees or brush. (TR 1113; 1119; 1131-34). Many of the injuries were produced by fingernails, and, at the time the injuries were photographed, they were three to five days old. (TR 1135; 1138).¹³

Terrell Kingery is a Florida Department of Law Enforcement crime lab analyst assigned to the latent print section. (TR 1168-69). Mr. Kingery has done thousands of shoe print comparisons, and has conducted comparisons of shoe prints left on a human body on ten or twelve occasions. (TR 1170).¹⁴ Mr. Kingery testified concerning the procedure followed in comparing the shoe (which was obtained from Sandra Davis, see pp.14-15, above), with the injuries depicted in the photographs of Meyers taken shortly after the murder. (TR 1180-1193). Mr. Kingery was of the opinion that the impression on Meyers' chest was a right shoe, and that impression was consistent with that of a Rebook "Princess" shoe. (TR 1194; 1197).¹⁵

¹³Dr. Hegert was in no way asked to conduct any evaluation or examination concerning any shoe print evidence. (TR 1136).

¹⁴While it is true, as Meyers states, that Mr. Kingery has only testified twice regarding shoe print impressions left on human skin, he has conducted far more than two such evaluations. (TR 1172).

¹⁵Mr. Kingery was qualified as an expert in this field. (TR 1176).

Alethea Turner knew Kathy from school, and was a close friend. (TR 1219-21). Kathy got along well with her grandparents, and was not unhappy living with them. (TR 1223-24). Kathy spent the night with Alethea the night before she disappeared, and never said anything to Alethea about wanting to run away. (TR 1224). Further, Kathy had no close friends that had run away, loved her grandparents very much, got along with her brothers, and had no desire to quit school. (TR 1225). Kathy tried to keep her grades up, and, in fact, Kathy and Alethea planned to attend college together. (TR 1225). Kathy and Alethea had tried out for the high school dance team, and, after Kathy disappeared, the results were released, which were that Kathy had made the high school team as a freshman. (TR 1226-7). Kathy was looking forward to starting high school. (TR 1227). Alethea testified that the incident referred to in Meyers' brief about Kathy being thrown out of a Burger King for being intoxicated did not occur. (TR 1228). Alethea has not seen or heard from Kathy since May 25, 1987.

Maureen Maguire is employed at Seminole High School, and was and is the dance team instructor. (TR 1239-40). Kathy tried out for the dance team in May of 1987, and was accepted as a member. (TR 1241-42). Making the dance team is a big honor (TR 1241), and Ms. Maguire has a close relationship with the members of the dance

team. (TR 1243). Kathy never mentioned any problems to her, and Ms. Maguire has not heard from Kathy since 1987. (TR 1243).

T. B. Metz is retired as the guidance counselor at Lakeview Middle School, which Kathy attended. (TR 1245; 1247). Mr. Metz knew Kathy during 6th, 7th, and 8th grades, and recalls that she came in to see him about ten times during her 8th grade year. (TR 1249-50). That is a normal number of visits, and approximately half of those were in connection with registration for high school. (TR 1250-51). Kathy did register to go on to high school, and never came into Mr. Metz with a serious problem of any sort. (TR 1251). Mr. Metz was unaware of anything to indicate that Kathy was so unhappy that she would run away, and described her as a "very normal 13 year old" student. (TR 1251). Moreover, Mr. Metz felt that Kathy was not the sort of person who would run away, because she was not a particularly strong personality. (TR 1252). He has not seen or heard from Kathy since May of 1987.

Michelle Holmes-Thompson was Kathy's best friend from 1984 until the time of her disappearance. (TR 1261-63). Michelle moved from Sanford to Richmond, Virginia, in January of 1987. (TR 1264).¹⁶ Kathy and Michelle corresponded regularly after Michelle

¹⁶Ms. Thompson moved back to Altamonte Springs three years prior to trial, or, approximately 1991. (TR 1265).

moved, with Kathy's last letter coming on May 6, 1987. The two girls also spoke by telephone, and, before Michelle moved, they spent the night back and forth and visited in each other's homes. (TR 1265). Michelle described Kathy's relationship with her grandparents as a good one, and, further, testified that nothing in Kathy's letters indicated that she was contemplating running away, was in any way unhappy with home life, and was, in fact, happy that her brothers had moved in with her and her grandparents. (TR 1266). Kathy and Michelle had made tentative plans for Michelle to visit in Florida during the summer of 1987. (TR 1267). Moreover, Kathy never expressed any desire to quit school, and was quite concerned when her grades dropped. (TR 1267-68). Later, Kathy pulled her grades up, and was very happy. (TR 1268). Michelle never saw Kathy using alcohol or drugs. (TR 1269-70). Michelle has not seen nor heard from Kathy since May 25, 1987.¹⁷

Richard Fess lives next door to Kathy's grandparents in Lake Mary. (TR 1290-91). Mr. Fess has lived in the same location since September of 1985, and knew Kathy and her grandparents socially. (TR 1291-92). Mr. Fess described them as a harmonious family, and

¹⁷Michelle testified that she was not at all surprised to learn that the "Burger King" incident did not actually occur. (TR 1283).

was of the opinion that Kathy had a good relationship with her grandparents. (TR 1292). The arrival of Kathy's two brothers in the household caused no problems. (TR 1293). Mr. Fess has not seen Kathy since her disappearance in May of 1987. (TR 1294).

Patricia Swaney lived next door to Kathy and her grandparents for a period time. (TR 1298). She was good friends with them, and stayed in touch with them after she moved. (TR 1299). Ms. Swaney has a daughter the same age as Kathy, and Kathy was in Ms. Swaney's home quite a bit. (TR 1299-1300). Kathy loved her grandparents, and her grandparents spoiled her in return. (TR 1300). Nothing happened between Kathy and her brothers to cause her to run away. (TR 1302).

