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IN THE SUPREME COURT OF FLORIDA

CURTIS CHAMPION GREEN,

Appellant,

vs.

CASE NO. 86,983

STATE OF FLORIDA,

Appellee.

______________________________/

SUPPLEMENTAL BRIEF OF THE APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant and Barney Franklin were charged with the first degree murder of Karen Kulick (R1-2). Trial by jury resulted in a verdict of guilty for Curtis Green (R174). At trial Chris Puckett testified that while driving home at 3:30 in the morning on May 22, 1988, he saw a body on the road at the intersection of St. Helena and Masterpiece Road. He drove home, informed his parents. They called the sheriff's office and authorities arrived at the scene in ten or fifteen minutes. (TR 1415-1425) His father Randy Maggard went to the scene after phoning 911, saw the body and shined a spotlight on it so that vehicles wouldn't run over it. No one disturbed the body. (TR 1431-35)

Former deputy sheriff Imig arrived at the scene at 4:14, eight minutes after receipt of the dispatch, observed no signs of life and secured the scene. He saw a trail or smudge of blood where it appeared the body had been dragged from the side of the road to the middle of the intersection. (TR 1436-40) Crime scene technician Lori Egan took photos at the scene and caused a video to be taken by another technician. The only apparel worn by the victim was a pair of shoes. (TR 1448, 1484-85) Detective Mincey arrived at the scene and saw the totally nude victim laying in the middle of the road in a "displayed manner" with her legs spread apart. There was no identification. (TR 1509-10) Randy Gulledge subsequently

identified photos of Karen Kulick and comparisons of the victim's fingerprints with those on file positively identified the victim as Kulick. (TR 1511) Mincey contacted Franklin and Green. Green said that he had been with Clyde at Karen's trailer on Highway 60 and her father chased them out with a gun; Green went to the S&P Mobile Home Park. Both Green and Franklin said the two of them were together since midnight and did not leave the trailer. (TR 1513-1514) Mincey later learned that the victim had been arrested at 11:30 P.M. Mincey testified that it took twenty-five minutes from Bartow to Masterpiece Gardens Road and St. Helena Road. (TR 1517) Mincey ran out of substantial leads in 1990 or 1991. He knew that Kulick had gotten out of jail at approximately two in the morning and that Green claimed he was with Franklin at home from midnight on. (TR 1541)

Associate medical examiner Dr. Alexander Melamud performed an autopsy on Karen Kulick May 23, 1988. There were two lacerations and an abrasion on the head; bruises and abrasions on the lower extremes. (TR 1559) There was a large abrasion on the left side back of neck extending to the upper portion of the shoulder; there was a brushburn abrasion often associated with dragging (seen when a pedestrian is hit by a car). (TR 1561) There was a stab wound between the ribs penetrating into the left lung (TR 1562); abrasions and bruises on the back, forearm, left buttock and thigh.

(TR 1563) The stab wound in the left chest didn't touch any internal organs and there was another superficial stab wound to the chest. (TR 1564) There were bruises on the right side of the neck, and recent bruises on the front lower aspect of the left thigh. A large bruise of the face extended to the neck, nine by six inches. Altogether, there were eight abrasions and lacerations under the chin. (TR 1565-66) There **was** massive hemorrhage into the muscles, a' fractured hyoid bone, the thyroid cartilage was also fractured, a bruise to the right ear, three stab wound like injuries on the left side of the nose which would have been caused by a screwdriver type object. There was a laceration above the right eye resulting from blunt trauma. (TR 1567-69) He did not find skull fractures or brain hemorrhages, The torn ear was the result of blunt trauma. **(TR** 1570) **Dr.** Melamud opined that the victim died of manual strangulation. **(TR** 1571) The stab wounds were not immediately fatal but could be after **a** period of time without medical attention. (TR 1572) There was no presence of sperm. (TR 1577) She did not have classical pedestrian injuries. (TR 1578)

Clyde Lee Price testified that on Saturday afternoon on May 21 he went to **Kulick's** house with Green because she had called needing a ride. At the door he saw a gun sticking out of the curtain and he and Green ran back to the car and drove away. When he told

