IN THE SUPREME COURT
OF THE STATE OF FLORIDA

ANTON D. MEYERS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.
_____/

SUPREME COURT CASE NO.: 85,617

APPELLANT'S INITIAL BRIEF

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PRELIMINARY STATEMENT

The Appellant, ANTON D. MEYERS, who was the Defendant below, will hereinafter be referred to as "the Defendant."

The State of Florida, which was the Plaintiff below, will hereinafter be referred to as "the State."

The Record on Appeal, excluding transcripts, will be referred to as "TR," followed by the page of the Record on Appeal.

The transcripts of the trial shall be referred to as "TT," followed by a number that corresponds to the page of the trial transcript.

STATEMENT OF FACTS AND OF THE CASE

The Appellant, who was the Defendant below, was charged with the crime of First Degree Murder. The Defendant submitted a Motion to Suppress certain evidence, which Motion the trial court denied. The Defendant proceeded to trial, and was convicted as charged. This appeal timely ensued.

The first witness to testify for the state was Laurna Brown. She had been a close personal friend of the victim. TT-703. She identified a picture of the victim when she was 14 years old TT-701, when they were in the eighth grade together. TT-703. She had known the appellant during that time only as someone in the neighborhood along with another individual named Gary Demay. TT-704. The last time she saw the victim was May 24, 1987.

State's Exhibit #2, a photograph of the neighborhood in those days was offered and accepted into evidence. TT-709. This depicted where the witness had met the victim the evening of May 24th, while the appellant was present. She met the victim at the convenience store where the victim's grandparents brought her. TT-710. The victim had asked the witness to spend the night with her because she was bored. TT-711. The witness stated that the victim made a phone call to her grandparents house from Autumn Pemberton's house. TT-712. The Witness stated that the victim had wanted to get beer since she could not find any pot and the defendant offered to buy some. TT-712. The three of them agreed to go to the appellant's residence to drink beer. TT-713. She stated she drank approximately two beers over a two hour period and the victim drank two or three. TT-714. Autumn Pemberton had also joined them

at the appellant's residence. TT-715. They then went to Gary Demay's residence where the appellant entered for five or ten minutes. TT-716. The three of them went back to Lorna's residence, where the appellant stayed outside and talked to them through the windows. The reason for going there was that the witness's parents would be leaving to go to work around midnight. TT-717. After Lorna's mother went to work, the witness went outside to join the appellant and the victim, who had left the house briefly to be with him. TT-719. More beer was consumed. They went back to her residence near 2 o'clock in the morning because her father would be getting up. TT-719. Both the victim and the appellant came into Lorna's house and were in her bedroom when Lorna's father woke up and found them. TT-721. Lorna's father threw both the appellant and the victim out. Lorna then told him who Kathy was and she and her father went looking for her. TT-723. They did not find Kathy so they gave up the search and went to the beach the following day. TT-725. They arrived back home approximately 2 o'clock the next afternoon. Her sister Sharon had not gone to the beach that day. The witness related that the victim's grandparents had been calling that day and her sister had told them that the girls had been out for a walk. TT-726. Later that afternoon, the police were at Lorna's residence along with the grandparents of the victim. TT-728. The appellant was also present.

According to the witness, she had already asked the appellant what he had done the night before with the victim. He had responded that he had left her at the convenience store not far from there. TT-728. The witness had never seen the victim since then. She expressed no knowledge of the victim ever discussing boys, unhappiness

at home with her grandparents, any desire to run away, or feelings of discomfort with the grandparents. TT-732.

On cross examination, the witness was asked about her drinking prior to that particular evening. TT-734 - 736. She was also questioned about the beer that was on the counter in her bedroom that night. She stated that her lifestyle did not include alcohol or marijuana, and that she would not have hung out with people like that. TT-737. She stated that during the time of the victim's disappearance when she was 13, that she regarded Mr. Demay as a handsome older man, he being 23 at the time. TT-739. Even though her best estimate of calling the victim to come over was 9 to 10 o'clock at night, she felt that her knowledge of Kathy's freedom with her grandparents allowed her to be out at that time. TT-741.

It was established that the witness had very little parental supervision in the evenings because of her parent's work schedule. TT-742-743. When she called Kathy from the convenience store she stated that there was no mention of spending the night. She stated that Kathy's residence was approximately 15 minutes from her neighborhood. TT-744-746. She denied stating to Kathy that she was having family problems at the time. TT-746. She stated that Kathy had spent the night before at her friend's Alethia's home, not the grandparents. TT-747. In addition to Kathy having initiated talk about getting marijuana and beer on the last evening she was seen, Kathy was described as "a little tough" and "wouldn't let anybody run over her". TT-753. She was described as essentially vulgar in her communications. TT-754.

The witness described their going to Gary Desmay because he was older,

"hot," from New York, rode motorcycles, and that he was fascinating. TT-755. The tone of the witness's direct examination had been that the Defendant had forced himself on the young girls and come into her home almost without her knowledge.

On cross examination, it was clear that the appellant had been with the girls by their choice, had not been in a position to force himself into the home without the witnesses knowledge, and was, in fact, there while the witness was in jeopardy of being found by her parents to be out at an unusual time for a young woman that age. TT-755-758. It was clear that both the appellant and the victim voluntarily got into a closet when the witness's father woke up. TT-762. It was also clear that the appellant left the house immediately without waiting for the victim or suggesting that she follow him. TT-763. The witness had not made any of her professed fears referred to in her direct examination concerning Kathy's disappearance known to her father the night that they looked for her. TT-765. She had no reason to fear the appellant or suspect foul play. The witness stated that her sister was wrong by stating that they had been out walking and that, in fact, that she, the appellant, and the victim had made tentative plans to lie about going jogging when they would instead be going to a movie the next morning. TT-768. The witness stated that together with the news media and the posters, within a couple of days after Kathy's disappearance that rumors were "flying all over". TT-770. The witness was then questioned with a statement that she had made on November 5, 1991 where she acknowledged that between all the things she had been told and what she actually remembered was mixed together. TT-783. She also stated that at the time of her testimony that what she knew of the appellant was "what police

officers have told me". TT-784. She stated that her impression of him at that moment was based on facts that had been told to her by the police after the night when she wasn't there. TT-784. She admitted that the media versions may have influenced her thinking. TT-786. Having on direct Kathy was to her knowledge a non-drinker, she admitted having made a statement to a detective that Kathy wasn't a non-drinker. TT-789. Asked about the rumors that she had been hearing she said that most of what she remembered was helicopters flying over the neighborhood at that point in time. TT-796. She was confronted with a previous statement that indicated the rumors were that Kathy was dead, didn't run away. TT-796. Having said on direct that Kathy was happy at home the witness admitted on cross that her first statements had been she believed Kathy had run away. TT-798. Most of the rumors had stated that Kathy was dead but this witness had disavowed believing that at the time. TT-798. The witness was then read portions of her deposition where she admitted that Kathy felt her grandparents were stifling, too old, not very hip and she had just gotten back from New York and really wanted to go back. Also that she had met a guy there and she wanted to go back and travel. TT-803. It had been her opinion at the time that Kathy had simply run away. TT-804. The witness stated that one of the lead detectives had told her repeatedly that it was the appellant who was the murderer, among other things, and that her opinion changed after hearing all of these things as to whether or not Kathy had run away or had been harmed. TT-820-821.

The next witness for the state was Robert Brown. On the night of Kathy's disappearance he had woke up to find activity in his daughter Lorna's room. TT-824.

