

IN THE SUPREME COURT OF FLORIDA

CHARLES BRANT, :
Appellant, :
vs. : Case No. SC07-2412
STATE OF FLORIDA, :
Appellee. :
_____ :

APPEAL FROM THE CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

INITIAL BRIEF OF APPELLANT

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

On July 14, 2004, the State Attorney filed an indictment charging Appellant Charles Brant with: (1) premeditated murder, a capital offense in violation of section 782.04(1), Florida Statutes (2003); (2) sexual battery, a life felony in violation of section 794.011(3), Florida Statutes (2003); (3) kidnapping, a first-degree felony punishable by life imprisonment in violation of section 787.01(1)(a)2, Florida Statutes (2003); (4) grand theft of a motor vehicle, a third-degree felony in violation of section 812.014(2)(c)6, Florida Statutes (2003); and (5) burglary of a dwelling with an assault or battery, a first-degree felony punishable by life imprisonment in violation of section 810.02(1)&(2)(a), Florida Statutes (2003) (v1/R1, 40-42). The kidnapping count asserted Mr. Brant "did forcibly, secretly, or by threat, confine, abduct, or imprison SARAH RADFAR with the intent to inflict bodily harm or terrorize SARAH RADFAR" (v1/R41). On September 2, 2004, the State filed notice of seeking the death penalty (v1/R2, 60).

On January 27, 2006, the defense filed a motion to suppress Mr. Brant's statements (v1/R7; v2/R198-262). On September 8, 2006, a hearing on the motion to suppress statements was held before Judge Fuente (v1/R10; v2/R301; v15/R1359-1520). On September 26, 2006, the trial court filed an order denying the motion to suppress statements (v1/R10; v2/R360-379).

On April 12, 2007, the defense filed a motion to dismiss the kidnapping charge because the undisputed facts fail to establish a

prima facie case where the confinement, abduction, or imprisonment was incidental to the felony, and Mr. Brant's statement establishes only false imprisonment (v1/R13; v2/R398-400). On April 25, 2007, the State filed a traverse (v1/R13; v3/R401-404). On April 26, 2007, a motion hearing was held before Judge Fuente (v1/R13; v16/R1593-1601). On May 14, 2007, the trial court filed an order denying the motion to dismiss kidnapping (v1/R14; v3/R412-418). The trial court found there was evidence Mr. Brant forcibly confined, abducted, or imprisoned Ms. Radfar with the intent to inflict bodily harm or terrorize her (v3/R417).

On May 25, 2007, a hearing was held before Judge Fuente (v1/R14; v4/R753-789). Mr. Brant entered a guilty plea, reserving only the right to appeal the denial of the motion to dismiss the kidnapping charge (v1/R14; v3/R420-422).

On August 13, 2007, a hearing was held before Judge Fuente (v1/R17; v17/R1634-1650). Mr. Brant was adjudged guilty of each of the counts to which he pled guilty (v1/R17; v17/R1637).

On August 20-21, 2007, a penalty phase jury selection proceeding was held before Judge Fuente (v1/R17-19; v17-18/R/1651-1978). A motion to strike the panel was granted (v1/R18; v18/R1965-1966).

On August 22-27, 2007, a penalty phase bench trial was held before Judge Fuente (v1/R19-21; v3/R517-533; v7-11/T1-646). Mr. Brant waived a jury penalty phase trial (v1/R19; v7/T2-15). Evidence of the following was presented:

Appellant Charles Brant's mother, Crystal Coleman, had two

children, son Charles and daughter Sherry, with her first husband Charles Brant (v10/T480). Ms. Coleman's father was an alcoholic and physically abused her mother (v10/T481). Her mother suffered from depression for 25 years and was medicated for it (v10/T480). Her paternal grandmother was placed in a mental institution for depression (v10/T481).

Ms. Coleman's first husband, Charles Brant, was quiet and had a 75 or 76 IQ (v10/T482). His mother had a similar IQ (v10/T486). Her first husband was not abusive (v10/T482). She did not know her husband well; he worked a lot and was not around much during their 4½ year marriage (v10/T482). They had two children -- a daughter Sherry and a son, Appellant Charles Brant who was 3½ years younger than Sherry (v10/T517).

Appellant Charles Brant was born by breach birth on October 23, 1965 (v10/T483). A few weeks before the birth, Ms. Coleman was bit by a snake, and she had a bad reaction to medicine which caused crying day and night (v10/T483). She died twice during the birth (v10/T483). She suffered depression after the birth, despite medication she became suicidal, and she was placed in a private mental hospital for 6 weeks (v10/T484-485). Charles was then 6 weeks old (v10/T485). Her husband left her for a relative by marriage, Aunt Jenny, while she was hospitalized (v10/T482, 485). Her husband kept daughter Sherry, but sent Charles to live with his grandparents in West Virginia (v10/T485).

Ms. Coleman was diagnosed with post-natal depression (v10/T486). She heard voices and attempted suicide (v10/T487). She

received shock treatments and medication (v10/T487). She has been taking antidepressant medication since then and had been treated by a physician during the 4 years prior to the trial and by a psychiatrist during the 2 years prior to the trial (v10/T487-488).

Shortly after her release from the hospital, Ms. Coleman took custody of Charles (v10/T486, 488). She had difficulty raising him (v10/T489). He kicked her and carried on when she tried to feed him or change his diaper (v10/T489). When he began walking, he beat his head on the floor, he pounded holes in the walls, and he dug out plaster and ate it (v10/T489-490). He also ate fertilizer (v10/T490). She attempted to punish him, but she never beat him (v10/T489).

Ms. Coleman gained custody of daughter Sherry (v10/T491). Ms. Coleman received no support and had to work assembling missiles (v10/T490). The elderly landlady took care of the children (v10/T491). Charles had no children to play with other than his sister (v10/T491, 493).

Ms. Coleman married Marvin Coleman when Charles was 5 years old (v10/T492). They moved to Baltimore and Charles was enrolled in school (v10/T493). After 6 months of marriage, Mr. Coleman became a monster, going crazy when drinking alcohol, fighting over things of no importance, calling Ms. Coleman bitch and whore, whipping Charles until blood flowed for small things, and threatening to kill Ms. Coleman (v10/T495-496).