Barney Franklin about the incident he laughed. **(TR 1599-1602)**

After listening to a proffer of testimony of James Michael Franklin regarding prostitution activities involving Kulick in the presence of appellant, the trial court overruled the pretrial decision of Judge **Andrews** and ruled such testimony inadmissible. (TR 1638-43)

Lt. Alan Adams testified that Karen Kulick was arrested and booked in at the county jail at **12:34** A.M. for disorderly intoxication and resisting without violence, after she had failed to cooperate with the officer's request to leave **Gulledge** Bail Bonds. (TR 1649-1662) Steven Showers testified that Kulick was released from the jail at two in the morning pursuant to a policy of reducing overcrowding. To his knowledge no one picked her up. (TR 1664-66) Joe Burgess saw the victim walk away after her release from the jail. (TR 1675)

Barney Franklin agreed to testify. **(TR 1690)** He was currently serving a prison term for sexual battery and had four or five prior convictions for felonies or crimes involving dishonesty. He also was currently charged with the first degree murder of Karen Kulick. **(TR** 1696-97) He has known appellant Green for years and he understood that what he said in court could not be used against him but that the first degree murder charge remained in effect. **(TR** 1699) He knew the victim and would go out drinking with her. **(TR**

1700) Franklin testified that after the aborted effort of Green and Clyde Price to pick up Karen, appellant said he was going to kill her before the night was out. He was mad and repeated it several times, (TR 1705-1706) Green was gone when Franklin subsequently picked up Karen and drank vodka with her from 6 to 11 P.M., then drove her to the bondsman's office. (TR 1709) Franklin testified that his wife and Green arrived home close to midnight and appellant was still upset with Karen and said he was going to "Kill that bitch before the night was out", (TR 1711) At about 1:30 A.M. Karen phoned; appellant Green was on the couch and answered the phone. Franklin got on the phone and Karen wanted him to pick her up. He told her to call her father, that his wife was home. Franklin went back to bed. He saw Green leave the trailer five minutes later and was driving down the road in his car. (TR 1713-14) The following morning appellant was cleaning his car and when Franklin teased him that Karen was coming down the road, appellant responded, "you won't see that bitch coming down through there". He did a little dance. When Franklin asked appellant a couple of weeks later whether he killed Karen, Green answered "I took care of business". (TR 1714-16) Subsequently Green packed his car and told Franklin "I'm getting the hell out of Dodge while the getting is good". (TR 1718)

Franklin's wife Shirley testified that she heard Green who was

very angry before the murder say "I'll get even with the bitch. I'll kill her". (TR 1820) When she informed her husband that Karen was dead, he did not seem surprised, (TR 1822)

Appellant told Steve Sullivan he was at Barney's trailer the night she was killed, that he didn't do it, that he went for a ride but didn't pick up anybody. (TR 1843-1845)

Randall Gulledge, deli owner and bail bondsman, had employed Karen and had a personal relationship with her which had ended, testified that she came to his office in an intoxicated state, that the police arrested her and when she had been gone a few days he contacted that prosecutor's office and identified her photo to Detective Mincey. (TR 1858-70) Deputy sheriff Corbitt assigned Detective Ashley to the unsolved case when he noticed from the case file that Franklin and Green had provided alibis for each other that night. (TR 1885)

Angelo Gay was in the county jail at the same time as Green. Green admitted to him that he was charged with murder, that they didn't have any new evidence against him, that he and his buddy picked up a girl and started doing things. He claimed "the bitch got crazy on us", that he and his buddy picked her up in front of the jail and they threw her out on Highway 60 naked except for shoes. (TR 1896) Green mispronounced the prosecutor's name, but Gay called the office and spoke to a secretary and was ultimately

interviewed by a detective. Gay identified **a** photo of appellant who made the admission and was not told appellant's name. **(TR** 1902)

Donna Snipes, Shirley Franklin's daughter, heard Green yell **"I'll** kill the bitch" before she learned of Karen's death. **(TR** 1931)