He located the appellant and Kathy in a closet. TT-825. He chased them out and then followed the route that Kathy would have taken home, then went to work. TT-826. He stated that the next day he, his wife, and Lorna went to the beach, that Sharon did not but knew the family was going to the beach. TT-831. He offered little explanation why Sharon would have told the grandparents that Kathy and Lorna were out for a walk the next day. TT-831. The next witness was Autumn Pemberton. TT-832. She had been twelve years old at the time of the events. She had been at the convenience store when Kathy was dropped off by her grandparents. 5-838. She stated that Lorna had gone back to her residence to get money to buy beer. TT-839. She went to the appellants home and drank beer with the rest of the group. TT-842. During that time Lorna mentioned that you could get a "buzz" from smoking tea bags. So they tried it. TT-843. She stated that about 2:30 in the morning that Kathy came back to her window with the appellant. TT-844. At that time Kathy asked whether she could spend the night and was told no. TT-845. She could see Gary Demay standing near he window on the road. TT-846. On cross examination the witness stated that Lorna had a crush on Gary Demay. TT-851. When the appellant, Kathy, and Gary Demay left her window they walked away together. TT-851. Based on Mr. Demay having also been the last person to be with the victim, the witness could offer no explanation why he was never contacted the next day. TT-852. She admitted that when Kathy had called her grandparents that she became angry because they hung up on her. TT-855. She also admitted that the plan was for Kathy and Lorna to wait for Lorna's parents to leave and then the next morning say they had gone jogging. TT-855. She remembered making a statement that

when she had been that age that there were other friends of Kathy's who were running away only to come back when the "pressure was off". TT-857. She had seen the appellant the following day of the disappearance and although he was wearing shorts and a shirt she remembered seeing no scratches or anything significant on him. TT-857. The next witness for the state was the grandmother of the victim. She and her husband had dropped Kathy off the night before at the convenience store where she had seen Lorna and someone on a bicycle. TT-879. Kathy had called later to ask to stay the night at Lorna's.

The next day the Hoopers would not have expected her to call until later in the afternoon because of her usual pattern. TT-881. The appellant was up at the Brown's residence when the Hoopers responded late that afternoon. They then drove him to the police department and along the way passed the convenience store where the appellant indicated he had dropped Kathy the night before. TT-885. Kathy had left and seen with a blue shirt that had a "Y" on it, jeans, and sneakers. TT-890. She was also wearing Reebok sneakers from a girlfriend, Amy Davis. TT-890. She stated that none of Kathy's clothing was missing nor any money withdrawn from her bank account. She described the vast media coverage of the disappearance including 152 billboards throughout the state, television, newspaper.

On cross examination the disparity of the Hoopers ages to Kathy was explored. TT-900. The Hoopers were the only parents she ever really new. Although her father had moved to Florida when she was young and actually lived in the same town, she had no close relationship with him. Her older brothers lived with him but she

did not. TT-902 & 903. Kathy's father kicked the two boys out a few months before Kathy disappeared after they came to live with the Hoopers. TT-907. Mrs. Hooper described the number of intrusions this created for Kathy and the fact that the oldest brother was smoking pot in the house. TT-908. Mrs. Hooper had confronted Kathy about the marijuana who became angry at the invasion of her privacy. TT-911. On the evening that she went to Lorna's home it was the Hooper's understanding that Lorna's father was drinking and they were having family problems. TT-912. Despite Kathy's age and the late hour the Hoopers took her to meet Lorna, nothing unusual since that was the second night in a row she would have spent out with a friend. TT-914. Rather than take her to the Brown's house they left her at the convenience store. TT-916. It was not until approximately 6:30 pm the next day that she reached the Brown residence and Lorna's sister said that Kathy and Lorna were out walking. TT-918. The Hoopers paid little, if any, attention to the discrepancies in what they had heard from the Browns or how the child happened to wind up with the appellant. TT-918921. Mrs. Hooper admitted that there was a tremendous amount of media coverage concerning the disappearance of Kathy Engels and that the appellants name was linked to her disappearance. TT-922. The Hoopers never questioned the appellant in any way about his association with Kathy. TT-927. She identified a tennis shoe which resembled the ones she had given Kathy. The witness had portrayed Kathy as having a good relationship with her family.

James Fisher testified for the State of Florida. James Fisher had been a long time acquaintance of the appellant. He was body bugged and sent to the Seminole

County Jail in an effort to get the appellant to admit different things about his involvement in the crime. Although the overall testimony of the State was that the appellant was more than willing to "spill the beans" to any number of perfect strangers, Mr. Fisher, his friend, came away empty handed. Mr. Fisher said that he had noted some swelling about the fingers and thumbs of the appellant. He mentioned nothing about scratches or other abrasions on the appellant's body and Stated that they had been working doing tree work during the last couple of days. He Stated that when he Stated that when he questioned him about his thumb, the appellant had made some reference about getting into a fight with a bum and thought that he might have killed him. Very little else was said about this particular event. When James Fisher went to the Seminole County Jail, it was clear that the appellant not only did not admit his involvement in this case but Stated that she would "turn up" somewhere.

The next witness for the state was Amy Davis. She had know Kathy Engels in May of 1986 and she knew Kathy quite well and had given her a pair of Princess Reebok sneakers. After she had stated that Kathy was very happy at home she admitted that Kathy was having problems since her brothers had moved in. TT-1017-1019. She felt that Kathy had changed a lot since her relationship with Laura Brown. TT-1022. She said that Kathy was becoming a "bad ass", a tough kid. TT-1024. She remembered Kathy coming out of a Burger King with some boys and announcing that she was "wasted". TT-1026.

The next witness to testify was Sandra Davis. TT-1034. She had known Kathy and the grandparents for a short period of time prior to moving. TT-1036. Her

daughter had given the Princess Reeboks to Kathy. TT-1037. She identified the shoe in evidence which had belonged to her and which was identical to the pair that were given to Kathy. TT-1039. The shoes given to Kathy had a hole in the right shoe at the little toe area. TT-1044.

Thomas Taggart next testified. Photographs of the appellant were going to be offered which had been the previous subject of a motion to suppress. The objection was again renewed and denied. TT-1048. Exhibit 5 through 17, pictures of the appellant taken at the jail with scratch marks on him were admitted. TT-1050.

The next witness to testify was John Engels. TT-1062. He stated that the relationship with his daughter was "fine", contrary to the testimony of all of the other witnesses. TT-1063. He stated that she had a good relationship with her brothers. TT-1064. In actuality, he had turned the child over to the grandparents when she was not two years old. TT-1064. As to the youngest son running away from the grandparents and not being heard from by the rest of the family, the witness stated that he was unaware of that on any of the family members and knew that Timothy was in New York. TT-1073.

The next witness was David Guilford. He was a detective with Lake Mary police. He identified the shoe as well as photographs as well as the area in which the investigation originally centered to find the body of Kathy Engels. He knew that that area had been searched using the assistance of infrared at the time of her disappearance.

The next witness was Kathy Engel's brother, John Engels, Jr. TT-1094. He had lived with the grandparents since just prior to Kathy's disappearance. The night

of her disappearance she had called him looking for marijuana. TT-1097. He stated that his brother was twenty years old when he moved out from the grandparents. TT-1099. On cross examination he admitted that Tim was actually seventeen when he left the grandparents and that neither nor anyone else in the family or friends of Tim had heard from him since. TT-1100. Contrary to the father's testimony that they had wanted to go live with their sister, he admitted that the father had thrown them out. TT-1101. He had also asked his father if he knew where Timothy was and contrary to the father's testimony his father had told him that he did not. TT-1102.

The next witness was the medical examiner, Thomas Hegert. TT-1109. He examined the pictures of the scratch marks on the appellant's body. TT-1114. He was shown enlargements of the pictures already entered into evidence. The enlargements were entered into evidence as Exhibit 31 through 34. TT-1126. The primary wounds first shown to the medical examiner were not, in his opinion, from finger nail scratches, but would have been from a fixed object because of the equal spacing and linear pattern that was created. TT-1130-1131.

Dr. Hegert admitted that he had not even seen the photographs until September, 1993 and that the coloration of the photographs was inconsistent. TT-1132. Dr. Hegert had no contact with this particular case until 1993. He admitted that he would have preferred to have an actual body to work with and that the photographs were discolored that he had to use. He estimated the time of the bruising to the chest for the scarring as to within 3 to 5 days prior. He also Stated that in addition to disallowing the possibility that fingernails had caused the prominent wounds, that the

other scratch marks could possibly be fingernails.