Charles Hooper is Kathy's uncle. (TR 1312-13). He last saw Kathy when she visited him in New York in March of 1987. (TR 1314). Mr. Hooper testified that one of his neighbors is named "Zass", but that that neighbor has no son named "Joey". (TR 1315). So far as Mr. Hooper knows, there is no such person as "Joey Zass". (TR 1315).¹⁸

Officer Joe Hart, of the Lake Mary Police Department, took the

¹⁸"Joey Zass" was referred to in some of Kathy's letters to Michelle Thompson. (TR 1274). Contrary to Meyers' assertion, no such person exists.

initial missing person report on May 25, 1987. (TR 1383-84). In the process of taking that report, Officer Hart spoke to Kathy's grandparents and to Meyers. (TR 1385). At that time, Meyers was merely a witness who had voluntarily come to the police department with Kathy's grandparents. (TR 1386). Meyers told Officer Hart he was with Kathy on May 24 thru 25, 1987. (TR 1387). Meyers stated that he went to Lorna Browns' house, knocked on the window, and was invited in. (Id.) Kathy was present at that time. (Id.) Lorna's father woke up and Meyers and Kathy hid in Lorna's closet. (Id.). Meyers never stated to Officer Hart that he had been with Kathy earlier that evening, or that he consumed any beer with Kathy. (TR 1387). Moreover, Meyers never said that Kathy had been at his house earlier that evening. (TR 1388). Lorna's father discovered Kathy and Meyers, and told them to leave. (TR 1388). Kathy came to Meyers' house about five minutes later wanting him to give her a ride home, which he did. (TR 1388) .¹⁹ Meyers said that he let Kathy out at the 7-11 located at County Road 15 and Lake Mary Boulevard. (TR 1388). According to Meyers, Kathy got out of the car and started talking to some other girls that she knew. (TR 1389). Meyers left at that time, met up with some girls near the

¹⁹Meyers has never told a version of the events that did not place him alone with Kathy. (TR 1388-90) .

7-11, and went swimming at a lake. (TR 1389) .²⁰ Officer Hart observed numerous scratches on Meyers' arm, and Meyers seemed very nervous. (TR 1391).

George Baron is incarcerated in the Federal Prison system following conviction for a drug offense. Baron has been offered or promised nothing in exchange for his testimony, but is, instead, testifying solely because of the nature of the crime. (TR 1411-12). Baron is not receiving a lighter sentence or better treatment in the prison system in exchange for his testimony (TR 1413). Baron was arrested on federal charges on June 12, 1987. (TR 1414) , About two weeks later, Meyers was placed in the same cell. (TR 1414). Baron had experience with infrared sensing devices as a result of his military experience, as did another person housed in that same cell. (TR 1413-16). Baron had conversations with Meyers, and, while Meyers was housed with Baron, a television news broadcast showed a helicopter using an infrared sensing device to look for Kathy's body. (TR 1414). Meyers asked Baron what he knew about the use of infrared sensors, and Baron told him that it really did work. (TR 1416). Meyers seemed agitated and nervous, and asked Baron if it would work to locate a dead body. (TR 1417). Baron told Meyers

²⁰Meyers statement was admitted into evidence without objection. (TR 1390).

that that was in fact possible, and Meyers replied "I covered her with a car hood." (TR 1417). The news broadcast concerning the use of the infrared sensors in the search for Kathy's body lasted for about three days, and, during that time, Meyers asked about the use of heat seeking devices on two or three occasions. (TR 1418). Meyers calmed down considerably when those news broadcasts ended. (TR 1418) .

John Blankenship is incarcerated in the Seminole County Correctional facility, awaiting sentencing on burglary charges. (TR 1466). Blankenship was in the same cell with Meyers in September of 1987, and had conversations with Meyers regarding Kathy at that time. (TR 1467-68). Meyers stated to Blankenship that Kathy's body would never be found. (TR 1469). Blankenship has been offered nothing in return for his testimony, and, in fact, was willing to go forward with sentencing on his burglary charges prior to this testimony. (TR 1469; 1493).²¹ Blankenship has approximately ten prior felony convictions (TR 1470), and, while his cooperation will be made known to the sentencing judge (TR 1471), he is testifying because it is the right thing to do. (TR 1472).

Randall Cole is serving a two-hundred-sixty-five year sentence

²¹Blankenship contacted law enforcement in 1988-89, before the current charge arose. (TR 1469-70).

for armed robbery, kidnapping, and attempted murder. (TR 1500-1501) . Cole knew Meyers prior to being incarcerated because they had friends in common. (TR 1502). Cole saw Meyers while they were both in jail, and Meyers recognized Cole as a friend from the "outside". (TR 1502). Cole and Meyers were in the same cell most of the time. (TR 1503) .²² Meyers began discussing Kathy's disappearance a day or two after Meyers was put into the cell with Cole. (TR 1504). Cole and Meyers were discussing a movie, and Meyers stated that the depiction of a murder in that movie was just "Hollywood **stuff**" and that he knew that because he had killed a girl by cutting her throat, and that, when a victim is killed in that way, they fight for an extended period of time. (TR 1504-05). Meyers told Cole that Kathy's grandparents had dropped her off at a convenience store, that they had been drinking beer together and had been forced to leave Lorna's house, and that he got Kathy to go into the woods with him by telling her that they were going to check on some of his marijuana plants. (TR 1506). Meyers told Kathy that they were going to smoke marijuana, but when he wanted sex, Kathy resisted violently, kicking and scratching him. (TR 1507). Meyers then cut Kathy's throat with a knife and buried her body under some

²²Cole had been arrested on May 3, 1987. (TR 1503) .

pieces of concrete. (TR 1507). Subsequently, Meyers persuaded Jimmy Fisher (see p. 14, above) to give him a ride back to the scene because Meyers had left a flashlight and possibly his shirt. (TR 1508) .²³ Meyers told the police all sorts of things, and thought that was funny. (TR 1508). Cole described Meyers' demeanor as cocky, and, moreover, stated that Meyers indicated that he was not worried so long as the body was not found. (TR 1509). Cole, who is from Seminole County, was moved to Liberty Correctional Institute from Sumter Correctional after his grand jury testimony. (TR 1512) . Cole is not at all pleased with his situation, because he is a long distance from his family. (TR 1512-14). Cole is testifying because he has a daughter of his own. (TR 1515). Cole further stated that Meyers was concerned about returning to the scene and getting Kathy's head so that the body could not be identified. (TR 1551-52). Meyers told Cole that he had disposed of the body in the woods near a canal or a ditch, and that he had piled chunks of concrete on top of the body. (TR 1552-54). Meyers was boastful about what he had done, and seemed to be proud of what he had accomplished. In fact, Meyers seemed to regard himself as having accomplished

²³Meyers apparently returned to the scene when Fisher dropped him off at County 15 and Lake Mary Boulevard. (See p. 14, above).

spectacular, that would fall within the 'master criminal" category. (TR 1582). Cole further stated that, in a telephone conversation Meyers had with Fisher, Meyers was concerned with how well Fisher had cleaned up his house. (TR 1568).

Greg Davis is incarcerated in the Department of Corrections serving a ten year sentence for sexual battery. (TR 1623). Davis met Meyers in the Seminole County jail in 1987, and was in a two-man cell with him for about a day and a half. (TR 1624). Davis has seven prior felony convictions, and, while he was housed with Meyers, was intimidated by him. (TR 1625-26). Meyers told Davis that Kathy 'had teased him", and that Meyers had forced himself on her. (TR 1627). When the intercourse was over, Kathy was dead. (TR 1627). Meyers did not elaborate, and Davis wanted to be away from Meyers. (TR 1627). Meyers did not seem concerned about the murder being discovered, saying "no body, no case" (TR 1627). Moreover, Meyers seemed to think that Kathy had led him on, and it was her fault that he had killed her. (TR 1628). Davis came forward after reading about the trial in the newspaper, has been promised nothing, and expects to receive nothing in exchange for his testimony. (TR 1629-30).