Detective Ashley became involved in investigating the Kulick homicide in August of 1994. **(TR 1941)** Approximately 25-30 people were subpoenaed for interviews. **(TR 1945)** He interviewed Mr. Franklin in October of 1994 and when detectives mentioned that they were interested in asking him questions about Curtis Green, Franklin responded that he knew why they were there, it was **"about** that girl." When they asked what girl he said "that Karen Kulick deal." **(TR 1947)** Ashley reinterviewed Franklin on March 1, 1995 and arrested him. **(TR 1955)**

Appellant Curtis Green was arrested in Pensacola for the Kulick murder on March 1, 1995. **(TR 1957)** Ashley told him he was being arrested for murder without mentioning the girl's name and it was apparent he knew what the officer was talking about because he said he didn't even know the girl, said he had been at the girl's house that day with Clyde Price, that he had been run off by her dad threatening him with a gun. Green mentioned the name Karen Kulick. Ashley made a mental note of this because Ashley hadn't

mentioned the victim's name and most of the people he had talked with previously hardly knew the correct pronunciation of her name. (TR 1965-66) Green accused Franklin of framing him and Ashley informed him that Franklin had also been indicted and arrested. (TR 1967)[1]

Detective Ashley described his having visited Angelo Gay at jail; he had received a phone call from prosecutor Aguero and was requested to go and interview Gay. Gay didn't know ahead of time that Ashley was coming. (TR 1967-68) Gay did not mention he expected any consideration or wanted any deals and Ashley made no promises or threats. (TR 1969) Ashley took six photos with him. Gay told him the inmate he had talked to was housed in the jail. (Green was housed in the jail and Barney Franklin was housed in the annex.) Gay described the man he had talked to as tall, white and slender which described appellant. (TR 1971-72) Gay looked at and rejected the photo of another man (Exhibit 51 - Gennes Burke) and identified at Exhibit 52 a photo of appellant Green as the prisoner he had talked to. (TR 1973-74) Ashley did not tell him the name of either person depicted in the photos. (TR 1975)

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[1]Appellee understands that subsequent to the instant trial Barney Franklin entered a plea of guilty to the offense of accessory after the fact to the Kulick homicide.

SUMMARY OF THE ARGUMENT

The trial court correctly denied the motion for judgment of acquittal and there is competent substantial evidence to support the conviction for first degree murder. The nature and extent of the wounds inflicted upon the victim in this beating-stabbing-strangulation support the conclusion that it was a deliberate, premeditated slaying. Appellant had expressed within earshot of several people earlier that day an intent to kill the victim before the night was over and admitted the killing to cellmate Angelo Gay after his arrest. Appellant left the Franklin trailer shortly after the victim's phone call at 1:30 A.M. asking for a ride home (she was released from jail at 2:00 A.M.), thus providing appellant the opportunity and time to make good on his earlier threat.

ARGUMENT

ISSUE

WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE CONVICTION.

A court should not grant a motion for judgment of acquittal unless there is no view of the evidence which the jury might take favorable to the opposite party that can be sustained under the law. DeAngelo v. State, 616 So.2d 440, 441-442 (Fla. 1993); Taylor v. State, 583 So.2d 323, 328 (Fla.), cert. denied, ___ U.S. ___, 115 S.Ct. 518, 130 L.Ed.2d 424 (1994); Lynch v. State, 293 So.2d 44, 45 (Fla. 1974). In moving for judgment of acquittal, a defendant admits the facts in evidence as well as every conclusion favorable to the state that the jury might fairly and reasonably infer from the evidence. If there is room for a difference of opinion between reasonable people as to the proof or facts from which an ultimate fact is to be established, or where there is room for such differences on the inferences to be drawn from conceded facts, the court should submit the case to the jury. Lynch, Taylor.