The next witness was Phillip Valunan TT-1154-1166. His testimony was that he took the photographs of the scratches and "footprint", and enlarged them for Mr. Kingery, the next witness. He was not sure which of the several photographs Mr. Kingery had used for comparison purposes.

Terrell Kingery was the next witness called by the State. TT-1168. He was a Crown Laboratory analyst. His actual credentials with regards to impressions on skin that he had testified about in his years of training was two times, one of which was a shoe on a face and another a tire print on an arm. TT-1172. He had actually only testified concerning a shoe impression on skin one time out of 18 years of work. TT-1173. Unlike the instance case, he had never testified concerning a hypothetical shoe impression on skin using no scale of measurement. TT-1174. As a result of the witness's lack of experience testifying in this regard, counsel moved that he not be qualified as an expert, which was overruled by the judge. TT-1176. He assumed that the shoes that he used for his overlay were similar to the ones in question in the homicide. TT-1183. During the witnesses evaluation of the photographs, counsel objected that these pictures flowed directly from the same photographs that had been objected to originally as a result of the motion to suppress. The court recognized the objection as a standing objection TT-1189. The witness marked with a pen the specific hexagonal shapes that he found to be relevant. These were the same shapes that the defense witness, Dr. Hyma, found to be completely misleading.

Mr. Kingery testified that the lab report had on it that it was a death

investigation into Antone Meyers and Gary Demay. TT-1205. He had already acknowledged that the shoes presented to them were not the shoes which the victim had been wearing when she disappeared. He indicated that he had only testified once in eighteen years regarding shoe impressions and that was when he actually had the particular shoe in question. TT-1206. He indicated that the majority of his work was with finger prints. TT-1208. He was unable to tell from the photograph of the shoe he was given whether or not there was a hole in the right toe area of the shoe. TT-1214. His method had been to have a photograph made of a colored photograph of the shoe. He had a negative made and then enlarged it to try to get it close to the size of the shoe that was submitted to him for comparison. TT-1216. He stated further that there might be other shoes, not sneakers, that would leave the same tread design. TT-1217.

The next witness for the State was Alethia Turner, a dental assistant. She stated that Kathy had no dissatisfaction with her grandparents. TT-1225. She stated that the brothers moving in had not affected Kathy at all. TT-1225. Until TT-1273 the witnesses basically testified about their relationship with Kathy Engels and their opinions as to whether or not she would have run away. Kathy had been painted by most of the states witnesses as a happy well adjusted child with no particular habits. Michelle Tompkins, however, described a slightly different Kathy. She stated that she was quite graphic in her sexual descriptions, wanted to "fuck" Mel Gibson and that she had met a boy in New York with whom she was quite infatuated. TT-1274. She stated that the Kathy Engels that she knew was not the same girl that presented herself to her grandparents. TT-1275. Although she professed not to know that Kathy drank, she

acknowledged a letter received around April 28, 1987 from Kathy describing how four of her friends had together gotten so drunk they had been thrown out of a Burger King by a police officer, but that she didn't remember much about it. TT-1275. She stated that during the early part of 1987 that Kathy's grades had started to fall to F's and D's. TT-1277. She remembered a letter from Kathy stating that things were quite boring at home but there was nothing she could do about it. That letter was received in March of 1987. She admitted that in reference to boy in New York that she had stated that she fantasized about going to New York because "that's where things were happening". TT--1280. Contrary to prior testimony she characterized Kathy as tough and strong-willed. The next witness, the next door neighbor to Kathy's grandparents testified about the harmony within the home. On cross examination he expressed surprise that the younger brother who had moved in left the home. The younger brother was seventeen when he left. This witness had never seen him since. TT-1295. He had never discussed with the grandparents where the young man had gone or why he had left. The next witness, Patricia Swaney was also a neighbor of the grandparents. She indicated that she had developed a closeness to Kathy. She indicated that when the brothers moved in that Kathy would come to her house periodically and express her resentment. TT-1301. She stated that the younger brother, Timothy, had left shortly after Kathy disappeared. TT-1305. She admitted that she had discussed this with the grandparents and right to the day of her appearance and trial no one knew where Timothy was. In other words, the brother of Kathy Engels had also disappeared and never been located during the same time period. TT-1306.

The next significant witness was Mr. Joe Hart of the Lake Mary Police Department. TT-1376. He had been at the station when the grandparents brought the appellant. His testimony was otherwise unremarkable. The witness did testify further that the appellant indicated that he had dropped Kathy off at the 7-11 at the corner of C-15 and Lake Mary Blvd. TT-1388. He claimed that the appellant stated that he had met some girls across the street from the 7-11 at a lake and spent several hours swimming with them in the dark. TT-1389. He stated that the defendant had on a short-sleeve shirt and he noticed scratches on his arm. TT-1391.

At this point the defense again argued the corpus delicti issue which will be more fully developed in the appellate brief. It had been the court's position that this was a continuous case and relied on circumstantial factors and distinguished this case from the Sochor case, on which the defense relied. At the time the initial ruling had been made, some of those factors had been that the defendant claimed to have been at a 7-11 which was in fact closed. By now the evidence had shown that the lights may well have been on at the time. Additionally the scratch marks found on the appellant were suggestive of a ferocious struggle which at this point had been shown not to be the case. As a matter of fact the major marks on the appellant had been rejected as scratch by the states expert witness. TT-1395. It was the argument of the defense that at this point any statements or confessions by the appellant would rest simply on the shoe print evidence, in the face of the fact that the experts could not say that it was necessarily a tennis shoe. In fact during the defense presentation in this case an expert originally subpoenaed by the state testified that the technology employed by the "shoe expert" was

so faulty as not to be worthy of admission. The court denied the corpus delicti objection for the third time. TT-1410.

The next witness for the state was George Barron who admitted having been convicted of importation of marijuana and at the time serving a federal sentence. TT-1412. He had experience with Infrared in Viet Nam. TT-1414. During June of 1987 he had been in a federal cell in Seminole County with the appellant. During that time a television was broadcast regarding infrared devices being used to locate the body of a young girl. He stated that the appellant asked if infrared really worked and then made a comment to the effect that he buried her and covered her up with a piece of metal. TT-1417. The witness believed the piece of metal to have been the hood of a car. On cross examination he admitted that the first person he related this to was a U.S. Marshall, not the corrections people at the Seminole County jail. He also stated that the level of his confinement in the federal system was the most lenient. TT-1423. According to the witness, the U. S. Marshall had been unimpressed with the account, took no written statement from him and no one else in the cell was interviewed as to anything they might have heard the appellant say. TT-1424. He admitted that he didn't tell anyone for approximately two days and then it was an incidental conversation on the way to the federal courthouse. TT-1434. He stated that he had been facing life in prison federally and part of his pre-negotiations included testifying against different people to reduce his sentence to fifteen years. He had also originally told the U. S. Marshall that the appellant drove the victim to a wooded area in a pick-up truck.

John Blankenship testified next. At the time he was waiting for sentencing

on burglary charges. He had spent some time in the same cell with the appellant during 1987. He had read a newspaper article naming the appellant as the prime suspect. When he discussed this with the appellant he indicated that the response was "they'll never find the body". On cross examination it appeared that the first time he spoke to law enforcement about this statement was five years after the fact. Additionally, the prosecution had offered to make his cooperation known to his sentencing judge who he would be facing shortly with a record of ten prior felonies. TT-1474. He admitted that all he knew of the crime he had read in the same newspaper that was placed in the cells for all the inmates to read and that the appellant was not a very "popular" fellow.