Mr. Coleman was verbally and mentally abusive to Ms. Coleman and he put guns to Ms. Coleman's head and razors to her throat

(v10/T513, 517). While drunk, he once mistook Ms. Coleman for his first wife and tried to kill her (v10/T497). On one occasion, Mr. Coleman came home drunk, he shoved Ms. Coleman against the refrigerator, Ms. Coleman and the children fled from the house through a window, Mr. Coleman coerced Charles back into the house, Ms. Coleman called 911, Mr. Coleman threatened the police, and he was arrested (v10/ T497, 509-510, 522). Ms. Coleman was afraid of leaving him (v10/T522).

The family lived in Baltimore for 3 or 4 years, then moved to Orlando (v10/T494). Mr. Coleman drank alcohol 6 or 7 times a month while they lived in Baltimore, but he began drinking every night in Florida (v10/T497-498). Mr. Coleman also smoked marijuana (v9/T529-530). He tortured Ms. Coleman every night until 4:00 or 5:00 a.m. when she prepared to leave for work (v10/T498).

Mr. Coleman showed no affection for the children (v10/T499-500, 521). From the time Charles was 8 years old, Mr. Coleman bullied him and sometimes took him outside and beat him but never did anything to Charles that required hospital treatment (v10/T514-518, 520). Charles was quiet, nonviolent, and sought to avoid conflict, and he once refused Mr. Coleman's orders to fight in the street (v10/T503, 522). Mr. and Ms. Coleman had one child, 33-year-old son Garrett (v10/T480, 492). Mr. Coleman paid no attention to Garrett (v10/T500). From the age of 13 to 16, Sherry was sexually abused by Mr. Coleman (v10/T522-524).

Ms. Coleman interceded during beatings of Charles on three occasions (v10/T515). Ms. Coleman's mother lived with them during

the first years in Florida, and she prepared the children for school (v10/T499). Ms. Coleman's mother ate supper in the kitchen because she could not stand Mr. Coleman threatening Charles at the dining room table (v10/T499). Ms. Coleman did not ignore her children, but she worked 70-80 hours each week (v10/T504).

Charles taught Garrett to play ball (v10/T500). Mr. Coleman once went to see Garrett, an All Star, play in a game, but he was drunk and he berated Garrett's performance (v10/T500). Mr. Coleman once went to see Charles play in a football game, but he made horrible comments about Charles, they left after a half hour, and they never attended another football game (v10/T501). Mr. Coleman once came home drunk and attacked Ms. Coleman and Garrett, Ms. Coleman phoned 911, and Mr. Coleman was arrested (v10/ T469, 475, 510-514). Ms. Coleman bailed him out of jail after he threatened to kill her and her family if she did not do so (v10/T469). As the children got older, Mr. Coleman spent less time at home, but things never improved (v10/T519).

Charles Brant left home when he was 17 years old and rented an apartment with a friend (v10/T502). Mr. Coleman was happy, but Ms. Coleman cried for days (v10/T502). Charles was once arrested for taking money from his landlady's penny jar, perhaps in 1985, and once he had a bad check charge (v10/T503, 506). Charles did not visit his family often (v10/T504). Garrett told Ms. Coleman that Charles was on drugs, then Charles invited her to his baptism and told her he had used drugs (v10/T504).

Ms. Coleman moved to Virginia in an attempt to leave her

husband and lived with her former supervisor, Gloria Milliner, for approximately four months, but Mr. Coleman followed her there (v10/T465-468). Mr. Coleman was very controlling and bad tempered, and the Colemans had disagreements constantly (v10/T468, 478). Mr. Coleman physically abused his son Garrett (v10/T476). Ms. Coleman began working for Ms. Milliner as a Circle K operation manager (v10/T467, 470). Mr. and Ms. Coleman then rented a house (v10/T467).

Charles Brant joined a church (v10/T504). He met Reverend Hess at a Gospel conference in Harrisburg, Pennsylvania (v9/T282-283). Reverend Hess invited Mr. Brant, a friendly likeable person, to attend Blue Ridge Bible College in Virginia (v9/T283-284). He was admitted despite admitting prior drug use (v5/R941; v9/T284). Mr. Brant did some wiring work in a house for Reverend Hess and did it well, and they became friends (v9/T286-287).

In 1990, Mr. Brant met Melissa McKinney while they were students at the Bible college (v8/T135, 182-183; v9/T281-282; v10/T504). She was in her second year and he was in his first year of the two year program (v8/T136-137; v9/T282). She planned to be an evangelist, a family tradition (v8/T183; v9/T282). Mr. Brant also wanted to be a minister, start churches, and be an apostle (v8/T183). He received As Bs, and Cs in his classes (v5/R942; v9/T289-290).

Contrary to college policy, Mr. Brant and Ms. McKinney engaged in sexual contact and were apparently disciplined (v8/T218-221; v9/T285, 288-289; v11/T599-601). In 1991, Ms.

McKinney became disillusioned upon being told she would have to return for a third year, she dropped out and Mr. Brant left with her (v8/T136, 183, 220; v9/T281, 285-286).

Mr. Brant stayed at the Winter Park home of James Donald Harden, the father of a Bible college classmate James Harden, for three months (v9/T295, 300; v11/T597). Mr. Brant was a clean, respectful, and thoughtful guest, and he gave Mr. Harden no uneasy feeling (v9/T296). Mr. Brant stood out due to his odd yellow and orange hairdo (v9/T293). Mr. Brant dated Ms. McKinney, a neighbor of Mr. Harden (v9/T295; v11/T598). Mr. Brant, Ms. McKinney, and Mr. Harden attended at Faith Family Worship Center of God Church where Ms. McKinney's uncle, Leon Jackson, was pastor (v9/T295-296; v10/T379-380).

Mr. Brant and Ms. McKinney married in Florida in June 1991, and lived in Altamonte Springs, Tampa, Lutz, and Virginia, moving often to find work (v8/T137, 186; v9/T297). When Mr. Brant, his wife, and his son moved to Virginia, they initially stayed with his parents (v10/T465-466). Mr. Brant and Mr. Coleman did not get along and they argued often, but Mr. Brant did not react violently (v10/T469, 477).

Mr. Brant worked and went to school to become a certified electrician (v10/T466). Mr. Brant often brought his toddler, Seth, to visit the Milliner country home (v10/T470). Mr. Brant was a loving father, he was quiet, he was never violent, he never appeared to be under the influence of drugs or alcohol, and he was always willing to help others (v10/T470-473). Mr. Brant assisted

Mr. Milliner with building a garage (v10/T472). Ms. Milliner and her husband thought the world of Mr. Brant and she felt like he was one of her children (v10/T470).