While this Court has recognized that circumstantial evidence may be deemed insufficient where it is not inconsistent with a reasonable theory of defense, this Court has also recognized repeatedly that the question of whether any such inconsistency exists is for the jury, and this Court will not disturb a verdict

which is supported by substantial, competent evidence. Spencer v. State, 645 So.2d 377, 380-381 (Fla. 1994); Cochran v. State, 547 So.2d 928, 930 (Fla. 1989); Heiney v. State, 447 So.2d 210, 212 (Fla.), cert. denied, 469 U.S. 920 (1984); Williams v. State, 437 So.2d 133, 134 (Fla.), cert. denied, 466 U.S. 909 (1984); Rose v. State, 425 So.2d 521 (Fla.), cert. denied, 461 U.S. 909 (1983). It is not this Court's function to retry a case or reweigh conflicting evidence; the concern on appeal is limited to whether the jury verdict is supported by substantial, competent evidence, Tibbs v. State, 397 So.2d 1120 (Fla.), aff'd., 457 U.S. 31, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982). See also Barwick v. State, 660 So.2d 685, 694-695 (Fla. 1995) wherein this Court explained:

> In a circumstantial evidence case such as this, a judgment of acquittal is appropriate if the State fails to present evidence from which the jury can exclude every reasonable hypothesis except that of guilt. ***Atwater v. State,*** 626 So.2d 1325, 1328 (Fla.1993), cert. ***denied,*** U.S. ___, 114 S.Ct. 1578, 128 L.Ed.2d 221 (1994); State v. Law, 559 So.2d 187, 188 (Fla.1989). If a case is to proceed to trial where the jury can determine whether the evidence presented is sufficient to exclude every reasonable hypothesis of innocence beyond a reasonable doubt, the trial judge must first determine there is competent evidence from which the jury could infer guilt to the exclusion of all other inferences. ***Law,*** 559 So.2d at 189. If there is an absence of such evidence, a judgment of acquittal is appropriate.
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> [22][23] However, the State need not

> conclusively rebut every possible variation of events which could be inferred from **Barwick's** hypothesis of innocence. Id.; State v. ***Allen,*** **335** So.2d 823, 826 (Fla.1976). Whether the evidence fails to exclude **all** reasonable hypotheses of innocence is for the jury to decide. ***Lincoln v. State, 459*** So.2d **1030, 1032** (Fla.1984). We have held that "[i]f there is room for a difference of opinion between reasonable people **as** to the proof or facts from which an ultimate fact is to be established, or where there is room for such differences on the inferences to be drawn from conceded facts, the court should submit the case to the jury." ***Taylor v. State, 583*** So.2d 323, 328 (Fla.1991).

Accord, Crump v. State, 622 So.2d 963, 971 (**Fla.** 1993); Orme v. State, **677** So.2d 258 (**Fla. 1996**).

The state adduced sufficient evidence in the lower court to satisfy the foregoing standard. The evidence presented demonstrated that the brutal beating and strangulation was that of a premeditated murder.

Associate medical examiner Dr. Alexander Melamud performed an autopsy on Karen Kulick May 23, 1988. There were two lacerations and an abrasion on the head; bruises and abrasions on the lower extremes. (TR 1559) There was a large abrasion on the left side back of neck extending to the upper portion of the shoulder; there was a brushburn abrasion often associated with dragging (seen when a pedestrian is hit by a car). (**TR** 1561) There was a stab wound between the ribs penetrating into the left lung (TR 1562); abrasions and bruises on the back, forearm, left buttock and thigh.

(TR 1563) The stab wound in the left chest didn't touch any internal organs and there was another superficial stab wound to the chest. (TR 1564) There were bruises on the right side of the neck, and recent bruises on the front lower aspect of the left thigh. A large bruise of the face extended to the neck, nine by six inches. Altogether, there were eight abrasions and lacerations under the chin. (TR 1565-66) There was massive hemorrhage into the muscles, a fractured hyoid bone, the thyroid cartilage was also fractured, a bruise to the right ear, three stab wound like injuries on the left side of the nose which would have been caused by a screwdriver type object. There was a laceration above the right eye resulting from blunt trauma. (TR 1567-69) He did not find skull fractures or brain hemorrhages. The torn ear was the result of blunt trauma. (TR 1570) Dr. Melamud opined that the victim died of manual strangulation, (TR 1571) The stab wounds were not immediately fatal but could be after a period of time without medical attention. (TR 1572)