The next witness was Randall Cole who had also served time with the appellant. He was serving time for armed robbery, kidnapping and attempted murder. He gave a somewhat detailed story of the appellants confession to cutting the girl's throat. TT-1505-1506. He stated that the appellant had buried the body under concrete or cement. TT-1507. He had given a statement to the police shortly after hearing the recitation. TT-1510. The witness testified that he was there out of a sense of civic responsibility. The witness admitted that he had been responsible for the brutal beating of a female with a tire iron and then assisting another individual in leaving her off the side of the road not knowing if she were dead or alive. It was his testimony that the money taken from her was given to them voluntarily by her and that it was co-defendant who had done the actual beating. TT-1529-1531. According to this witness the appellant had driven the dead body with a slit throat into the woods after the killing. TT-1553. He stated that the appellant had been boasting to a lot of people in the cell

about the act. TT-1556. The witness admitted that he would have expected blood to have been in the vehicle. Despite all of the previous witnesses testifying that it would not be particularly dangerous for a man in jail to admit child molestation, this witness admitted that everyone in the cell block was yelling and screaming and wanting to get their hands on the appellant, TT-1526. He also stated the appellant admitted killing the girl. Again, this witness did not report any of these statements for six years after they were supposedly given. TT-1628.

Over objection, the minister testified to the jury essentially as he had during the proffer. TT-1804-1810. On cross examination the minister acknowledged that he felt that the relationship between himself and the appellant was "special". TT-1812. He acknowledged that it was important to the appellant to remain in contact with the church. TT-1812. The minister acknowledged also that after having prior knowledge from the police and reading the article that he had already formed an opinion about the guilt of the appellant. TT-1814.

At the close of the state's case the defense moved for judgement of acquittal. TT-1834. The first aspect of the motion was that no sign of premeditation had been proven. Thusly the defense argued that the case was wholly circumstantial other than the statements of the other inmates. TT-1835. The state argued that the case was well beyond circumstantial evidence due to the recitation of Father Spence and the inmates. TT-1837. The motion was denied. TT-1839.

The defense called Edward Perry, who was serving a sentence with witness Cole. TT-1851. Mr. Perry indicated that he had been called originally as a state

witness. Mr. Perry stated that, during his transport from the jail to the court, he had been in the van with Mr. Cole. TT-1855.

The next defense witness was Gerald Fyse. TT-1880. He was incarcerated at Sumter and knew Randall Cole and Ed Perry quite well. TT-1880, He had been a law clerk at the prison with them. His testimony essentially was that inmates Perry and Cole had a motive for testifying and trying to improve their position for release or escape. TT-1888. The witness stated that Perry had told him that he had lied for the prosecutor and was encouraged to do it by Cole. TT-1908.

The next witness was the detective who had originally worked the case, Mr. Taggart. He identified the posters that had been widely disseminated from the time that Kathy had been missed. He read from the poster introduced into evidence that "Kathy was last seen in the company of Darryl Anton Myers, a twenty-six year old white male who is presently in jail on unrelated charges". TT-1932. During the initial investigation they had dragged a lake. TT-1937. They found a wooden spoil approximately 30 feet from the shore line. This was the lake where the appellant had indicated he was swimming some girls that night that Kathy Engels disappeared. The spoil was found just below the surface of the water and had the appellant's name carved on it along with the date of either 5/24 or 5/25, 1987. TT-1939. The spoil was recovered on either the 26th or the 27th. The former detective also testified that based on information of two men emerging from the woods the night of the disappearance, that another suspect in the case was Gary Demay. TT-1944.

TT-1953. The witness acknowledged that he had attempted to get

information from Gary Demay and had attempted to get information through Fisher and Brad Block by way of body bugs, but without success.

The next witness for the defense was James Fisher. He testified that he knew both Cole and Perry in person and considered Perry a friend. He Stated that it was quite dangerous to admit that you were a "baby raper". TT-1979. He Stated that with regard to Mr. Perry, that he had sent information even to the governor about the Danny Rollens case, a case about which he had no personal knowledge. TT-1980. He also Stated that Cole had mentioned that the State attorney's office could do anything to get them out of prison. TT-1981.

The next witness to testify was Marvin Gill who was also serving time. He knew both Perry and Cole. He Stated in all the time he worked with them in the prison law library, that no one mentioned the appellant. It was clear to him that they felt by providing information regarding the appellant, that they could get out of prison. TT-1991. He overheard Mr. Fife telling Mr. Perry that he was sorry that he had testified as he had and he knew the information was false. TT-1994. The witness did not know the appellant, and had no reason to testify on his behalf.

The next defense testimony came from Randall Cole. TT-2022-2033. He testified that there had been some concern by Taggart that Jimmy Fisher needed to get his house cleaned up and that he had thought that perhaps Cathy had been at Fisher's house the evening of her disappearance.

Charles Hooper was recalled to the stand by the defense. Mr. Hooper was asked numerous questions about the relationship that existed while the boys lived there

and Cathy's reaction to the situation at the time. TT-2082-2087. Mr. Hooper essentially denied all of the things that were asked him by the defense which related to Cathy's disenchantment with her family life.

The next witness for the defense was Darlene Caffrey. Ms. Caffrey had seen a poster that closely resembled someone she had seen. She had contacted the police during that time and really never heard much back from them.

The next witness was Terry Lynn Newton who 3 1/2 to 4 years prior to the trail had seen someone who looked like Cathy. TT-2094. At the time she had been within 15 feet of the individual and had Stated something to her about being missing. The response from that individual was "so, I don't care". TT-2095.

The next witness for the defense was Betty Waine. TT-2104. Betty Wayne had seen Cathy, who she knew from living in the same complex with her and the grandparents. She had seen her the day after her disappearance in a shopping mall, and had spoken to her briefly, prior to Cathy turning away and walking down another aisle. She was quite certain despite rigorous cross examination that she had seen Cathy during that period of time, and did not even know she had been reported missing at the time she had seen her, TT-2104-2122.

The next defense witness was Jennifer Thompson, who was the director of the missing children's center and had worked on the case originally. TT-2145. Her testimony was essentially, that in her experience that numerous children never show up after running away, and that there are several places known to harbor runaway children. IT-2145-2175. She also testified as to the many policy agencies and other groups that

were launching efforts to try to find Cathy Engles and the publicity that was generated at the time. She knew, further, that numerous sightings had taken place, but did not know how much law enforcement had investigated them.

The next witness for the defense was Marsha Forge. She had also been a volunteer for the missing children's center in 1987. TT-2176. She had answered the hot line for them.

The next witness called by the defense was Doctor Hyma. Dr. Hyma had originally been a State witness called in this particular case and was a forensic pathologist for the Dade County Medical Examiner's Office. TT-2184. Essentially what Dr. Hyma testified to was a complete rebuttal of the State's "expert" with regard to the shoe print evidence. Dr. Hyma and his staff handled all of the forensic work done for the entire Dade County law enforcement agency and he and his staff totally rejected the methodology used by the State in this particular case. He had reviewed the same evidence that the State expert had reviewed, all of the pictures regarding scratch marks and "shoe print" evidence and determined categorically that because there was not scale of reference, and because of the ability to manipulate the size of pictures made from other pictures, that he would simply have no way of dealing a one-to-one comparison, and could not commit to anything similar to what the State witness had testified. He had been asked by the State originally as to whether the larger scratch marks on the appellant could be from a chain link fence, evidence never suggested to the jury in this case and a possibility that he found, given the equal spacing of the prominent marks, to be quite possible. TT-2184. His group of six colleagues did all of the police work in the

Miami area and he had testified countless times as an expert. TT-2186. Pattern injuries were nothing new to him. He had been requested to do an evaluation in the appellant's case through Bill Parham. 5-2189. He had done his examination on May 10, 1991. He had received the same color photographs that the state had presented to their expert during trial. TT-2190. He indicated that the photographs had no scale to them. TT-2191. He was also supplied a photograph of a chain link fence. TT-2192. Because of the lack of scale he was unable to form a concise opinion but felt because of the overall configuration of the fence and the scratches on the appellants body that it was possible that the fence could have scratched him in that manner. TT-2192. He had sent this report back to Mr. Guilford. IT-2193. He was also asked to examine the photograph of the sole of the sneakers as compared to the "footprint" injury to the appellants body. TT-2194. He was asked to make comparisons of the two. He could not rule out any type of flat blunt surface as causing that particular injury. TT-2195. He had described this as a healing wound and indicated that these were not optimal conditions, not having a fresh injury, and having to use photography and different photographic techniques, none of which had any scale. In his jurisdiction very different light sources would be used, ultra violet would have been used and the photograph would have included a scale of reference.