Clarence Zacke is serving a 60-year sentence in the Department of Corrections. (TR 1648-49). Zacke, who has at least five prior

felony convictions, met Meyers in the Zephyr Hills Correctional facility in the latter part of 1988. (TR 1650). Meyers made statements to Zacke concerning a murder, and Zacke informed the correctional officers about those statements. (TR 1651). When he was initially interviewed by law enforcement, Zacke asked for nothing in return for his testimony, and was promised nothing. (TR 1652). In fact, Zacke was told, by the investigating officer, that the state had nothing to offer. (TR 1652). Zacke asked the Seminole County State Attorney's Office for help and was turned down. (TR 1652). When Zacke threatened not to testify if the state attorney's office would not "help him out" the state attorney's nevertheless refused to do anything for him. (TR 1653). Zacke and Meyers developed a casual friendship because Zacke was older and more experienced in the prison system. (TR 1654). Meyers asked Zacke if he had ever killed anybody, and Zacke said that he had, during his service in Viet Nam. (TR 1655). Later on, Meyers told Zacke that he had killed someone, too. (TR 1656). Subsequently, Meyers told Zacke more about the murder when he learned that a road was being built in the area where Kathy's body was buried. (TR 1658). Meyers first said that he "picked up a slut" (TR 1658) who was 15 years old, but he later told Zacke that the victim was 13 years old. (TR 1659). Meyers told Zacke that he and Kathy had

smoked marijuana, that Kathy had refused to have sex with him, and when he tried to force her, she fought back. (TR 1659). Meyers pulled a knife **out** to scare Kathy, and she clawed him **with her** fingernails so he slashed her with the knife, cutting her throat. (TR 1659). Meyers stated that this occurred in a heavily wooded area, and that he had gone back later and buried the body, but that he wished he had put it in a different place. (TR 1661-62). Zacke told Meyers that there was no statute of limitations on murder, but that he could not be prosecuted unless the body was found. (TR 1663). In these conversations, Meyers used **two women's names:** Debbie and Kathy. Zacke did **not remember, at the time of his** testimony, **which was the defendant's sister,** and which was the victim. (TR 1664). Zacke is incarcerated for the murder of the brother of a Brevard County Assistant State Attorney. (TR 1685).

Curtis Cox, a patrol officer with the Sanford police department, took the initial report of a sexual battery from Beth Maycrink in the early morning hours of March 18, 1987. (TR 1692-93). That report **was** taken in the Wal-Mart parking lot close to Carriage Cove, where Meyers lived. (TR 1694). Beth Maycrink testified that, in 1987, she was sexually assaulted by Meyers after he induced her into a wooded area near his home, punched her with his fists, and pulled a knife on her to force her into submitting

to his sexual advances. (TR 1695-96; 1701-1705).

Father James Spencer is the Rector of All Saints Episcopal Church in Winter Park, Florida, (TR 1799). Father Spencer has been at that church for almost twelve years, and, in 1991, **was** the Assistant Rector. (TR 1804). Father Spencer met Meyers in late August to early September of 1990, but Meyers never formally joined the church. (TR 1805). On the Thursday prior to Easter of 1991, Father Spencer learned that Meyers was regarded as a suspect in Kathy **Engles'** murder. Shortly thereafter, on April 28, 1991, Father Spencer had a conversation with Meyers at the parish picnic. (TR 1807). That conversation came about when Father Spencer became concerned at the amount of attention Meyers, who was over thirty, was paying to a senior high school girl. (TR 1807-08). Father Spencer told Meyers that they needed to talk (TR 1808), and Meyers replied 'is this about God or is it a complaint". (TR 1809). Father Spencer told Meyers about the newspaper articles, and questioned Meyers about them. (TR 1809). Meyers replied, 'no, that's done -- the statute of limitations has run out." (TR 1810). Meyers further stated that he was not going to do like his father and go to Montana, that the only evidence was circumstantial, and that Gary **[DeMay]** was his alibi that the murder **was** not premeditated. (TR 1810). Meyers never said that he was not

involved in Kathy's murder. (TR 1810).

THE DEFENSE CASE IN CHIEF

Edward Perry was an inmate at Liberty Correctional Facility, and was incarcerated along with Randall Cole. (TR 1851). Perry testified that Cole never said anything about Meyers admitting Kathy Engles' murder, but also testified that Cole never said that his testimony concerning Meyers commission of that murder **was** not true. (TR 1858; 1863). Perry further testified that he never stated that Cole convinced him to convey false information concerning Meyers' commission of this murder. (TR 1864). Cole never told anyone that he was persuaded to testify before the Grand Jury by Cole, but pointed out that it was prudent to tell other inmates what they wanted to hear, especially when one had testified against inmate. (TR 1870). Perry also testified that, while he was the inmate law clerk, Meyers had wanted information from him on the statute of limitations. (TR 1852; 1873). Moreover, Perry testified that he making up cover stories regarding his appearance before the Grand Jury in an effort to conceal the truth to protect himself from retaliation by other inmates. (TR 1874). Perry never told anyone that he lied before the Grand Jury, nor did he ever tell anyone that Cole had lied about any facts conveyed by him about this case. (TR 1875).

Gerald Fyfe testified that he did not like Randall Cole (TR 1910), and testified in a manner that has been portrayed, in Meyers' brief, as being that Cole falsified his testimony.

Thomas Taggart, who was the lead investigator in this case, testified that Gary DeMay was investigated and eliminated as a suspect. (TR 1924-25; 1944-45). DeMay was living in New York at the time of trial. (TR 1945). Officer Taggart testified that the spool that was found in a lake (with Meyers' name on it) was in close geographic proximity to the 7-11 at County Road 15 and Lake Mary Boulevard. (TR 1958). A photograph of the spool and of the lake were admitted into evidence without objection. (TR 1962). Officer Taggart also testified that information that he received from a Mrs. Clark about Gary DeMay dealt exclusively with matters that had occurred two days after Kathy Engles disappeared. (TR 1959).