The victim's nude body was discovered displayed in the road in the early morning hours (about 3:30 A.M.) of May 22, 1988. (TR 1421-24) Initially Barney Franklin and appellant Green provided an alibi for each other to Detective Mincey claiming the two of them were together since midnight and did not leave the trailer. (TR 1514) Evidence was presented that the victim had been released

from the Bartow jail at approximately 2:00 A.M. (TR 1541, 1666, 1671-72) and it was about a twenty-five (25) minute drive to the site where the body was discovered at Masterpiece Gardens Road and St. Helena Road. (TR 1517)

The state also adduced evidence that on the afternoon of May 21, appellant had gone to Karen Kulick's house because she needed a ride but that he was driven off by someone sticking a gun out the window (TR 1599-1602) and that he was angry telling others 'he was going to kill her before the night was out". (TR 1704-06, 1711, 1820, 1931) Barney Franklin (also charged with this murder -- TR 1696-97) testified that he was drinking vodka with the victim and drove her to the bondsman's office later that evening; she was intoxicated. (TR 1709) Bondsman Randall Gulledge and law enforcement officer Alan Adams confirmed that Ms. Kulick was arrested for her boisterous and intoxicated condition and booked into the jail at about 12:30 A.M. (TR 1647-55, 1860-66)

Franklin further testified that Karen phoned him about 1:30 in the morning relating that she wanted him to pick her up as she was getting out of jail. Appellant Green who was on the couch in the front room answered the phone and after Franklin told the victim to call her father, that he couldn't pick her up, appellant left the trailer five minutes later and was driving down the road in his car. (TR 1711-14) The next morning at about 8:00 A.M. Franklin

saw appellant cleaning his car and when he teased him about Karen approaching, appellant replied "You won't see that bitch coming through there" (TR 1715) and did a little dance. (TR 1717) When he asked Green a couple of weeks later if he killed the girl, appellant responded that he took care of business. (TR 1716) Subsequently appellant packed his car and said 'I'm getting the hell out of Dodge while the getting is good". (TR 1718)

Angelo Gay, present in the jail facility while Green was awaiting trial, testified that appellant admitted to him that he and a buddy had picked up the girl and started doing things, that the "bitch got crazy on us" (TR 1896) and that she was thrown out on Highway 60 naked. (TR 1896) Gay identified Green's photo. (TR 1902)

Appellant argues that the only direct evidence produced at trial was the "testimony of a semiprofessional snitch" Angelo Gay. (Supp. Brief, p. 1) He contends that the appellate reviewer should disbelieve his testimony since it is not credible that appellant who did not know him would choose to confess to him and that he had also been trusted by another serial killer Frank Potts[2] (TR 1894-1928, TR 1909) and he argues that Gay's testimony is totally at odds with all of the other relevant testimony. Appellant contends that it is unreasonable to believe that appellant would make

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[2]It is apparently appellate counsel's appellation of serial killer.

damaging admissions to inmate Angelo Gay and yet even defense witness assistant public defender Maslanik conceded on cross-examination that some defendants do talk despite warnings by counsel and some don't. (TR 2153-2155)

Appellee does not believe that it is the usual responsibility of appellate courts to decide the credibility of witnesses who do not appear before such tribunals. As stated in State v. Spaziano, 692 So.2d 174, 178 (Fla. 1997):

> [3] When we examine the lower court's determination for an abuse of discretion, we find none. The lower court conducted an extremely thorough evidentiary hearing. Twenty-six witnesses testified over the course of the week-long hearing. After hearing and viewing the evidence presented, the trial judge issued a well-reasoned order based on the legal guidelines expressly set forth by this Court. The trial judge noted in his order that the principles we established "have been applied here, although it has not always been easy." It is clear that the trial judge fully understood his responsibility in this case. <u>We give trial courts this responsibility because the trial judge is there and has a superior vantage point to see and hear the witnesses presenting the conflicting testimony. The cold record on appeal does not give appellate judges that type of perspective.</u> It is clear to us that there is evidence in this record to support the trial court's decision. Therefore, this record does not establish an abuse of discretion by the trial judge.[3]

(emphasis supplied)