TT-2196. He was presented State's Exhibit 39 and 35. He was shown the same small box created by the State's expert in arriving at the State's conclusion and he had done the same overlay and adjusted it to try to make it fit. He indicated that his laboratory was equipped with hundreds of thousands of dollars of state-of-the-art

equipment and that they had a training program for forensic photographers, TT-2198. He was familiar with the process of taking color photographs and changing them to black and white. He indicated that his laboratory would not do that because too much manipulation was involved which could introduce distortion. TT-2199. He also indicated that he would not manipulate a photograph and would not use pictures of pictures without a scale because the scale of reference would be "totally lost". TT-2203. Essentially he stated that the methodology of the State's expert was unacceptable. He testified further that a 3 to 4 day time lag between the infliction of these injuries and a picture being taken, that the impressions would not be there after that period of time. He stated that those impressions would be gone after a number of hours. TT-2206. As a matter of fact, with any medical certainty, he opined that the impressions would be quote "long gone". TT-2207.

The next witness, Mr. Blackwell, testified that during the early days of the disappearance he had seen a young girl matching the description of the posters trying to find the Bahamas airline counter at the airport. TT-2223 to 2226.

James Fisher was then called back to the stand. He indicated that during the initial investigation that law enforcement was so convinced that the appellant murdered the victim that they had him convinced. TT-2236. He had been body bugged and sent to the jail to talk to the appellant because they were friends and the police felt that he would get information. TT-2238. The appellant made no admissions. He felt that he had been badgered by the police who wanted him to say that he had given the appellant a ride to the Wal-Mart rather than to Lake Mary Blvd. IT-2243 and TT-2244.

Mr. Guilford was recalled to the stand. TT-2254. He had worked with Mr. Parham during this investigation They had spoken to Mr. Brad Bloch who had indicated that he had information to supply. He would need to be furloughed from prison, which was done. Mr. Bloch would take them to look for the body stating that he knew the possible location. A motion was filed and an order signed releasing Mr. Bloch for two weeks. TT-2258. Bloch was returned to the prison in less than two weeks because of lack of manpower. TT-2259. Although he stated that no guarantees had been made to Bloch for his seeming cooperation, that Bloch was released from prison only five days after the furlough ended. TT-2260. Letters were submitted by law enforcement on behalf of Mr. Bloch for early release. One of the letters informed the witness that Mr. Bloch's cooperation in this investigation had been the mitigating factor which got him an early release from prison. TT-2264.

The next defense witness was Ralph Solerno from the Seminole County Sheriff Department. TT-2332. He was involved in the investigation beginning in May of 1987. During the initial investigation a pen register had been placed on the phone to determine those people calling the appellant or to whom he called in order to find out who to interview. They got no results. TT-2336. All of the information they received as to phone calls was given to Mr. Guilford and to Mr. Parham

Mr. Guilford again took the stand. TT-2341. Originally he had gone to New York as a result of Gary DeMay being heard to say that he had said Florida because he was a possible murder suspect. TIT-2343 and TT-2344. Mr. Brad Bloch was in prison at the time. He was recruited to get information and equipped with a body

bug. The witness claimed that Bloch was not offered anything in return for his cooperation. TT-2347. The motion for furlough filed on his behalf and marked as Defense Exhibit J, was introduced into evidence. TT-2348. It was filed August 13, 1991. It was marked as Defense Exhibit 3. TT-2349. The court told the jury that Mr. Bloch had been sentenced to eight years in prison on March 29, 1991. TT-2350. He was furloughed for two weeks on August 15, 1991. He was returned five days early. Bloch had convinced them that he reliable information. TT-2353. Although they followed Bloch's theories and dug holes looking for the body, nothing was ever located, Bloch was released from prison five days after his return on the date of the completion of the original furlough. TT-2356. Defense Exhibit D was entered into evidence. Defendants Exhibit S was introduced into evidence. TT-2360. It was clear that when Bloch had been returned to prison, they had exhausted all of his leads and found nothing. TT-2361. Defendants Exhibit 6 was entered into evidence. TT-2365. The witness admitted that Mr. Bloch had impeded their investigation and would not follow instructions. TT-2365 and TT-2366. The witness admitted that he felt as though the witness had never really been cooperative. TT-2367. Exhibit 7 was admitted into evidence. TT-2369. The nuts and bolts of all of these letters back and forth from law enforcement was clearly that Brad Bloch, although ostensibly offered nothing for his "cooperation," had been not only furloughed, but released from prison within two weeks of his release on furlough. This was not the result of any serious cooperation, but, in fact, a hinderance of the investigation. Nonetheless, he had received the benefit of law enforcement's recommendations which allowed probation and parole to release him,

period. The purpose of this testimony was to show conclusively that the testimony of the inmate witnesses that they could not expect any benefit from their testimony on behalf of the state was totally false and that, in fact, another inmate had not only been furloughed, but given a pass from prison for pretending to cooperate.

By stipulation the Court then told the jurors that contrary to previous testimony by inmate witnesses for the state that they had been transported together in the same vehicle to and from the jail to the courthouse and occupied the same holding cell at the courthouse until each had testified, 73-2385 and TT-2386.

The testimony of Susan Brandenburg was then offered by way of video tape. She was connected with the Missing Children's Center at the time of the disappearance. The tape contradicted the grandfather's testimony in almost every respect. He had allowed Kathy to go to the Brown residence thinking that Lorna's father had been drinking and giving Lorna problems. TT-2390. The grandfather had originally told Brandenburg that the natural father had kicked both brothers out. He had told her further that the brothers had totally disrupted the quiet life led by Kathy. TT-2391. He had told her that the brothers had caused them and Kathy a great deal of strain and that Kathy had repeatedly asked them to make her brothers leave, TT-2392. He had told her that they felt responsible for the boys and were at a loss as to how to handle the situation. He had told her that they had considered the possibility she ran away to Virginia and that he knew that she would not go to her father because she had a poor relationship with him. TT-2393. He had told her that on the day of the disappearance that his wife had confronted Kathy with a marijuana joint found in her

dresser. He stated that Kathy had been angry that her privacy had been invaded. IT-2393. She identified the several types of posters that had been disseminated everywhere that they could which had already been entered into evidence at this point in the trial and described the appellant and his connection with the missing child. She stated that on May 27, 1987 that she contacted all the local TV channels to get Kathy's picture on the six o'clock news. IT-2405 She further stated that Channel Six went out to see the grandparents. She stated that the TV information would have been the same as the posters which would have necessarily included the notion of foul play. TT-2406. She further stated that Lorna Brown had told her that Kathy had been unhappy at home. TT-2406. There was a tremendous amount of publicity going on during the immediate time after the disappearance. TT-2410. Lorna Brown had stated that Kathy often fantasized about running away to New York. TT-2411. Lorna Brown had stated that Kathy was concerned because the grandparents thought she was "real good" but they did not know the other side of her. IT-2415 She stated that by June lst, 1987 the media was broadcasting such details as scratches being found on Antone Meyers. 'IT-2415 and TT-2416.

At the close of both the state and the defense case, the defense renewed the motion for judgement of acquittal. IT-2453. It was the Defense contention that the "footprint" evidence had been completely neutralized by the former state witness, Dr. Hyma, who had then testified for the defense. It was the Defense's contention that despite the inmate testimony that they could not get any assistance for their testimony, that the testimony of Mr. Bloch's release had completely neutralized their position.