Mr. Coleman kicked Mr. Brant and his family out of the home (v10/T466, 474). Mr. Coleman later had a religious conversion, he gave up drinking and smoking, and he became a somewhat better person (v10/T468-469, 476-477, 513, 519). Sherry subsequently forgave Mr. Coleman (v10/T525, 530-531). Mr. Coleman and Charles reconciled (v10/T526). Garrett had a continuing crack cocaine problem, starting when he was 17 or 18 years old (v10/T529).

Mr. Brant and Ms. McKinney separated 8 or 9 times during their 13-year marriage, due to Mr. Brant's drug usage (v8/T138, 187-188). Initially he used only marijuana, but later he began using ecstasy (v8/T188-189, 220). Charles Brant phoned Reverend Hess in the late 1990s about reapplying to the Bible college (v9/T286-287). Mr. Brant said he became reinvolved in drugs and was looking to straighten out his life (v9/T186). Reverend Hess assured him he could reapply, but Mr. Brant did not reapply (v9/T286287).

When Mr. Brant and Ms. McKinney returned to Florida in 2003, they had problems with their marriage and Mr. Brant sought help from Pastor Jackson concerning drug addiction (v10/T380-382, 389-391). Pastor Jackson prayed with Mr. Brant and sought to place him in a residential drug program, but his family could not afford for him to take a year off from work (v10/T381-383). On three occasions, Mr. Brant, a skillful worker, did some electrical work

at the church and did it well (v10/T391-392). However, Pastor Jackson ceased asking him to work at the church when he sought to be paid for the third job (v10/T392-393).

Pastor Jackson believed Mr. Brant was immature and emotionally incomplete, and this may have been a result of his dysfunctional family and lack of a father figure (v10/T384-386). He believed Mr. Brant related to his sons more as a friend than as a father (v10/T386-387, 394). Mr. Brant's father-in-law helped the family when they were in need (v10/T384, 393-394). Pastor Jackson had not noticed any signs of Mr. Brant being under the influence (v10/T391). He believed Mr. Brant had respect for the Bible, he would admit he was not waking in the truth, he had the capacity to grow, and God could use him as an example to others not to go down the road he took (v10/T387-388).

Mr. Brant and Ms. McKinney subsequently lived at 7509 Altaloma Street with their two sons, 12-year-old Seth and 9-year-old Noah (v8/T139-140, 185-186, 202). Mr. Brant was friendly, he got along with the children, he taught the children, he coached Little League 1 year, and he took the children surfing, fishing, and to amusement parks (v7/T114, 124; v8/T197-200, 213). Mr. Brant was very good with his hands, worked for an elevator company and did construction work, and did tile, electrical, drywall, and stucco work for the manger of the apartment (v7/T114-115, 124; v8/T144-145, 194; v9/T308-313). Mr. Brant made improvements to the residence before they moved in (v8/T145, 202). Ms. McKinney's parents lived on the same street, about one block away (v8/T140,

156).

Mr. Brant and Ms. McKinney had normal sex daily, albeit from behind with her on her belly (v8/T210-211, 221-222, 225-226). For several years, Mr. Brant and Ms. McKinney also occasionally engaged in consensual sex games including him acting like an intruder/rapist, tying her, and using force against her (v8/T204-206, 210-212, 221-228). The sex games became too rough, Ms. McKinney asked him to stop, and Mr. Brant agreed, but continued surprising her approximately once every other week by attacking her while masked or attacking her from behind, blindfolding her, shoving a sock in her mouth, and having sex with her from behind (v8/T207-210, 221-226). The attacks were unplanned, "spur of the moment," spontaneous, and something that "came over" Mr. Brant (v8/T236-239). They never sought marriage counseling (v8/T209). Mr. Brant habitually wore latex gloves during the "assaults" (v8/T304).

Mr. Brant began using methamphetamine and introduced Ms. McKinney to methamphetamine use approximately 6 months before July 2004 (v8/T190-191). Mr. Brant used it often, staying awake for 4 or 5 nights each week, then he would crash (v8/T191). He was cheerful and calm under the influence of methamphetamine, and fidgety and "going about 100 miles an hour," but when coming down of it at the end of 4 or 5 days of use he became irritable and snappy (v8/T191-195). Ms. McKinney worked with him on construction jobs, especially at the end of projects when he was more concerned with methamphetamine than completing the job (v8/T194-195).

Approximately 2 weeks before July 1, 2004, she heard him talk to himself while he was working (v8/T195). Methamphetamine use changed him - he no longer cared about finishing his jobs or about his family, all he wanted was more methamphetamine and he became obsessed with forceful sex (v8/T197, 206, 211-212, 216). Ms. McKinney began locking him out so she could get some sleep (v8/T237).

Steven Ball and his fiancée, twenty-one-year-old Sara Radfar, were neighbors on Altaloma Street (v7/T38-41, 114, 122; v8/T145, 203-204). Mr. Brant was a former resident of their apartment and he possessed a key to their apartment (v7/T41, 55; v8/T202-203). Mr. Ball asked for the key and he received it from Mr. Brant (v7/T41, 54). Mr. Brant came to the home once on the behalf of the landlord to prepare an electrical hookup for a washer and dryer (v7/T41-42, 54, 56). The apartment manager said Mr. Brant would take care of other maintenance problems (v7/T56). Mr. Ball visited Mr. Brant and they smoked marijuana together (v8/T203-204). Mr. Ball moved out one week before the murder and left their Ford Bronco with Ms. Radfar (v7/T39-40, 122; v8/T145-146).

Mr. Brant did not have full-time employment at the beginning of July 2004 (v8/T144). On the night of June 30, 2004, Mr. Brant jumped out of a closet, threw Ms. McKinney on a bed on her stomach, bound her hands, shoved a sock in her mouth, and pulled her pants down (v8/T214, 217, 222-223, 239). He was dressed in black from head to toe (v8/T214, 232, 239). When he let go of her, she ran to the bathroom, locked the door, and remained there all

night (v8/T215, 217, 227, 237). In the morning, she woke him, or believed he was feigning sleep (v8/T226-227, 233-234). She told him this must cease and threatened to call the police (v8/T226-228).

On the night of July 1, 2004, Ms. McKinney took the children to a movie that started at approximately 7:30 p.m. (v8/T147-148). When they left, Mr. Brant did not appear to be under the influence of alcohol or drugs, but he had been using methamphetamine that week while working on a job and was using them that day (v8/T149, 193-194, 216). He had been up without sleep since Sunday night (v8/T216-217). They returned home from the movie at approximately 11:00 p.m. (v8/T148-149). Mr. Brant was at home, washing dishes and cleaning the kitchen (v8/T150-151). They had been angry with each other for two days, but now Mr. Brant acted nice (v8/T151-152, 163). He did not appear to be under the influence of alcohol and he did not act suspiciously, but he was "speedy" and "fidgeting" (v8/T151-153). He did not mention seeing anything suspicious in the neighborhood (v8/T152).