Appellant argues that Gay's testimony of Green's admission does not identically match the testimony of Bartow police officer

Joe Burgess regarding his recollection of the direction the victim was walking after her release from the jail. (TR 1673-75) She was still walking when he lost sight of her. (TR 1675) It should be remembered that no representation was made that Gay was an eyewitness; rather, he was testifying as to the admissions against interest made by Green. According to Gay, appellant stated "me and my buddy had picked up this girl and we started doing things", that "the bitch got crazy on us" and "she had on nothing but shoes, that's all she had on". (TR 1896-97) Green claimed that the prosecutor "ain't got nothing on me" and "they couldn't have seen her when he picked her up". (TR 1897-1898) The witness did not know about this murder beforehand (TR 1903), he did not even know Curtis Green's name but identified the one who made these fateful admissions from a photo presented by the detective. (TR 1901-1903) Appellee disagrees with Green's assessment that the testimony was valueless since appellant failed to specifically identify his co-perpetrator. (Brief, p. 3)

Appellant relies on inapposite decisions of this Court, State v. Green, 667 So.2d 756 (Fla. 1995) and State v. Moore, 485 So.2d 1279 (Fla. 1986). This Court explained that prior inconsistent statements may not be used substantively as the **sole** evidence to convict. The Court supported its ruling in State, *supra*, by citing Jaggers v. State, 536 So.2d 321, 325 (Fla. 2DCA 1988)

which explained that to allow the state to use as its **sole** evidence of the crime charged such prior unsworn out-of-court statements which were not subject to cross-examination by the defendant violated the Sixth Amendment right to confrontation and cross-examination. 667 So.2d at 760. That is a far cry from the instant case where the witnesses now challenged by appellant -- co-defendant Barney Franklin, Shirley Franklin, Donna Snipes and others -- all testified under oath and were subject to cross-examination regarding any inconsistencies any of them may have made previously. To the extent that appellant may be arguing that Barney Franklin may also bear culpability in this homicide, that is in accord with the prosecutor's theory of the case and the jury was fully informed during Barney Franklin's testimony and in closing argument that he was also charged with first degree murder of Karen Kulick (TR 1696-69) and participated in her death. (TR 2209, 2224-2226)

While it is true that Clyde Price, Jr. testified that immediately after the incident at the Kulick residence, when the victim's father pointed a gun out the window at him and appellant resulting in their hasty retreat, that Green was quiet on the drive back home (TR 1602) he also stated that he (Price) left Barney Franklin's trailer later that day and went to Daytona. (TR 1602) That he wasn't present when appellant later made his threats (TR

1704, 1711, 1820-21, 1931) means nothing; Barney Franklin confirmed Price's testimony that appellant was initially quiet on his return from the Kulick residence. **(TR 1705)**[3]

Appellant refers next to the proffered testimony of James Michael Franklin outside the presence of the jury when the trial court overruled an earlier pretrial ruling and disallowed what the prosecutor anticipated would be **Williams-rule** evidence that the victim was a prostitute for appellant. (TR 1614-43) Appellee submits that the trial court's ruling that such **Williams-rule** evidence was inadmissible has no relevance to the instant inquiry regarding sufficiency of the evidence; appellee cannot discern Mr. Green's interpretation that this was part of a conspiracy on the part of Barney Franklin and his relatives aided by the state to frame appellant, (Brief, pp. 6-7)

Appellant suggests that there are other reasonable alternatives; that the murderer could have been bail bondsman Randy Gulledge, or an elusive truck driver who was not found or Barney Franklin (as appellee has indicated, *supra,* the prosecutor did

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[3]**Appellant's** assertion at page 6 of his brief that the Franklins and Snipes contradicted their earlier statements bears clarification. Barney Franklin testified that he initially told police Green was with him because appellant asked him to and he didn't think anything about it but later realized he wasn't there. (TR 1726-27) Shirley Franklin claimed officers didn't ask her too much. (TR 1832) Donna Snipes heard appellant say something about "I'll get the bitch" (TR 1931) but didn't hear any name to whom it was directed. (TR 1932-33)

contend that Franklin was involved with appellant in Kulick's murder).[4]