TT-2454. The Court again addressed the Corpus Delicti issue, having heard all of the testimony and again determined that enough circumstantial evidence had been produced to prove The state acknowledged during closing arguments that much of the evidence in this case came directly from the appellant "by his own words." TT-2489.

POINT ONE

THE COURTERRED IN DENYING THE APPELLANT'S MOTIONS TO DISMISS AND FOR JUDGMENT OF ACQUITTAL BASED ON LACK OF CORPUS DELICTI AND LACK OF SUFFICIENT EVIDENCE.

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.

The first time the issue of corpus delicti in this case was raised was during the motion to set bond filed on June 16, 1993. In the transcript of that record, at pages 23 and 24 thereof, which was part of the State's response, TR-31-34, some pertinent facts which were developed at trial appeared. The State indicated that the investigation focused on the appellant almost immediately. The State claimed that the store where she was supposedly dropped off had been closed for nearly two hours. Testimony in the case, showed that the lights from the store were probably still on, giving the store the appearance of being opened.

The testimony of Terre11 Kingery was cited matching the imprint on the defendant's chest as consistent with tennis shoes worn by Cathy at her disappearance. This testimony was ultimately completely rejected by Dr. Hyma, the defense expert. The response was cited that she had a good relationship with her grandparents, when it was obvious from defense testimony that she did not, and often fantasied about leaving home. The State then cited to Sochor v. State, 580 So. 2d 595 (Fla, 1991), on ***remand*** 619 So. 2d 285 (Fla. 1993), as to the corpus delicti issue, a case upon which the

defense relies as well. All of these issues were considered by the court when denying the defendants motion to set bond. TR-147-168. At that time, of course, the court did not have the benefit of the actual testimony at trail or the rebuttal by defense witnesses. What the court found at TR-150 was that Sochor would, in the courts opinion, require considerably more than that Cathy had disappeared and that the defendant was the last person seen with her. The court found other circumstances to exist to establish a corpus delicti. These facts included the Statement of the appellant to other witnesses. The fact that the 7-11 store was supposedly closed, the scratch marks and "sneaker" marks, and the good family relationship. TR-153. The defense filed a 3.190(c)(4) motion to dismiss. TR-245-248. The States traverse is found at TR-335-341. Included in the traverse was reference to a Statement by Gary Demay, another suspect in this case, who never was brought to trial as a witness. The State also indicated in paragraph five of the traverse that no one had never been found who had seen Cathy Engles after she was last seen in the early morning hours of May 25, 1987. This was also found not to be true, inasmuch as Mrs. Waine testified that she had seen her the following day. Numerous sightings over the years had been reported concerning a girl who looked like Cathy Engles. The court recited that she was a normal 14 year old with no problems sufficient to justify running away from home. This was in contrast to the testimony of her own friends who felt that she was changing, becoming "tough", vulgar and often fantasied about running away from home. The rosy picture painted about her and her family was totally discredited upon cross examination and through the testimony of Ms. Brandenberg who originally interviewed the family. Further, the State cited that Mr.

Terre11 Kingery was an expert in fingerprint and shoeprint comparison, when in fact he had only testified once in 18 years as to a shoeprint on a face and that was when he actually had the shoe in question.

In paragraph nine of the traverse, the State recited that Dr. Bruce Hyma, originally their witness, had examined the photographs of scratches taken on May 28, 1987 and found them to be consistent in shape, age and size of scratches that could have been made by the fingernails of Cathy Engels on the night of May 24th and 25th, 1987. In fact, Dr. Hyma testified for the defense and did not make these Statements.

Lastly, in paragraph eleven, it was the Statements made to Cole, Zachey, and Davis that the State felt were sufficient for conviction. Initially the appellant questioned the wait of the State to proceed on felony murder and to use his Statements against him without proving the underlying corpus delicti of the rape alleged via the evidence in this particular case.

The Defendant, ANTON D. MEYERS, has questioned the ability of the State to prove, at any level, that any enumerated felony which would constitute felony murder was committed, absent statements attributed to the Defendant. It is the Defendant's position that one of the elements of felony murder which needs to be proven is the fact of the felony itself, and that this need be proven beyond a reasonable doubt, as any other element of a crime must be. The State will perhaps rely on McIntosh v. State, 532 So.2d 1129 (Fla. 4th DCA 1988) which determined based on recited authority, that the State is not required to prove the elements of the underlying felony once there is sufficient proof of criminal agency, death and identity of the victim,

in order to introduce a confession to first degree murder, Unfortunately, the cases upon which McIntosh rests do not substantiate this somewhat convoluted logic. In Bassett v. State, 449 So. 2d 803 (Fla. 1984), cited by McIntosh, the appellant's confession was to an intrinsically brutal murder, one showing clear premeditation, and there was no issue as to the corpus delicti of any underlying felony. The court simply recited the well accepted standard of the admission of statements or confessions and its relationship to the proof of corpus delicti. In Schneider v. State, 152 So. 2d 731 (Fla. 1963), the issue was whether or not the trial court has relied too heavily on allegations of robbery without providing the defendant a sufficient chance to argue larceny, a crime not suspectable to first degree murder, and the underlying felony, The court did not find that the underlying felony need not be proved. The court simply rejected the defendant's construction that nothing in the record other than his statement substantiated robbery. As the court stated "to give any weight to this contention it would be necessary to accept the premises that he accidently shot the driver three times while concealed in the back of his car and that the entertained no intention to rob, but only to steal so the offense was murder in the third degree, The position in too tenuous to warrant approval by this court". Further, the court stated that it was "obvious to us that if, when appellant dispatched (the victim), he intended to take his car, he was attempting to commit robbery, not larceny". Thus, McIntosh is a misinterpretation of the cases on which is depends. It is clear that the Fifth District does consider proof of the underlying felony to be relevant, Sams v. State, 600 So, 2d 1297 (Fla. 5th DCA 1992). In that particular case, the appellant was convicted for felony murder based on

a death which ensued during his escape from the police, Arguing that he had not violated the escape statute, he next argued that he could not be guilty of the felony murder based on the alleged escape. Far from rejecting his argument as to the necessity for proving the underlying felon, the Fifth District relied begrudgingly on the dictates of State v. Ramsey, 475 So.2d 671 (Fla. 1985) which defined escape in a much broader manner than did the appellant or the Fifth District. The court simply felt bound by the Supreme Court's analysis. In Sochor, *supra*, the Florida Supreme court also felt compelled to evaluate the evidence of kidnapping in order to support the appellant's conviction on a felony murder theory. Although in that case the victim's body was never located, the court found sufficient circumstantial evidence of death based on eye witness testimony that the appellant was physically assaulting the victim in the woods after having held her against her will, The court stated "to remove her from the lounge parking lot to a secluded area facilitated Sochor's acts, avoided detection, and was not merely incidental to, or inherent in, the crime, thus, the evidence supports the underlying felony of kidnapping, as well as Sochor's separate conviction of kidnapping". It is clear that the Supreme Court of Florida, when faced with the issue, clearly believes that the underlying felony in a felony murder theory must be proven. The standard jury instructions for Florida Statute 782.041(a), first degree by felony murder, require that the State must prove three elements beyond a reasonable doubt (1) that the victim is dead (2) that the death occurred as a consequence of and while the defendant was engaged in the commission (or attempting to commit) the (crime alleged) and (3), that the defendant was the person who killed the victim. These are the essential elements

of felony murder for which the corpus delicti must be established.