Mr. Brant asked Ms. McKinney cut his long hair to avoid lice in light of a problem their children had weeks earlier (v8/T154-159). At approximately 11:30 p.m., she borrowed clippers from her mother to give him a close haircut (v8/T155-157, 159). The hair was placed in the garbage (v8/T157). They snuggled on the couch, then went to bed together (v8/T151, 153, 158, 238). She declined his request and they did not have sex that night (v8/T153, 215, 226, 238).

When Ms. McKinney woke at 7:00 a.m. on July 2, 2004, Mr. Brant appeared to be asleep but he might have feigned sleep (v8/T160, 233-234). When Ms. McKinney left for work on July 2, 2004, Mr. Brant was up and he remained at home with the children (v8/T143, 146, 160). That morning, her father took Seth to Georgia for the weekend (v8/T143, 147).

At approximately 3:00 p.m. on July 2, 2004, Hillsborough County Sheriff's Deputies Riddle and Fitzpatrick went to 7503 Altaloma Street, Tampa to investigate a missing persons report (v7/T22-23, 25, 109). Deputy Riddle surveyed the neighborhood to find out if anyone had seen Ms. Radfar and spoke to Charles Brant at 7509B Altaloma Street (v7/T109). Mr. Brant was calm, cordial, and coherent, he did not appear to be under the influence of drugs or alcohol, and he seemed like he wanted to help (v7/T111-112). He said he saw Ms. Radfar at 7:00 p.m. the previous night with a man wearing a white shirt and black pants with white dots (v7/T110). Minutes later, Mr. Brant approached the deputy and said he saw a white male wearing a yellow hooded raincoat run from the rear of her home (v7/T110-111).

The deputies knocked on the front door of Ms. Radfar's home and announced their presence, but there was no response (v7/T23, 109). They found a rear window open and a bent screen on the ground (v7/T23, 109). Deputy Fitzpatrick heard dogs barking and water running inside the house (v7/T23). He climbed in the window (v7/T24, 29). He found a dead young woman in the bathtub (v7/T24, 29-30). There was a leather belt, a cord, and a plastic bag around

her throat (v7/T24). Water was running on the victim from the shower head (v7/T24, 29-30). He unlocked the front door, then the deputies called for support and supervision (v7/T26, 30, 109).

At approximately 5:00 p.m. on July 2, 2004, Charles Brant told neighbor John Burttt that Ms. Radfar had been murdered (v7/T115-116). Mr. Burttt believed he did not seem abnormal or to be under the influence of alcohol or drugs (v7/T117). He told Mr. Burttt that Ms. Radfar had asked Mr. Brant to check the security of her windows (v7/T117-122).

At approximately 5:15 p.m., Detective Smith spoke to Mr. Brant at his home (v7/T60-62). He had short dark hair (v7/T96). They spoke for approximately 20 minutes (v7/T67). He was lucid and coherent and she did not believe he was under the influence of drugs or alcohol (v7/T67). He said he saw and spoke to Ms. Radfar on June 29, 2004 (v7/T80, 101). Ms. Radfar said she was concerned about someone in a red car following her and she asked Mr. Brant to make sure her windows were secure (v7/T80, 101). The next day, he checked the windows from the outside and found they were secure, and he also mowed her lawn (v7/T80, 102). He saw a man with long brown hair wearing a white shirt with a blue collar and tight black pants with white dots with Ms. Radfar (v7/T92-95). He also saw someone flee from the scene in the rain, dressed in a yellow hooded raincoat and black pants (v7/T92-94, 96).

Ms. McKinney stopped at her parents' home on her way home from work and saw police at the end of the street at her neighbor's home (v8/T142, 160). When she returned home, Mr. Brant

did not appear to be under the influence of alcohol, but he was nervous and appeared to be under the influence of a drug (v8/T146-147, 161-163). He said the police told him only that Ms. Radfar was deceased (v8/T161). He said he was writing a statement for the police, but he did not tell her that he knew anything about it (v8/T162). After the police left, Mr. Brant told Ms. McKinney that he would be a suspect if she told the police about their disagreement (v8/T229-230). Mr. Brant left the home Friday night, saying he was going to work on a house, and he did not return (v8/T179-181, 217). She unsuccessfully tried to contact him, but he later phoned her from Orlando (v8/T180-182, 217).

Associate Medical Examiner Jacqueline Lee responded to the crime scene on July 2, 2004 (v9/T249). The home was messy (v9/T150). Ms. Radfar was in the bathtub (v9/T250). She was on her side with her feet toward the faucet and drain (v9/T250). A plastic bag held by ligatures was over her head (v9/T250). Her skin had brown discoloration from the water (v9/T250). The water was turned off before Dr. Lee arrived (v9/T251).

Deputy Kenneth Ratcliff photographed the scene and collected evidence including razor blade cartridges and a handle, a plastic bag, an electric cord, a hair brush, a bloody washcloth, a shampoo pump, and a bottle of cleaner (v9/T316-322). The victim was bruised and had multiple ligatures around her neck (v9/T318). The contents of a cosmetics bag and an ashtray were spilled (v9/T318-319). The back was off a TV remote and the batteries were missing (v9/T319). A screen was removed from an open rear window (v9/T316-

317). A suitcase containing clothing was near the window (v9/T317). On the west side of the duplex, there was a broken board on the privacy fence (v9/T317).

Corporal Christi Esquinaldo participated in the investigation (v9/T323). Sara Radfar's residence was approximately 124 feet from the residence of Mr. Brant (v9/T324). Ms. Radfar's vehicle was found 338 feet from her home, on a grassy parking area near Friendship Trail (v9/T324-325). The vehicle was impounded and processed (v9/T325-326). A green Post-it note was found on the passenger side floor (v9/T327). The note said, "hey, it Chuck next door. Please give me a call 390-6177. If my answer service come on, say your number very slow so I can call you back. Chuck." (v9/T327).

Detective Smith later sought more details from Mr. Brant, but he was not at home (v7/T103). Subsequently, deputies confiscated Mr. Brant's garbage that was left out by the street (v7/T68-69). The deputies found a white cotton man's shirt, dark green flannel pants, two pairs of latex gloves, a yellow wash cloth, an empty box from the gloves, a pair of white socks, a Visa debit card in the victim's name and bearing her photo, a large key ring with many keys, a flowered lady's blouse, a stained blue towel, an empty Leggs hosiery box labeled color black, a stack of yellow or green Post-it notes one of which bore writing, and garbage (v7/T69, 76-79, 95-96; v9/T328, 354-355).