Finally, Officer Taggart testified that when Fisher talked with Meyers (after Meyers had been arrested on the Maycrink sexual battery), Fisher was wearing a concealed body microphone. (TR 1965). Fisher showed that microphone to Meyers early in the conversation. (TR 1965).²⁴

²⁴Consistent with the other testimony regarding the locket that Jimmy Fisher pawned, Officer Taggart testified that it was

James Bissy, who is an inmate at Sumter Correctional Institute, testified that Cole stated that the Brevard County State Attorney's Office would be getting Perry and him out of prison. (TR 1981) .²⁵ Perry never said anything at all. (TR 1982). However, Bissy never heard Cole and Perry making up a story, and, for all Bissy knows, Cole's testimony is true. (TR 1982). Bissy also stated that he knows nothing about the facts of this case. (TR 1985). Marvin Gill is incarcerated at DeSoto Correctional Institution. Gill was at Sumter Correctional from April of 1990 until August of 1993, and was in contact with both Cole and Perry on a daily basis. (TR 1989). According to Gill, both Cole and Perry told him that they were lying about their knowledge of this case. (TR 2005). However, Gill later testified that Cole never said that he had lied. (TR 2010-11).

Randall Cole testified that he never talked to Gill at all about the case (TR 2030), and testified that he and Perry lied about why they were coming to Seminole County (to testify before the Grand Jury) in order to avoid being labeled as snitches. (TR 2030). Moreover, Cole did not get along with Gill, and he refused to help

determined that that item of jewelry did not belong to Kathy Engles.

²⁵On p. 20 of his brief, Meyers erroneously refers to this witness as "James Fisher".

Gill with his case. (TR 2028-29).

Charles Hooper, Kathy's grandfather, testified that her brothers moving into the home did not disrupt Kathy's life, and that her brothers were considerate of her. (TR 2081-82). Mr. Hooper never said that he was at a loss of as to how to handle Kathy, and did not recall ever stating that she wanted her brothers to be made to be leave. (TR 2083-84). Mr. Hooper emphasized that he had a good relationship with Kathy, and that she had no reason to run away. (TR 2087). Moreover, Mr. Hooper testified that he was not even sure that the purported marijuana cigarette found in Kathy's room was, in fact, marijuana. (TR 2088).

Darlene Caffrey testified that, on or about June 10, 1988, she saw a missing person poster with Kathy's picture on it. (TR 2089). About that same time she saw a person whom she thought looked like the photograph. (TR 2089). However, on cross-examination, Ms. Caffrey admitted that she remembers very little about the person that she saw. (TR 2092). Terri Lynn Newton testified that she saw a person who looked like Kathy in 1988 or 1989. (TR 2094). However, she did not report that until approximately one month before trial, and gave a sworn statement to law enforcement on April 22, 1994. (TR 2096-7). While Ms. Newton claimed to have attended school with Kathy, she was not in school with her in 1986 or 1987,

and, in fact, did not know Kathy. (TR 2098-99). While Ms. Newton and Kathy purportedly had a common friend, Ms. Newton did not even know Kathy's last name. (TR 2099). Moreover, she told law enforcement that the picture of Kathy Engles shown on television did not look like the "Kathy" that she knew. (TR 2099). In fact, Ms. Newton is not sure if Kathy Engles is even the Kathy that she knew through a common friend. (TR 2099; 2102). Ms. Newton is not sure that the person she saw was Kathy Engles. (TR 2100).

Betty Waine worked next door to the residence of Kathy and her grandparents. (TR 2103-04). Ms. Waine testified that she saw Kathy at the Altamonte Mall on Monday of Memorial Day week-end, 1987 [May 26, 1987]. (TR 2106). Ms. Waine testified that she never stated that she wanted to wait before reporting the "sighting" because she did not want to give Kathy's grandparents false hope. (TR 2116). However, Susan Brandenburg later testified that Betty Waine was not sure enough to tell Kathy's grandparents about her "sighting" until May 30, 1987, and, in fact, had contacted her daughter and discussed the matter prior to calling anyone. (TR 2419-20).

Joan Thompson is the founder and Executive Director of the Missing Children's Center. (TR 2145-46). Ms. Thompson testified that she has followed up on a number of leads in connection with this case, and that no one who actually knew Kathy Engles has ever

reported hearing from her. (TR 2167-68). None of the reasons that children run away were present in Kathy's life and, in any event, at least one friend of a runaway generally knows where they are. (TR 2169). Ms. Thompson further clarified the purported "sightings" of Kathy Engles, and pointed out that, in almost all cases, it was possible to quickly eliminate the sighting as a viable one based upon the description given. (TR 2170). Ms. Thompson is of the opinion that Kathy Engles is not hiding someplace, found no trouble at home, and emphasized that Kathy's home situation was not what children run **away** from. (TR 2171-72; 75).

Dr. Bruce Hyma is forensic pathologist with the Dade County Medical Examiner's office. (TR 2184).²⁶ Dr. Hyma admitted, on cross-examination, that this is the only case he has ever been involved in where a footprint was left on a body. (TR 2210). While Dr. Hyma believes that his protocol for evaluating such injuries is the best, he admitted that there are other ways to conduct the same examination. (TR 2211). Moreover, Dr. Hyma testified that the mark on Meyers' side was consistent with a shoe. (TR 2217).

Norman Blackwell was a uniformed security guard at Orlando

²⁶**Contrary** to Meyers' continuing assertion throughout his brief, Dr. Hyma was not a "state witness". He was summoned to trial by the defendant.

International Airport. (TR 2223; 2225; 2226). Mr. Blackwell saw a girl whom he thought looked the photographs he had seen of Kathy Engles. (TR 2225). That person asked him for directions to a particular airline ticket counter. (TR 2225-6). The girl who asked directions from Mr. Blackwell was not attempting to hide, and Mr. Blackwell does not recall if she seemed nervous or not. (TR 2227).

James Fisher is the brother an Assistant State Attorney in the **Brevard/Seminole** Circuit. (TR 2241). Fisher testified about the scratches that he observed on Meyers, and confirmed that Meyers had been concerned about him cleaning up his house. (TR 2235) .²⁷ Fisher also testified that the locket he pawned belonged to his girl friend. (TR 2235). Fisher was wearing a body bug when he went to the jail to speak with Meyers. (TR 2238). Fisher and Meyers talked for some time, but Meyers admitted nothing. (TR 2240). Meyers found the body microphone that Fisher was wearing. (TR 2240-41).

Ralph Salerno has been employed by the Seminole County Sheriff's Office for about 22 years. (TR 2332). In addition to being involved in this case, Deputy Salerno was the investigator in Cole's case. (TR 2337). Cole never asked for any help from Deputy Salerno about his own case. (TR 2339).

²⁷The 'house cleaning" was apparently related to a flooding toilet or sink--it had nothing to do with Kathy's murder.