A defendant cannot be convicted of both premeditated murder and felony murder for one homicide. Gaskon v. State, 591 So. 2d 917 (Fla. 1991). In Penn v. State, 574 So. 2d 1079 (Fla. 1991) the court made it clear that a conviction for the underlying felony was necessary to sustain a felony murder charge. The defendant had been acquitted on the underlying felony of robbery. In that particular case, the defense had not requested a separate verdict form and so the determination of guilt by the jury of first degree murder did not specify whether they found felony murder or premeditated murder. The court could have easily dispensed with the distinction by stating that an acquittal for the underlying felony would not necessarily bar a conviction for the charge of murder, thereby imputing to the underlying felony a lessor degree of proof than would be necessary in a trail for that charge. The court did not do this, however. The court simply went on to analyze the presence of evidence of premeditation and found it sufficient. It is clear, therefore, that not only must the element of the underlying felony be proven beyond a reasonable doubt in accordance with the jury instructions, but the Supreme Court of Florida requires that the same standard be accorded the underlying felony as if it were the only charge at trail.

Again, in the State's demur to the Defendant's 3.190(c)(4) motion, the State relied heavily on the statements given to Davis, Zachey and Cole. And again, they recited the happy relationship between the child and the grandparents. TR-418.

The issue was raised a,,gain by way of motion for judgement of acquittal, that both the end of the State's case in chief, the Defense case, and at the end of

rebuttal A motion for a new trail was also filed, TR-1694 - 1695, which was denied. The salient facts on which the defense relies stem from the Sochor case already cited and its progeny. At the conclusion of all of the evidence, the court in considering the motion for judgement of acquittal took into account all of the evidence presented at that time including not just what had been presented as expected during the State's recitals as to bond motions and motions to dismiss. The appellant might argue that the court might have been more correct in its analysis originally had the actual facts been known to the court.

First, the very compelling evidence went unrefuted, that a state's expert finds the "footprint" evidence to be consistent with a hypothetical shoe is completely contradicted by an expert whose credentials the State could hardly question inasmuch as he was originally was a state witness. Not only did he refute the scientific reliability of the manner in which the State came to their expert conclusions, but he testified that these types of marks and abrasions would be gone within not within days but hours after the affliction. In his expert opinion a shoeprint would simply leave nothing more than a bruise without any distinct marks which could be anyway measured in order to compare them with a hypothetical shoe, Additionally, he would have preferred to have had a fresh picture and one that had not been subject to distortion and manipulation by attempting to blow it up into an overlay, which inherently causes distortions and artifacts. This testimony brought into question the "expert" testimony the State had expected to be presented without contradiction, Far from what the State had originally proposed, that the scratch marks would be consistent with the child's having fought for

her life and scratched the appellant, even Dr. Hagert testified that the most prominent of the marks were not, in his opinion, from fingernails but from an equally spaced object. Curiously, Dr. Hyma had been asked by the State whether the marks might be consistent with a chain-link fence, something never mentioned in trail as relevant to the case. His answer, none the less, was yes. The other minor markings on the body were never testified as being fingernail marks but merely possibly fingernail marks. The fact that the appellant may have been the last one seen with the "victim" in this case is hardly sufficient for the introduction of his statement.

The State had made much ado about the strong relationship between Cathy and her grandparents. Based on seven years of belief of State witnesses that Cathy was now dead and that Anton Meyers killed her, their recollection of this relationship was totally distorted from that they held when she disappeared, the report of Ms. Brandenberg said quite clearly that Cathy was living in a state of turmoil at the time, that she was seeking alcohol and marijuana, that she resented her brothers moving into the residence, often fantasied about running away to New York, and was not at all the child the State had sought to present throughout. In fact she was just the type of child who might well run away.

There were good reasons for everyone to believe that Anton Meyers was the assailant in this case because of the mass media exerted by everyone involved which linked his name and foul play to the disappearance of Cathy Engels from the very beginning. Cathy Engels was seen by Mrs. Waine who was unshakable in her assertion that she had seen her the day after at a mall. Mrs. Waine actually knew Cathy very well

and had no reason to lie. Many other sightings were reported but because of the passage of time no one could remember how well they were followed, The State argued that no one had ever found the girl that the appellant claims he had been swimming with the night of Cathy's disappearance, yet, 30 yards off shore and underwater, a spool was found with his name and the date on it. A location hardly likely for a man who was seeking evidence of an alibi, It is clearly more likely that the spool would have been found on the shore rather than being subjected to being lost altogether. The statements, then, attributed to the appellant by Cole, Zachey and Davis, became crucial in this case. Actually the only real evidence upon which the State could heavily rely would have been their statements. The State sought to make it appear that these witnesses had no motive to testify and that the State could not do anything to help them even if they wanted to. More importantly, the other inmates completely contradicted and stated they knew these people were lying from their association with them, the testimony regarding Brad Block was destructive to the State. Brad Block never intended to help the State, did nothing to help the state, was offered no promises according to the State for his assistance, led them on a wild goose chase, and was then released not only from furlough but from any further prison time with letters being sent back and forth by law enforcement stating it was his cooperation that was the basis for his release to probation in Michigan.

The court determined that the Sochor case had elements not present in the instance case, like the eye witness account that the victim was being attacked, but felt that in the instance case the circumstantial evidence filled that gap. The appellant herein, while acknowledging that circumstantial evidence may form a basis for

establishing a corpus delicti, contends that the evidence taken as a whole, is so tenuous that the court erred in introducing the critical statements of unreliable prison inmates in order to heal a very wounded presentation and that the conviction hearing should be reversed.

POINT Two

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS.

The defendant filed a pre-trial Motion to Suppress the "scratch mark and footprint" evidence that was taken as a result of photographs taken of him within three days of the disappearance of Cathy Engles. TR-332 & 333. It was the contention of the defendant that at the time he was required to submit to photographs of his chest and arm area, that he was not under arrest for anything connected with Cathy Engles, that no court order existed requiring him to submit to these photographs, and that the photographs were not taken for an investigation into her disappearance which was in anyway communicated to him. Further, he was without benefit of counsel at the time of the photographs. After this motion was denied, on or about February 4, 1994 TR-468, a motion to reconsider was filed by the defendant, TR-506-509. For reasons unknown, neither the court's written order as to the motion to suppress for an actual transcript of the hearing on the motion to suppress was prepared for the record in this case, as of this dictation. Counsel for the appellant has requested that this matter be supplemented for the record, but because of time constraints is submitting this brief with as much information as is available. It was the court's apparent opinion at the motion to suppress that because the defendant had been seen at a swimming pool after the disappearance of Cathy Engles and had scratch marks on his person that he had abdicated any right to privacy as challenged in the motion to suppress.

The deposition of Thomas Taggart was taken on February 4, 1994.

TR-531. He had gone to the appellants residence on May 27, 1987. He was not going to arrest anyone for a crime he was simply looking for the missing juvenile. TR-534. He was met at the appellant's residence by a young girl. His notes reflected that there were two young girls there at the time, but he did not recall who they might have been. He verified that neither was the missing girl and they could have been relatives for all he knew. TR-534-535. Without determining who either of the young girls were, Taggart decided to ask their permission to enter. Neither of them had the authority to allow him to enter and he made no effort to ascertain whether or not they did. None the less, according to him, one of them said he could come in. At this time he saw the appellant inside the residence. The appellant had not invited his entry and he did not see the appellant from outside the residence. Taggart was the first one to notice the scratch marks on the appellant as a result of his illegal entry. Taggart testified in trial as to the photographs that he took while the appellant was in jail for a violation of probation, unconnected with the incident case. TT-1047. These pictures were all taken of the appellant chest area over the objection of the defense. TT-1048-1049. It was because Taggart had witnessed the scratch marks on the body of the appellant that he had orchestrated the taking of the photographs at the jail in relation to a different investigation altogether. This was not common jail procedure, inasmuch as they ordinarily take nothing but a "mug shot" and these photographs would not have been taken, had Mr. Taggert not seen the scratch marks within the confines of the appellants residence.

It is the contention of the appellant therefore, that the suppression should have been granted as a result of, first, the illegal intrusion into his residence which then precipitated the tainted photographs being taken by the same witness, and, second, that the taking of these photographs without a court order was not only an intrusion into the appellant's privacy, but an intrusion not recognized by law.