At 11:55 p.m. on July 2, 2004, deputies executed a search warrant on Mr. Brant's home (v7/T72). Two garbage bags found in a

can on the porch were collected and taken to the Sheriff's Office (v7/T72). Deputies collected hair clippers in the home (v7/T75). A yellow or green Post-it note bearing writing was found in Mr. Brant's vehicle (v7/T79). The deputies found a yellow raincoat, a pair of black pants, a blue sock, a mass of long brown hair, gray sweatpants, and garbage in the garbage bags (v2/T73, 77-78).

On July 3, 2004, Charles Brant was at his mother's home in Orlando, and he told relatives that he was involved in what happened to Ms. Radfar (v10/T527). He said he was hallucinating (v10/T527). He told Garrett he was going to turn himself in (v10/T527). The family drove him to a police substation, but it was closed (v10/T529). They drove him to another police substation, but officers told him to go to Tampa to turn himself in (v10/T528).

Shortly before midnight on July 3, 2004, Hillsborough County Sheriff's Corporals Christi Esquinaldo and Frank Losat contacted Mr. Brant at his mother's home (v9/T329, 346-347). Mr. Brant agreed to go with them and he was transported to the Orange County Sheriff's Office (v9/T331, 356). During the drive to the Sheriff's Office, he said several times, "I've been trying to turn myself in." (v9/T356-357). He was interviewed for approximately three hours, from midnight to 3:00 a.m. on July 4, 2004 (v9/T331-332). The Corporals believed he was coherent and intoxicated due to drugs or alcohol (v9/T331, 347-348).

At the Sheriff's Office, Mr. Brant agreed to give a statement (v9/T348). The Corporals confronted him about evidence found at

his home pursuant to a search warrant (v9/T354-355). Mr. Brant initially gave a story about seeing a man fitting his own description running through his back yard, then he changed his story (v9/T349). He said he went to Ms. Radfar's home to take photographs for his portfolio, then he raped and strangled her (v9/T349-350). He later returned the home to remove signs of his presence, then fled out of a rear window when deputies came to the home (v9/T352-353).

During the confession, Mr. Brant said he was sorry for hurting Ms. Radfar and her family (v5/R796-797, 817; v6/R1163-1164, 1178-1179). He asked for solitary confinement, counseling, and to be executed (v5/R796-797, 814; v6/R1163-1164, 1178-1179). Mr. Brant said he was sick for years, he was tormented by sexual problems since childhood, and had sexual problems with his wife (v5/R798, 813-814; v6/R1178-1179). He kept doing more and more drugs, but it kept getting harder to control his sexual torments (v5/R814-815). He broke into a house and threatened a woman with a knife when he was 10 years old, but he was not suspected or arrested for this (v5/R813). He was once arrested for burglary, but there was no one home and he did it only because of hunger (v5/R814). He had no long term relations with any women other than his wife (v5/R814). He relieved his tension by having sex with his wife and watching videos that have scenes of attacks on women (v5/R815).

During the confession, Mr. Brant said that on the night of the murder, his wife and sons went to the movies (v5/ R809, 811;

v6/R1175, 1177). He went to Ms. Radfar's home to photograph tile work he did in her home which he needed for his portfolio (v5/R799, 806-807; v6/R1165-1166, 1173). Her dogs were locked in a cage (v5/R806; v6/R1173). After photographing the floor, he grabbed Ms. Radfar, dragged her to a bed, and had nonconsensual vaginal sex with her (v5/R799-800, 808; v6/R1164-1167). He gagged her with a sock and attempted to suffocate her by placing a plastic bag over her head (v5/R800-801; v6/R1167-1168, 1174). While he looked around the house, she jumped from the bed and ran to the front door (v5/R802; v6/R1168).

During the confession, Mr. Brant said he grabbed Ms. Radfar and dragged her back to the bedroom (v5/R802; v6/R1168). He strangled her with his hand over her mouth and nose (v5/R797-798, 802; v6/R1164-1165, 1168). He then placed her body in the bathtub (v5/R798, 802-803; v6/R1165, 1169)-1170. Ms. Radfar hiccupped (v5/R802; v6/R1169). He strangled her with the wire to a heating pad and a dog leash (v5/R797-798, 802; v6/R1167-1170). He washed her body with water (v5/R803; v6/R1170). He then cried (v5/R803-804; v6/R1170).

During the confession, Mr. Brant said he put on clothes from Ms. Radfar's closet, put a towel on his head, walked out the front door, and drove off in her Bronco (v5/R804, 812; v6/R1170-1171, 1177). He left the front door unlocked (v5/R805; v6/R1171). He parked the Bronco on Friendship Trail, then walked to his home (v5/R804, 812; v6/R1171, 1177-1178). He put the keys for the Bronco in the garbage (v5/R811; v6/R1177). His wife and children

returned from the movies (v5/R809; v6/R1175). He had his wife cut his long hair because of a lice problem (v5/R809; v6/R1175).

During the confession, Mr. Brant said he returned to Ms. Radfar's home the next day (v5/R805; v6/R1171-1172). He tried to wipe things he touched to remove fingerprints and moved items around to make it look like a burglary occurred (v5/R805; v6/R1172). Officers arrived at the home, then Mr. Brant locked the front door and left through a rear window (v5/R805-809; v6/R1172-1175). He broke a fence climbing over it (v5/R806, 808; v6/R1172-1173). Mr. Brant told no one about the incident (v5/R812; v6/R1178). He told an officer a false story about seeing a man in a hooded yellow raincoat (v5/R806; v6/R1173). His wife asked what happened to Ms. Radfar and suspected he was involved (v5/R810; v6/R1176). They argued and he left (v5/R810; v6/R1176).

Associate Medical Examiner Jacqueline Lee performed the autopsy on July 3-4, 2004 (v9/T251). Ms. Radfar was 5'1" tall and weighed 130 pounds (v9/T253). Dr. Lee removed the ligatures (dog leash and heating pad cord), the bag from her head, a black stocking from her neck, and bags from her hands (v9/RT253-256). The ligatures had not been tied (v9/T267). It appeared the stocking was used first, then the heating pad cord, then the plastic bag and dog leash (v9/T256-257).