David Guilford was employed by the Lake Mary Police Department and, and in March of 1991, was assigned to work on the Kathy Engles case. (TR 2341-42). Officer Guilford testified concerning the efforts undertaken to locate the victim's body. (TR 2343-71). Officer Guilford testified that, until 1992, the focus of the investigation was to recover the body of the victim. (TR 2373; 2377) .²⁸

Susan Brandenburg, who was associated with the Missing Children's Center, testified concerning information she had developed during the course of her investigation into Kathy's disappearance. (TR 2387). Ms. Brandenburg testified that her approach to a case such as this one (or any missing child **case**) is that the child is a runaway. (TR 2418). Ms. Brandenburg further testified that Lorna Brown was extremely concerned about Kathy, and doubted that she had run away. (TR 2422). All reports of "sightings" were turned over to law enforcement, and many false leads were followed up on. (TR 2413-14).

In the state's rebuttal case, Deputy Ralph Salerno testified

²⁸Officer Guilford testified at length about the involvement of an inmate named Brad Bolch in the attempts to locate Kathy's body. The testimony about Bolch is irrelevant for several reasons, not the least of which is that Bolch never produced any viable information and never testified at trial.

concerning the circumstances of the meeting between Fisher and Meyers when Fisher was wearing a body microphone. (TR 2428-29). Deputy Salerno arranged the body microphone on Fisher, and, at all times, was able to visually observe both Meyers and Fisher. (TR 2429). Meyers found the body bug 30 or 40 seconds into the conversation when Fisher went over to Meyers, bent over, and showed him the microphone. (TR 2430; 2441).

Meyers specifically stated on the record that he did not want any lesser included offenses submitted to the jury. (TR 2456). This decision was contrary to the advice of his attorney. (TR 2458). On June 17, 1994, the jury returned its verdict finding Meyers guilty of first degree murder as charged in the indictment. (TR 2625). At that time, Meyers stated that he wanted no mitigation evidence put on at the penalty phase of his capital trial. (TR 2630-31).

On August 22, 1994, Court reconvened for the penalty phase proceedings. Between the conclusion of the guilt phase and the commencement of the penalty phase, Meyers was evaluated by mental state experts and found competent to waive the presentation of mitigation. (TR 2700).

THE PENALTY PHASE FACTS

Officer Curtis Cox of the Sanford Police Department testified

that, on May 18, 1987, he took a sexual battery report from Beth Maycrink. (TR 2738-40).

Beth Maycrink testified that, in 1987, Meyers physically attacked her, threatened her with a knife, and forced her to submit to sexual intercourse with him. (TR 2743-45; 2754).²⁹

Dr. Michael Gutman, a psychiatrist, evaluated Meyers on May 23, 1994. (TR 2768-69). Dr. Gutman testified that Meyers has a family but does not want them involved. (TR 2774). Dr. Gutman testified that Meyers has no mental disease or defect (TR 2774), has a full scale I.Q. of about 105, and has no mental status diagnosis. (TR 2775). Dr. Gutman testified that Meyers has the *capacity* to be rehabilitated, but whether he will be or not is another question. (TR 2779). Dr. Gutman also testified that he does not know Meyers criminal history.

The jury recommended death by a unanimous vote. (TR 2832). On March 17, 1995, the trial court sentenced Meyers to death, finding, in aggravation, that Meyers has previously been convicted of another capital felony or of a felony involving the use or threat of violence to a person, and that the capital felony was committed

²⁹A certified copy of the judgement and sentence for sexual battery (and the subsequent violation of probation) was introduced as State's Exhibit 1. (TR 2759-60).

while Meyers was engaged in the commission of, or attempt to commit, or escape after committing a sexual battery. (R 1684). In connection with the statutory mitigating circumstances, the Court made the following findings:

The defendant has chosen not to present evidence of any of the statutory mitigating circumstances. The record is clear that his counsel did not agree with the defendant's request but acceded to his wishes after this court ordered a competency evaluation and the defendant was found competent to waive any presentation of **any** statutory mitigating factors. Because of this decision by the defendant against his counsel's wishes, this Court has had no evidence of any statutory mitigating circumstance to consider, and has therefore considered none.

(R 1686).

Meyers did present four non-statutory mitigating factors, which were the following:

1. The defendant is rehabilitatable;
2. The defendant did volunteer work and participated in church activities between 1990-1992;
3. The defendant was not arrested between 1990-1993;
4. The defendant exhibits usual feelings and emotions and does not exhibit serious psycho-pathology or anti-social personality. (R 1686).

The first three mitigating factors were given little weight, and the fourth was given some weight by the sentencing court. (R 1686-1688).

SUMMARY OF THE **ARGUMENT**

Meyers' claim that the corpus delicti of a homicide was not proven prior to the admission of evidence of his confessions and inculpatory statements is wholly meritless. The law is settled that, in the case of a homicide, the corpus delicti consists of the fact of death, the identity of the victim, and the criminal agency of another. Proof beyond a reasonable doubt of those three elements is not required, and those elements **may** be established by either direct or circumstantial evidence. The evidence presented by the state established those three elements through both direct and circumstantial evidence, and that is all that is required before admission of an inculpatory statement is proper. To the extent that this claim blends a challenge to the sufficiency of the evidence in with the corpus delicti component, the evidence, both direct and circumstantial, supports the conviction beyond a reasonable doubt. Moreover, contrary to Meyers' claim, direct evidence, in the form of Meyers' confessions, supports the conviction beyond a reasonable doubt. Meyers' claim is one of the credibility of witnesses, and that is a matter for the finder of fact, not the appellate court.

Meyers' claim that the motion to suppress photographs taken of him, and the evidence resulting from those photographs, is wholly without merit because the photographs were taken with Meyers'

consent. Again, Meyers is asking this court to substitute its judgment for that of the fact finder. The trial court heard all of the testimony concerning the suppression issue, and found, as a fact, that Meyers' testimony that the photographs were taken without his consent **was** not credible. That finding is supported by the record, and should not be disturbed. In addition to being meritless because the photographs were taken with Meyers' consent, this issue also fails because Meyers had no right to privacy concerning the injuries on his torso given that he had presented himself to law enforcement personnel while not wearing a shirt, thus leaving the injuries in plain view. He can have no privacy right in those injuries, and, moreover, even if he did, he had no privacy right once he was in custody on an unrelated charge because a full search at the county jail was proper.

Meyers' claim that the evidence is insufficient to sustain the conviction for first degree murder is, to some extent, a variant of Claim I, above. To the extent that this claim is different from Claim I, Meyers attempts to present the case against him as being based wholly on circumstantial evidence. However, that conclusion is wrong as a matter of law because his confessions (and the other physical evidence) are direct evidence of guilt. The circumstantial evidence standard is inapplicable to this case, and the evidence is

more than sufficient to establish Meyers' guilt beyond a reasonable doubt.