The transcript of the Motion to Suppress is forthcoming, having not been completed in time for the presentation of this brief, and the Record on Appeal will be supplemented accordingly. The Appellant relies, however, on 3.220(c), Florida Rules of Criminal Procedure, and cites the case of State v. Kuntsman, 643 So. 2d 1172 (Fla. 3d DCA 1994.

POINT THREE

THE TRIAL COURT ERRED IN DENYING APPELLANTS MOTIONS FOR JUDGMENT OF ACQUITTAL MADE AT THE CONCLUSION OF THE STATE'S CASE AND AT THE CONCLUSION OF ALL THE EVIDENCE.

It has been previously raised In this appeal, that the Motions for Judgment of Acquittal were denied at all stages by the court as well as the motion for a new trial. It was the defense position that because of the lack of corpus delicti, that statements of the defendant should not have been admitted at all, It is the defense contention, at this point, that even with the statements that there was insufficient circumstantial evidence from which the jury should have been able to exclude every reasonable hypothesis of innocence. In the court's ruling, as to corpus delicti, it was continually noted that convictions in these matters and proof of corpus delicti could rest solely on circumstantial evidence. The question of whether the quality of circumstantial evidence should be addressed was not noted. The defense contends however, that in cases where the appellant challenges his conviction which rests solely on circumstantial evidence, that it is the appellate court's duty to review the legal sufficiency of the evidence. The appellate court must reverse the conviction when the evidence, even if strongly suggestive of guilt, fails to eliminate any reasonable hypothesis of innocence. Horstman v. State, 530 So. 2d 368 (Fla. 2d DCA 1988). In that particular case, the defendant had been seen with the deceased prior to her being found dead. He had made several unsuccessful sexual advances toward her. Additional hair and fiber analysis was found to be indistinguishable from the defendant's hair. A pubic hair, indistinguishable from

the defendant's, was found on the deceased's ankle sock. As in the instant case, the defendant's chest, face, arm, and knee were bruised. There was no trace of sperm or of forced sexual intercourse, however, Death was caused by strangulation,

The court, citing Jackson v. State, 511 So. 2d 1047 (Fla. 2d DCA 1987), discussed the problem of basing a conviction on hair comparisons. The court held that, while admissible, hair comparison does not establish certain identification as does fingerprints, citing Bundy v. State, 455 So. 2d 330 (Fla. 1984). The court also emphasized that even if hair comparison were 100% reliable, which the state attempted to contend that it was, that there was no showing that the hair could only have been placed on the victim during the commission of the crime.

In a somewhat similar case, the Supreme Court of Florida in Jaramillo v. State, 417 So. 2d 257 (Fla. 1982), found that the circumstantial evidence of the fingerprints found at the murder scene was insufficient to support a conviction, where it was not established that the fingerprints could only have been placed on the item at the time the murder was committed. As important, in that particular case, there was rebuttal evidence by the State to contradict the defendant's version of matters which would have been at odds with his testimony Therefore the Supreme Court had to review the quality of the evidence submitted and reversed the conviction of the defendant in that particular case, much as the appellant herein asks this court to now do.

The appellant contends that this court should consider Johnson v. State, 201 So. 2d 492 (Fla. 4th DCA 1967), which discusses the nature of corpus delicti and stated that, "regardless of whether the evidence is direct or circumstantial, the proof the

component elements of the corpus delicti must be established beyond a reasonable doubt". The issue of justice, whatever that might be, was well stated in Davis v. State, 90 So. 2d 629 (Fla. 1956). In that particular case, this court did a somewhat searching analysis of the conflict in the evidence and the sufficiency of the evidence to establish a homicide. For instance, in that case a pathologist who was the state's own witness clearly established the possibility of innocence in his direct examination. In the instant case, Dr. Hegert testified that the primary wounds to the appellant were not caused by scratch marks, a theory of the prosecution in the instance case. Additionally, the "footprint" in evidence would be characterized as consistent by the state's "expert" and was completely rejected by the state's expert called by the defense, who stated that not only was the technology faulty, but that these type of distinct impressions do not remain on the skin for more than minutes, much less the three to five day period testified to by the state's "expert".

When the state relies on circumstantial evidence, the circumstances, when taken together, must be so conclusive that they lead to a reasonable and moral certainty that the accused and no one else committed the offense charged; "it is not sufficient that facts create a strong probability of and be consistent with guilt, they must also eliminate all reasonable hypothesis of innocence." Owen v. State, 432 So. 2d 79 (Fla. 2d DCA 1983). The testimony of the state's witness as to the minor scratch marks and the "footprint", was simply that the evidence was "consistent", and not that it rejected other reasonable hypothesis or time frames. It should be noted that Gary Demay was never eliminated as a suspect in the case herein. He simply evaporated as far as law

enforcement was concerned.

This court should note a significance in Sochor, *supra*, that in closing arguments the defense did not even contest the fact that the victim was dead. Rather, counsel based the defense strategy on theories of voluntary intoxication or mistaken identify, i.e., that the defendant actually committed the crime. In the instant case, this court should consider the fundamental injustice which might result from the conviction of a man whose guilt was premised from the start on media coverage which linked him specifically to foul play and the disappearance of a young girl. His name and picture were plastered across television and throughout news media almost from the inception of the investigation. He was arrested almost immediately for a violation of probation. The evidence went out almost immediately over the media that a body was being searched for, again linking the appellant to, not a missing girl, but one who was deceased. Law enforcement decided at the time, that he was guilty, not years later. Only after years had transpired, were the photographs analyzed and determined to be inconclusive. In fact, the primary scratches on his body were not attributable in any way to fingernails and could not be accounted for. The defense expert, formerly the state's, testified that these marks of "shoeprint" evidence would not even be there after more than minutes. Law enforcement set out to body bug friends of the appellant who were unable to get any incriminating evidence from him. Nonetheless, although it would be patent to anyone in the prison system that admitting this kind of crime would be imprudent, to say the least, the appellant is charged with having admitted to fellow inmates the most despicable of crimes, people who he didn't know at all and had no

reason to trust. While in the county jail he was threatened by almost everyone there as a result of the media coverage, which would make it unlikely that he would admit to anyone his guilt in this type of crime. The inmates who testified claimed they had nothing to gain but this was disputed by other inmates who stated that they knew that these people were lying for their own good. The last piece of that puzzle was supplied by the release of Brad Bloch from prison, years before his termination date and he did nothing but send the police in circles with promises to help. These inmate witnesses testified they had no opportunity to share their story when in fact they were transported to and from the jail and kept in the same holding area prior to testifying, unlike defense witnesses. A spool, which was found in the lake where the appellant testified he had been swimming that night was found off shore under water. It would be highly unlikely that someone trying to plant an alibi, would leave the evidence underwater on the off chance that someone would discover it. Add to this the almost ignored fact that there were almost numerous sightings of someone who looked like the child, the sighting by a neighbor which could not be shaken, and the almost incredible fact that her teenage brother disappeared shortly after she did and had never been seen since. No one seemed to pay much attention to the fact that of three siblings, two disappeared, never to have been heard from again.

The father maintained that he had a close relationship with Cathy, which was disputed by everyone, including family members. The grandparents maintained that they had a close relationship with Cathy who was undisturbed by the brothers moving in with her. This was totally disputed by the statements given by the grandparents at the

time of the disappearance, The statements of her friends that she was a normal teenager was completely destroyed on cross examination with statements made at the time of the disappearance. At the time of the disappearance no one believed that Cathy had been murdered, until the police set those particular wheels in motion, at which time the idea of her running away lost force. The clear possibility that Cathy Engles is still alive, dispels the notion that justice dictates that a man should be sentenced for first degree murder based on the lack of quality of evidence submitted by the state herein Wherefore, the conviction should be vacated and reversed.

CONCLUSION

The Defendant's Judgment and Sentence should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to the Office of the Attorney General, 210 North Palmetto Avenue, Daytona Beach, Florida 32114, this 5th day of January, 1996.

Respectfully Submitted,

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