The skin was waterlogged, there were hemorrhages on her eyelids, there was a ligature groove around her neck, and there were bruises and abrasions on her face, neck, torso, and

extremities, some of which might be defensive (v1/T253-255, 259-268, 274, 276-278). No bones were broken and none of the bruises would have required treatment (v9/T266, 276-277). Ms. Radfar was alive when she suffered blunt force trauma (v9/T264-265). Injuries were consistent with an attack from behind and consistent with a struggle with the attacker (v9/T262-264, 269, 277-278). The injuries could have been painful (v9/T265). Dr. Lee could not estimate whether the encounter lasted minutes or hours and agreed loss of consciousness could have occurred within 7 to 14 seconds of strangulation (v9/T270, 275, 278-279). The death was a result of strangulation and suffocation and suffocation may have preceded strangulation (v9/T272-274, 278).

Dr. Lee collected specimens for a sexual assault kit (v9/T253). A joint stipulation was filed that DNA analysis of Ms. Radfar's vaginal swab from a rape kit established the presence of semen that matched Mr. Brant's DNA (v5/R8876-77; v7/T126).

After his arrest, Mr. Brant wrote letters and poems to his wife (v8/T224, 230). He sometimes blamed her for their sex games and threatened to tell people she was responsible, but she denied ever starting the sex games (v8/T224-225). They divorced in December 2004 (v8/T138). She and the children moved to Texas in July 2006 (v8/T141-142). The children sent letters to their father, including pictures they drew (v5/R926-928, 929-930, 931-936; v8/T200-201).

Thomas Rabeau, former volunteer chaplain at the Hillsborough County Jail and Department of Corrections, met with Mr. Brant 150

times at the jail (v9/T334-338). Mr. Brant expressed extreme remorse and concern for his family, and sought forgiveness from God (v9/T338-341).

James Donald Harden and his wife were shocked by news of the murder charge and could not believe it (v9/T297). They put money into canteen service for Mr. Brant and provided him with newspapers (v9/T298). Mr. Harden visited Mr. Brant in jail approximately 6 times (v9/T298). Mr. Brant never asked for anything (v9/T299). Mr. Brant had good days and bad days (v9/T299). On bad days he reminisced about his sons and wept for his sons (v9/T299). Mr. Brant's mother had a heart condition and could not visit him (v9/T298).

Dr. Michael Maher was retained by the defense to evaluate Mr. Brant (v10/T397, 422). He met with Mr. Brant for eight hours over several interviews beginning in 2005 for evaluation (v10/T398, 422-426, 457-458). Mr. Brant was given antipsychotic medication and other medication in jail (v6/R994-1097; v10/T458-460). Dr. Maher also met with Ms. McKinney for an hour and spoke with her on the phone several times (v10/T398, 419-420). He consulted with Dr. McClain, and reviewed documents such as legal documents, police reports, jail records, investigation reports, statements of family members and others, school records, medical reports and files, and transcripts of depositions, including those of medical professionals Dr. Farzanigan, Dr. Wood, Dr. Woo, and Dr. Taylor (v10/T398-399, 419-420, 424-425, 428-429, 433-440, 450, 452-453).

Dr. Maher found Mr. Brant had a history of problems going

back to his childhood, including chronic depression, attention deficit disorder, and relationship problems with his mother, grandmother, stepfather, and wife (v10/T414-418, 421). He had an unstable and chaotic childhood and did not graduate from high school (v10/T435). He had a pattern of unusual sexual behavior with his wife (v10/T414, 453-455, 460). During adolescence, he self medicated his depression with marijuana and alcohol (v10/T415-417, 435). He continued self-medicating with drugs as an adult, despite the conflict with his moral and religious ideals (v10/T415-417, 435). His severe use of methamphetamines was consistent with an obsessive pattern of sexual interest (v10/T415).

Dr. Maher was familiar with methamphetamine abuse (v10/T399-400). Some people use methamphetamine recreationally for a high and others, such as truck drivers, use it to support their ability to work long hours (v10/T400-401). People who use it for work usually develop a dependency and as the dependency continues, dysfunction and ultimately psychosis result (v10/T401). This occurred with Mr. Brant (v10/T402, 428). Although he was not insane at the time of the offense, he had periods of psychosis associated with methamphetamine at and around the time of the offense (v10/T402-403). He was highly energized, had racing thoughts, was irritable and fidgety, had illusions and auditory hallucinations, and had impaired impulse control (v10/T402-406). Because he used the drugs to be a good father and husband and a productive worker, he strove to appear normal while under the

influence, but his impulse control disorder became worse as he dependence became worse (v10/T403-406, 417, 426-428).

Dr. Maher found Dr. McClain's testing of Mr. Brant established there was a significant 25 point difference between his verbal IQ and his performance IQ, an indication of abnormal brain function (v10/T406). The higher performance IQ pertains to his ability to work with his hands, and the verbal IQ has more to do with thinking (v10/T407). Dr. Woods analysis of Mr. Brant's PET Scan established there were abnormal patterns of glucose intake in his frontal lobe and his thalamus, showing areas important in impulse control and executive function and fundamental to reasoning and good judgment were underactive (v10/T407-410, 417, 452). Although the abnormal PET Scan could not be linked to any particular behavior, it was consistent with Mr. Brant's impulsive behavior (v10/T410-414, 451-452). The abnormality may be genetic and not caused by brain damage (v10/T416-417).

Dr. Maher found that Mr. Brant had a severe methamphetamine dependence with psychotic episodes (v10/T416-417, 453). He had a sexual obsessive disorder and sex games with his wife created lower inhibitions to a link between surprise, sex, and violence (v10/T416, 453, 460-461). He suffered from chronic depression (v10/T416-417, 429, 453). His brain abnormality may be genetic and not caused by brain damage (v10/T416-417, 429). He was sane at the time of the offense and competent to proceed (v10/T402-403, 433, 447). The rape and killing point to evidence of brain abnormality (v10/T444-448). Mr. Brant initially tried to hide his crime, but

subsequently remorsefully confessed (v10/T436-449). His attempts to hide the crime is not proof of particularly clear thinking, or a lack of brain abnormality or lack impulse control (v10/T436-449). On July 1, 2004, "he had, as a result of mental disease, a substantial impairment and limitation in his ability to conform his behavior to the requirements of the law." (v10/T418).