ARGUMENT

I. THE CORPUS DELICTI WAS ESTABLISHED BEFORE MEYERS' STATEMENTS WERE ADMITTED INTO EVIDENCE

On pp. 30-39 of his brief, Meyers argues that "[t]hat the trial court erred in allowing the admissions and confessions of the appellant into evidence without first making the state establish a sufficient prima facie case of guilt of first degree murder against the defendant." *Initial Brief, at 30.* That argument is not an accurate statement of the law because it co-mingles corpus delicti and confession concepts in with complaints about the sufficiency of the evidence.³⁰

A. The Corpus Delicti Was Proven

Corpus delicti is broadly defined as "embrac[ing] the fact that a crime has been committed by someone...without embracing the further fact (needed for conviction) that the defendant was the one who did or committed that act or was otherwise responsible

³⁰Throughout this claim, Meyers switches between the corpus delicti and sufficiency of the evidence issues. The state has responded separately to those discrete claims.

therefor."³¹ In the case of a homicide, the corpus delicti consists of three elements: the fact of death; the identity of the victim; and the criminal agency of another. *See, e.g., Bassett v. State*, 449 So. 2d 803 (Fla. 1984). Those three elements may be established by either direct or circumstantial evidence, and proof of those elements beyond a reasonable doubt is not required. *Bassett, supra; Stano v. State*, 473 So. 2d 1282, 1287 (Fla. 1985); See also, *Buenoano v. State*, 527 So. 2d 1294 (Fla. 1988). As set out in the statement of the facts, the state established the corpus delicti of a homicide, and Meyers' admissions were properly admitted into evidence.³²

The evidence establishing that Kathy Engles is dead is that she had a good relationship with her grandparents (with whom she lived), had no reason to run away from home, and that she never expressed any desire or intent to run away from home to any of her **friends**.³³

³¹LaFave and Scott, *Criminal Law*, CH.1 § 1.4(b) (1986).

³²To the extent that Meyers claims, on p. 30 of his brief, that the 7-11 where he says he let Kathy out of his car "appeared" to **be** open, that claim strains credulity. According to Meyers' story, several people were present, and he was in the parking lot for several minutes. His claim that the lights made the store "appear " open is spurious.

³³As set out in the statement of the facts, Kathy had made the high school dance team, and was looking forward to starting high school in the fall.

Autumn Pemberton was the next-to-last person to see Kathy Engles alive. The occasion of that meeting was Kathy's request to spend the night with Autumn, a request that is absolutely inconsistent with any plan or desire to run away from home. No one who knew Kathy has seen her since May 25, 1987, when she was seen in the early morning hours in the company of the defendant. At that time, Kathy was apparently in good health. The only evidence to the contrary was Betty Waine's testimony, and that testimony was throughly impeached. See p. 37, above. In fact, Mrs. Waine waited several days after the so-called "sighting" before she mentioned anything to anyone because she wanted to be 'sure". This was in the face of knowledge that Kathy was missing and that a massive search for her was under way. While Ms. Waine denied that statement during cross-examination, those very facts were proven up during the testimony of Susan Brandenburg. Ms. Waine knew that Kathy was missing and that the police were looking for her, but delayed reporting the 'sighting" until she talked with her daughter, who did not know Kathy at all, (TR 2419-20). As set out in the statement of the facts, there has been no sighting of Kathy Engles since May 25, 1987.

The day after Kathy was last seen, Meyers exhibited physical injuries as a result of a violent altercation, and bore a bruise-

like mark on his side consistent with the shoes Kathy was wearing at the time she disappeared.³⁴ Kathy left her purse in her grandparents' car when they dropped her off in Lorna Brown's neighborhood; Kathy always took her purse with her unless she only planned to be away for a short period of time. In fact, Kathy specifically told her grandmother that she did not need her purse because she would only be gone one hour. Kathy's money and personal items were in her purse. Moreover, none of Kathy's things were missing from her room, including a sum of cash that was left in her dresser. Further, Kathy Engles had a bank account containing over \$200; no one has ever attempted to withdraw any of that money.

When the circumstantial evidence that Kathy did not disappear voluntarily is coupled with the undisputed facts (shown by direct evidence) that she was last seen in Meyers' company and that Meyers was observed with marks on his body from a violent physical confrontation (and had a mark on him consistent with Kathy's shoes), there is more than enough evidence to establish that Kathy Engles is dead as a result of the criminal agency of **another**.³⁵ Therefore,

³⁴Both experts testified that some of the scratches on Meyers' body were consistent with fingernail scratches. (TR 1134-35; 2222).

³⁵To the extent that Meyers alleges, on p. 31 of his brief, that Gary DeMay was also a suspect in this case, Meyers' own

there was no error in the introduction of Meyers confessions and admissions.

B. The Evidence Supports Meyers' Conviction

To the extent that the first issue contained in Meyers' brief challenges the sufficiency of the evidence to support a conviction, that claim fails on the facts. In addition to the evidence set out above, Meyers directly admitted having killed Kathy Engles during the course of sexual battery to no less than five (5) people, and in addition made inculpatory statements to a priest. See, pp.24-32, above. That direct evidence, together with the other direct and circumstantial evidence, is overwhelming evidence of guilt.

In his brief, Meyers makes much of the fact that he confessed to fellow inmates and that, according to Meyers, those confessions are unreliable and unworthy of belief. There are three defects with that argument, each of which, standing alone, is sufficient to support a denial of relief. First, Meyers ignores, by omission, his inculpatory statements to Father Spencer. The testimony of a priest is hardly subject to impeachment based upon character. Father Spencer's testimony is consistent with the testimony of the five

statement to law enforcement was that he was alone with Kathy. (TR 1388-90). In any event, DeMay was eliminated as a suspect. (TR 1924-25; 1944-45). The identity component of the corpus delicti was never disputed.

inmate witnesses, and it makes no sense to suggest that the inmates fortuitously fabricated stories which are remarkably consistent with Father Spencer's testimony.³⁶ No inmate-witness received any benefit from his testimony, and, in fact, no such witness was successfully impeached in any respect. Meyers' admissions, and all of the other evidence, are more than sufficient to support the conviction. See, e.g. *Hardwick v. State*, 521 So. 2d, 1071, 1075 (Fla. 1988)

The second reason that Meyers' challenge to the truthfulness of the inmate testimony fails is because the testimony of Zacke and Cole (and to a lesser degree, Davis) is consistent with Kathy's violent resistance that is shown by the physical evidence of Meyers' injuries. See, pp. 13-14; 16; 18-19, **above**.³⁷

The third reason that Meyers' claim fails is because, when stripped of its pretensions, Meyers does nothing more than ask this Court to substitute its credibility determination for the jury's.