Randall **Gulledge** testified that Kulick came pounding on the door of his business late at night, fairly intoxicated (TR **1862)** [**Barney** Franklin had earlier testified that he dropped her off there (TR **1709)].** When she wouldn't leave, he called police and asked them to have her go away. When she returned a few minutes later police arrested her. (TR 1862-66) After a news article appeared concerning the discovery of the nude body and Kulick's probation officer indicated something was out of the ordinary, he talked to assistant state attorney Boswell and identified Kulick's body from photos to Detective **Mincey. (TR 1869-70) Gulledge** denied picking up the victim after her release from jail and testified that when she was in jail he went home and that his mother heard him come through the door. (TR 1876-77) It was stipulated below that the autopsy did not disclose that Kulick was pregnant at the time of her death, **(TR 1938-39)**

With respect to the elusive truck driver appellant alludes to the testimony of witnesses Earl Tommy Walker and Jean Shakeshaft.

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[4]At page 9 of his brief appellant cites TR 1625 for the proposition that Green hardly knew Kulick. The testimony at TR 1625 was part of the proffer not presented to the jury and the testimony on that page was that Karen Kulick didn't like appellant. Detective Ashley's testimony regarding appellant's admissions -- even knowing the correct pronunciation of her name -- suggests the contrary. (TR 1965-66)

Walker testified that he saw a semi-tractor, a white KW anteater, pick up a girl (TR 2007) around 2:30 A.M. (TR 2011) It wasn't unusual to see people walking around there -- sometimes an every night occurrence. (TR 2016) He didn't actually see the woman get into the truck and he didn't recognize this person as Karen Kulick who was a couple of years behind him in school. (TR 2018) According to Deputy Mincey, Walker told him the hitchhiker wore dark pants not shorts. (TR 2053) Law enforcement officer Lt. Alan Adams and Randy Gulledge testified that victim Kulick was wearing a tank top and gym shorts the night of her arrest. (TR 1657, TR 1871) The shorts had a Georgia bulldog symbol. (TR 1871) Jean Shakeshaft claimed to have seen a tractor coming down the road when she saw a body laying on a road (TR 2024) and also insisted that she did not talk to any policeman in 1988. She told Detective Ashley in 1994 she wasn't sure about the time she saw the body when asked if she had reported this occurred at 1:30 A.M. (TR 2030-31) She insisted that she did not talk to Detective Mincey, only to Ashley. (TR 2035-36) Rebuttal witness Detective Mincey contradicted her, testifying that he spoke to Shakeshaft on two occasions, May 23 and June 18, 1988 and that he showed her three books of different types of trucks and she could not identify any particular kind of truck. (TR 2177) He also testified that it's very common to see tractor trailer trucks in the Lake Wales area in

the early morning hours. (TR 2178) See Finney v. State, 660 So.2d 674, 679 (Fla, 1995)(Finney's theory that Kunkle who was seen leaving the victim's apartment on the morning of the murder committed the murder was rebutted by Kunkle's testimony that he was not in the apartment and did not kill the victim). Similarly, the theory that Gulledge was the real perpetrator can be rejected because he testified and denied it. The theory about a mysterious truck driver can be rejected since the witness' description of the hitchhiker didn't match the clothing worn by Kulick and the witness could not identify the hitchhiker as Kulick. Shakeshaft's testimony is insubstantial since she initially thought the incident occurred at 1:30 A.M. (when the victim was still in jail) and adamantly contended she had never spoken to Detective Mincey when he testified that he had twice interviewed her. The jury correctly concluded his theory was unreasonable. Orme, *supra*.

CONCLUSION

Based on the foregoing arguments and authorities, the judgment and sentence should be affirmed.

Respectfully submitted,

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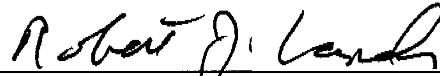
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by **U.S. Regular Mail** to Glenn Anderson, Esquire, 1128 First Street South, Winter Haven, Florida 33880, this 5TH day of November, 1997.



COUNSEL FOR APPELLEE