Dr. Valerie McClain was retained by the defense and met with Mr. Brant on four occasions for four hours at the Orient Road Jail (v11/T551, 553, 561). She first met with Mr. Brant on October 6, 2005 (v11/T561). Mr. Brant was cooperative (v11/T562). He said that he had been using methamphetamine for eight days preceding the incident, he used Ecstasy two days before the incident, he had not slept well before the incident, he drank a 12-pack on the day of the incident, he went to the victim's home to photograph tile work in the bathroom, he raped the victim vaginally, he put a bag over her head and tied it with an extension cord, he looked around the house, the victim rose and ran for the front door, and he grabbed the victim and smothered her (v11/T573-574, 576).

Dr. McClain primarily received background information from Mr. Brant, but she also had reviewed depositions of his brother and sister and interviewed Mr. Brant's mother (v11/T553-554, 572-573). She reviewed police records other than Mr. Brant's confession, but she did not review investigative reports (v11/T574). She administered the MMPI-2 personality test, conducted neuropsychological testing, and tested for malingering (v11/T553, 567-568). Mr. Brant denied any prior psychiatric

treatment or medication other than the medication he had been receiving in jail (v11/T563-564). He denied suffering from physical or sexual abuse while growing up (v11/T564). He denied hallucinating except while on drugs and denied being suicidal (v11/T567).

Dr. McClain found that Mr. Brant functioned in the low average range (v11/T554). His verbal skills were in the borderline range while his nonverbal performance skills were 25 points higher, in the average range (v11/T554-555). He had problems in learning, memory, organizational skills, verbal fluency, and impulse control (v11/T554, 559, 575). The S2AXI-2 test indicated Mr. Brant was quick tempered and had difficulty with anger (v11/T567-568). Mr. Brant scored within normal limits on the Ray 15-I memory test, which suggests he was not malingering (v1/T557). The MMPI-2 indicated Mr. Brant was: depressed: preoccupied with his health; had problems with poor judgment, passivity, dependence in relationships, insecurity, inadequacy, and sense of inferiority, and was exaggerating his current psychological or emotional turmoil (v11/T568-569).

Dr. McClain found Mr. Brant's academic records were consistent with a learning disability (v5/R956-963; v11/T555-556, 559, 563). When Mr. Brant was in the fifth grade, he functioned at a third grade level (v11/T556-557). His language skills were then at the sixteen percentile and his nonlanguage skills were at the sixth percentile (v11/T560). His good grades at Bible college and his working abilities were consistent with her conclusions in this

case (v11/T571, 579-580).

Based on the difference between verbal and performance skills and the learning, memory, and verbal fluency problems, Dr. McClain recommended a PET brain scan be conducted (v11/T555, 576-577). Dr. McClain followed up on the results of the brain scan by reading the depositions of Dr. Wu and Dr. Wood, and she read the deposition of Dr. Farzanigan and talked with Dr. Maher (v11/T555, 572-573). The findings of these doctors were consistent with Dr. McClain's findings (v11/T555). Jail records included a mental health diagnosis and indicated Mr. Brant was given medication (v6/R994-1097; v11/T564-565). Those medications may have affected Mr. Brant's mood, but it was not likely they affected his memory (v1/T566-567).

Dr. McClain diagnosed Mr. Brant with polysubstance dependence, major depression recurrent, and cognitive disorder not otherwise specified (v11/T558). Cognitive disorder is a brain impairment including deficits in certain areas (v11/R558). Mr. Brant's capacity to conform his conduct to the requirements of law was substantially impaired on July 1, 2004 (v11/T559). Methamphetamine use makes anger problems worse and makes a person likely to act impulsively (v11/T579).

Dr. Donald Taylor twice evaluated Mr. Brant for the State, for an hour on July 13, 2006 and for an hour and fifteen minutes on August 14, 2007 (v11/T603-604). Dr. Taylor also reviewed numerous police reports and witness statements, reviewed reports of Dr. Maher and Dr. Farzenigan and deposition of Dr. Wu, Dr.

Wood, and Dr. Mayberg, and listened to the taped confession (v11/T604-606). Dr. Taylor found discrepancies between what Mr. Brant told him and the reports, but he did not classify his behavior as malingering (v11/T606-607). Dr. Taylor found three Axis 1 disorders: substance abuse disorder (alcohol, cannabis, Ecstasy, and methamphetamines); learning disorder (primarily reading and spelling); and psychosexual disorder (sadism) (v11/T608-609, 617, 625). Mr. Brant is not a psychopath (v11/T621).

Sadism usually arises from genetic predisposition and childhood environment, and Mr. Brant had factors in his childhood that could contribute to sadism (v11/T621-622, 629). The use of methamphetamines and lack of sleep for days caused impairment during the entire incident and exacerbated the impulse control problems relating to the sexual battery, but not the killing (v11/T612-618, 620, 624-629). The accounts of sexual activities with his wife indicates some ability to control his impulses (v11/T619). There was no evidence that Mr. Brant engaged in no prior violent behavior other than rough sex with his wife (v11/T623-624). Mr. Brant suffered drug and alcohol withdrawal after his arrest (v11/T616). He was subsequently treated with psychotropic medication for anxiety or depression (v11/T616). In May 2007, the psychotropic medication was discontinued (v11/T616). Mr. Brant did not engage in impulsive, disruptive, or inappropriate behavior in jail and had no disciplinary problems (v11/T617, 622).

Dr. Taylor saw no evidence of trauma or injury to Mr. Brant's brain, but the ability to read or interpret the results of PET testing was outside of Dr. Taylor's area of expertise and he did not know whether it was a proper diagnostic tool to interpret behavior (v11/T609-611). Dr. Taylor believed Mr. Brant's capacity to conform his conduct to the requirements of law was substantially impaired as to the sexual battery but not as to the killing in light of his statement to police about steps he took following the sexual battery and his lack of urge to commit murder (v11/T612-616, 624-629).

The trial court declined to consider Mr. Brant's apparent desire to be electrocuted (v11/T544). Mr. Brant chose to not testify (v11/T583-584). Lina Vartanian, Ms. Radfar's cousin, read her letter and letters of Ms. Radfar's father, mother, and brother, relating to victim impact (v5/R972-977; v11/T630-639).

On September 28, 2007, a defense summation was filed (v1/R21; v3/R534-556). The defense argued against most of the State's proposed aggravating circumstances (v3/R535-541). The defense conceded that the heinous, atrocious or cruel aggravating circumstance was established, but asserted it should not be given great weight (v3/R541-542). The defense also conceded that the killing occurred during a sexual battery aggravating circumstance was established (v3/R542-543). The defense asserted the evidence established the following mitigating circumstances, that Mr. Brant: suffered abuse during his childhood; had mental impairment; attempted to wean himself from drugs; was an exceptional workman;

was a good father; had a nonviolent character; and cooperated with law enforcement (v3/R543-555). The mitigating circumstances outweigh the aggravating circumstances (v3/R556).