³⁶Meyers' admission to Father Spencer was not as detailed as some of the other admissions. However, that admission carries with it the recurrent statute of limitations/circumstantial evidence theme.

³⁷To the extent that Meyers argues that only the state's inmate witnesses were transported together, that claim is incorrect. The parties stipulated that Meyers' inmate witnesses were also transported together on at least one occasion. (TR 2385-86).

Florida law is settled that determinations about the credibility of witnesses are the province of the finder of fact, not of the appellate courts. *Demps v. State*, 462 So. 2d 1074, 1075 (Fla. 1984) ; *Jent v. State*, 408 So. 2d 1024, 1028 (Fla. 1981); see also, *Land v. State*, 59 So. 2d 370 (Fla. 1952). While Meyers believes (apparently) that the five inmates who testified about his confessions are "unreliable", the finder of fact resolved the credibility choice against Meyers. Meyers' dissatisfaction with that result does not establish a basis for the reversal of his conviction. Meyers' conviction should be affirmed in all respects.

To the extent that any other issue is contained within Claim I, *Florida Rules of Criminal* Procedure 3.190 is clear that a Motion to Dismiss pursuant to §(c) (4) must be denied when the facts are in dispute. See, e.g., *Fla.R.Crim.P.* 3.190; *see also, State v. Gale*, 575 so. 2d 760 (Fla. 4th DCA 1991). The facts in this case were certainly disputed, and the 3.190 motion was properly denied. See, R 415-422. To the extent that this issue discusses matters developed in connection with the motion to set bond or the motion to dismiss, that discussion is merely **surplusage**.³⁸ Those arguments

³⁸**Meyers'** brief from the last paragraph on p.32 to the first full paragraph on p.35 is a reincarnation of his memorandum of law filed in support of the motion to dismiss. (R 343-47).

have no legal basis because they erroneously equate the concept of corpus delicti with that of sufficiency of the evidence. Meyers is wrong as a matter of law for the reasons set out at pp. 46-49, above. The fact-based argument found on pp. 36-39 of Meyers' brief is no more than his attempt to persuade this Court to decide questions of credibility. For the reasons set out at pp. 51-52, above, this Court should decline Meyers invitation to substitute its judgement for that of the **fact-finder**.³⁹ The jury heard all of the evidence, including much that is set out in the state's statement of the facts but is not included in Meyers' brief. The corpus delicti of homicide was established, and there is no basis for reversal. The conviction and sentence should be affirmed in all respects.

II. THE MOTION TO SUPPRESS PHOTOGRAPHS TAKEN OF MEYERS WAS PROPERLY DENIED

On pp. 40-43 of his brief, and in Supplemental Point II on appeal, Meyers argues that photographs depicting injuries on his body shortly after Kathy Engles' murder should have been suppressed.

³⁹The testimony about the shoeprint found on Meyers' side is a classic battle of the experts that does no more than present a credibility choice to the fact-finder. Dr. Hyma, once again, was not the 'state witness' Meyers persists in calling him. Even if that label was accurate, its use is an improper and impermissible attempt to bolster the credibility of the witness. *See, Ehrhart, Fla. Evidence, § 702.5 (1996).*

For the reasons set out below, Meyers' motion was properly denied.

At the pre-trial hearing on the motion to suppress, Meyers testified that he was arrested on May 28th, 1987, for violation of probation. (SR 72-73). According to Meyers, he was told by law enforcement that they wanted fingernail, hair and blood samples from him in addition to photographs. (SR 74). Meyers testified that he asked for his attorney and the police refused. (SR 74). Then, according to Meyers, the officers hit him in the head and chest, removed his shirt and photographed him. (SR 74). Meyers testified that, in addition to the photographs, hair and fingernail samples were taken, as was his shirt, all against his will and over his protest. (SR 75). Meyers did admit, however, that Officer Taggart (of the Lake Mary Police Department) had interviewed him at his home on May 27, 1987. (SR 77). Meyers did not have a shirt on when that interview took place. (SR 77).

Lake Mary Police Officer Tom Taggart testified that he interviewed Meyers, at his home, on May 27, 1987. (SR 81). That interview took place at Meyers' residence and Meyers told Officer Taggart that he had already told law enforcement everything he knew about Kathy **Engles'** disappearance. (SR 82). Meyers did not have on a shirt, and scratches and other injuries to his torso were clearly visible. (SR 82). Officer Taggart had received information

that a young girl (who was possibly a runaway) was living in the home, and was invited into Meyers' residence. (SR 82). Meyers claimed that the scratches had been caused by tree branches, but Officer Taggart observed that they were consistent with fingernail scratches rather than scratches caused by tree branches. (SR 83).

Meyers failed to appear in court on May 28, 1987, and Officer Taggart attempted (unsuccessfully) to locate him at his residence. (SR 83). Later that day, Meyers turned himself in at the jail. (SR 84). Officer Taggart contacted Meyers in the Central Booking area of the jail, and told Meyers that he wanted to talk with him about a missing person and that he further wanted to take photographs of Meyers' injuries. (SR 85).⁴⁰ Officer Taggart did not recall asking Meyers for hair, fingernail or blood samples, but specifically remembered that Meyers never objected to being photographed, never asked for his attorney, and was cooperative throughout the photography session and voluntarily followed directions given to him. (SR 86; 88; 98). The photographs show a smug expression on Meyers' face. (SR 87) Officer Taggart testified that, when he went to Meyers' residence, a girl that appeared to be 12 or 13 years old answered the door. (SR 99). Officer Taggart believed that she

⁴⁰A large number of people were present at this time. (SR 85).

might be the suspected runaway he had received information about, and had no reason to doubt her authority to admit him into the residence. (SR 100; 102). Officer Taggart told the girl that he wanted to talk with Meyers. (SR 103). Officer Taggart's purpose in going to Meyers' residence was not to search the premises or to make an arrest. (SR 103). Meyers spoke with Officer Taggart in the kitchen of the residence. (SR 104).

At the conclusion of the suppression hearing, and after hearing the arguments of counsel, the court denied Meyers' motion. (SR 119-122). In doing so, the court expressly found Meyers' testimony that he was forced to submit to being photographed to be unbelievable. (SR 120). The court also found that Meyers did not have a shirt on when Officer Taggart observed him the day before the photographs were taken. (SR 122). The trial court's denial of the motion to suppress is correct for three independently adequate and interrelated reasons. Of course, under settled Florida law, the trial court's ruling on the motion is presumptively correct. *Bonifay v. State*, 626 So. 2d 1310, 1312 (Fla. 1993); *Medina v. State*, 466 So. 2d 1096 (Fla. 1985).

In his brief, Meyers relies exclusively on Rule 3.220(c) of the *Florida Rules of Criminal Procedure* to support his claim that the photographs, and the evidence coming from them, should have been

suppressed. However, Rule 3.220(c) has nothing whatsoever to do with the issue before this court. That rule, by its clear language, only applies to post-charging disclosure to the prosecution of the enumerated matters. Nothing in that rule affects (or even has anything to do with) the ability of law enforcement to photograph an individual with his consent before the filing of a charging document. Meyers consented to being photographed, and that is the end of the matter. There can, by definition, be no violation of Rule 3.220(c) because it does not even apply here. This claim is a non-issue and is certainly not a basis for reversal.

While Meyers has, in the past, disputed the validity of his consent, that issue was resolved against him when the trial court found that his testimony that he did not consent to being photographed was not believable. Such a finding of fact, which came after ore **tenus** testimony, is the very sort of credibility choice that is the province of the fact-finder. The trial court resolved this issue against Meyers, and there is no basis in law or fact for it to be disturbed by this Court. Even if there was a "search", that search was conducted with valid consent on the part of Meyers. See, e.g., *Washington v. State*, 653 so. 2d 362, 364-65 (Fla. 1994); *Turner v. State*, 645 So. 2d 444, 447 (Fla. 1994); *Marquard v. State*, 622 So. 2d 54, 56 (Fla. 1994). There is no error, and the motion

to suppress was properly denied.

Even though Meyers' consent is wholly dispositive of this claim, the motion to suppress was also properly denied for the following additional reasons.

First, it is undisputed that Meyers was in lawful custody when the photographs were taken. Obviously, Meyers had no reasonable expectation of privacy while he was incarcerated, and there was no error in photographing pre-existing injuries which were known to law enforcement. That factual scenario is analogous to an inventory search by jail personnel--because Meyers was in full custody, a full search was clearly proper. *See, United States v. Robinson, 414 U.S. 218, 84 S.Ct. 467, 38 L.Ed. 2d 427 (1973); See also, Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed. 2d 65 (1983).*

The second reason that the motion to suppress was properly denied is because the injuries were first observed, in plain view, by a law enforcement officer who was lawfully in the position to observe them. That officer was lawfully on the premises of Meyers' residence, and there was no error because Meyers had no reasonable expectation of privacy when he came to the door without a shirt on. See, e.g., *United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed. 2d 300 (1976).* Because the injuries were lawfully observed (in plain view) in the first instance, the fact that they were

photographed subsequently is irrelevant. *See, e.g., Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed. 2d 112 (1990) (inadvertence is not a requirement of the plain view exception); *Illinois v. Andreas*, 463 U.S. 765, 103 S.Ct. 3319, 77 L.Ed. 2d 1003 (1983) (right of privacy destroyed when evidence is viewed by law enforcement). Meyers destroyed any right of privacy when he exhibited his injuries to Officer Taggart, and the motion to suppress was properly denied.

Finally, even if the photographs should have been suppressed, their admission into evidence was harmless beyond a reasonable doubt. *See, e.g., Saavedra v. State*, 622 So. 2d 952, 959 (Fla. 1993) ; *State v. DiGuilio*, 491 so. 2d 1129 (Fla. 1986). The evidence of Meyers' injuries was before the jury through the testimony of Fisher (TR 970-73), Taggart (TR 1047-49), Hart (TR 1391), and Hilton (TR 938-30), and there is no reasonable probability that admission of photographs of those injuries (and the expert testimony) contributed to Meyers' conviction. With or without the photographs, Meyers would have been convicted--any error was harmless beyond a reasonable doubt.

The primary reason that denial of Meyers' motion to suppress was proper is because Meyers consented to being photographed in the first place. The trial court's finding that valid consent was given

came after hearing the testimony on both sides of the issue, and is well supported by the evidence. To the extent that that decision turns on a determination of the credibility of the various witnesses, this court should not substitute its judgement for that of the Circuit Court. Meyers' conviction and sentence should be affirmed in all respects.

III. THE EVIDENCE IS SUFFICIENT TO SUSTAIN
THE CONVICTION

On pp. 43-48 of his brief, Meyers argues that the evidence is not sufficient to sustain his conviction for first-degree murder. To some extent, this claim is a variant of Claim I, which fails for the reasons set out at pp. 49-53, above. To the extent that this claim differs from Claim I, it is without merit for the following reasons.

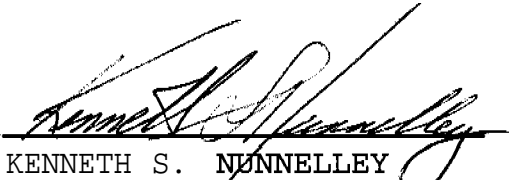
Meyers bases this claim on the premise that the state's case was entirely circumstantial and that, for that reason, the special standard for sufficiency of evidence in circumstantial evidence cases applies. See, e.g., *Heiney v. State*, 447 So. 2d 210, 212 (Fla. 1984). However, the fatal defect to Meyers' efforts to come within that standard is that the state's case was *not* entirely circumstantial. Meyers admitted the murder to five inmates and a priest. As a matter of law, those confessions are direct evidence

of guilt. See, e.g., *Hardwick v. State*, 521 So. 2d 1071, 1075 (Fla. 1988). Because a confession is direct evidence, this is a direct evidence case, not a circumstantial evidence one. For that reason, each case relied upon by Meyers in his brief is easily distinguishable and does not control disposition of this claim. What Meyers has attempted to present as a sufficiency claim is, in fact, merely a claim that the finder of fact gave too much weight to the direct evidence. That is not a cognizable claim on appeal. See, e.g., *Demps, supra*; *Jent, supra*; *Land, supra*. Competent, substantial evidence supports the conviction beyond a reasonable doubt. Particularly in light of Meyers' confessions, no reasonable hypothesis of innocence exists. The conviction and sentence should be affirmed in all respects

CONCLUSION

Based upon the foregoing argument and authorities, Meyers' conviction and death sentence should be affirmed in all respects.

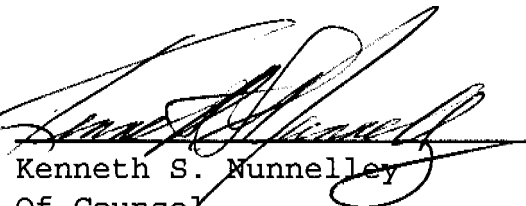
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been sent by U.S. Mail to: Mr. Ed Leinster, Attorney at Law, 1302 East Robinson Street, Orlando, FL. 32801 on this the 16th day of April, 1996.


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Of Counsel