October 1, 2007, the State's sentencing memo was filed (v1/R21; v3/R557-581). The State sought numerous aggravating circumstances and great weight for each (v3/R559-568). The State asserted some mitigating circumstances were not established, but many mitigating circumstances were established, and one should be given moderate weight while most should be given little, minimal, or no weight (v3/R568-577). The aggravating circumstances outweigh the mitigating circumstances and the proper sentence is death (v3/R577).

On October 8, 2007, a telephonic *Spencer* hearing was held before Judge Fuente (v1/R22; v7/R1180-1190). Melissa McKinney testified that she was married to Mr. Brant (v7/R1182). They had two sons, 12-year-old Charles Seth and 9-year-old James Noah (v7/R1182). She lived with the children in Texas and moved there over one year earlier (v7/R1182). Before moving to Texas, she and the children visited Mr. Brant in jail four or five times and once in the courtroom (v7/R1182-1183). She always tells the children that their father loves them and she encourages them to write to their father (v7/R1184). The boys have written to Mr. Brant since the move to Texas, and he responds to their letters (v3/R582-592; v7/R1183-1186). Ms. McKinney arranged for Mr. Brant to get their grades from school and be notified about school activities (v7/1184).

The State offered two sworn statements from Mr. Brant's brother, Garrett Coleman, which it asserted rebutted testimony about their step-father (v7/R1186-1188). The defense asserted the statements corroborated Mr. Brant's drug use (v7/R1187-1188).

On November 30, 2007, the State filed an amended and second amended sentencing memo (v1/R23; v4/R593-615, 616-639). The State sought numerous aggravating circumstances and great weight for each (v4/R595-604, 618-627). The State asserted some mitigating circumstances were not established, but many mitigating circumstances were established, and one should be given moderate weight while most should be given little, minimal, or no weight (v4/R604-613, 628-637). The aggravating circumstances outweigh the mitigating circumstances and the proper sentence is death (v4/R613-634, 637).

On November 30, a hearing was held before Judge Fuente (v1/R22-23; v7/R1191-1213). The trial court pronounced its findings and filed its sentencing order (v4/R640-683; v7/R1194-1212). The trial court would not consider victim impact evidence in the weighing process (v4/R641). The trial court found the heinous, atrocious and cruel aggravating circumstance and that the killing occurred during a sexual battery aggravating circumstance were established and gave each great weight (v4/R675-676; v7/R1202-1203, 1205-1206). The trial court found every item of mitigation was established and none of the State's evidence rebutted, contradicted, or impeached the mitigating evidence (v4/R677; v7/R1201). It found the following mitigating

circumstances were established: (1) no significant prior criminal activity/little weight; (2) emotional, mental and physical abuse during childhood, diminished intellectual function, diminished impulse control due to drug dependency resulting in substantially impaired ability to conform conduct to the requirements of law, and diagnosed sexual obsessive disorder/moderate weight; (3) age of 39 at the time of the crime and a crime-free life until the time of the crime /little weight; (4) remorse/little weight; (5) cooperation with law enforcement, confession, guilty plea, and waiver of jury penalty recommendation/moderate weight; (6) borderline verbal intelligence/little weight; (7) family history of mental illness/little weight; (8) not a sociopath or psychopath and does not have an antisocial personality disorder/little weight; (9) diminished impulse control due to methamphetamine abuse and exhibition of periods of psychosis, recognizing drug problem and seeking help, and methamphetamine use before, during, and after the crimes/moderate weight; (10) diagnosed with chemical dependence and sexual obsessive disorder, and has symptoms of attention deficit disorder/moderate weight; (11) good father/little weight; (12) good worker and craftsman/little weight; and (13) reputation for nonviolence/little weight (v4/R680-681; v7/R1206-1210).

Mr. Brant was sentenced to: death on count one; concurrent terms of life on counts two, three and five; and a concurrent term of five years on count four, with credit for three years, five months time served on each count (v1/R22; v4/R682, 684, 686, 691-

698, 741-742; v7/R1210-1211).

On December 4, 2007, the trial court filed a corrected sentencing order (v1/R23; v4/R699-742). The trial court would not consider victim impact evidence in the weighing process (v4/R700). The trial court found the heinous, atrocious and cruel aggravating circumstance and that the killing occurred during a sexual battery aggravating circumstance were established and gave each great weight (v4/R734-735). The trial court found none of the State's evidence rebutted, contradicted, or impeached the mitigating evidence (v4/R736). It found the following mitigating circumstances were established: (1) no significant prior criminal activity/little weight; (2) emotional, mental and physical abuse during childhood, diminished intellectual function, diminished impulse control due to drug dependency resulting in substantially impaired ability to conform conduct to the requirements of law, and diagnosed sexual obsessive disorder/moderate weight; (3) age of 39 at the time of the crime and a crime-free life until the time of the crime /little weight; (4) remorse/little weight; (5) cooperation with law enforcement, confession, guilty plea, and waiver of jury penalty recommendation/moderate weight; (6) borderline verbal intelligence/little weight; (7) family history of mental illness/little weight; (8) not a sociopath or psychopath and does not have an antisocial personality disorder/little weight; (9) diminished impulse control due to methamphetamine abuse and exhibition of periods of psychosis, recognizing drug problem and seeking help, and methamphetamine use before, during,

and after the crimes/moderate weight; (10) diagnosed with chemical dependence and sexual obsessive disorder, and has symptoms of attention deficit disorder/moderate weight; (11) good father/little weight; (12) good worker and craftsman/little weight; and (13) reputation for nonviolence/little weight (v4/R739-740). The trial court found there were sufficient aggravating circumstances to support a death sentence and the mitigating circumstances do not outweigh the aggravating circumstances (v4/R741). Mr. Brant was sentenced to: death on count one; concurrent terms of life on counts two, three and five; and a concurrent term of five years on count four, with credit for three years, five months time served on each count (v4/R741).

On December 7, 2007, notice of appeal was filed (v1/R23; v4/R743).

SUMMARY OF THE ARGUMENT

Substantial mitigation outweighed the two aggravating circumstances. The death penalty is disproportionate.

ARGUMENT

ISSUE

APPELLANT'S DEATH SENTENCE IS NOT
PROPORTIONATE.

Proportionality review "requires a discrete analysis of the facts," *Terry v. State*, 668 So. 2d 954, 965 (Fla. 1996), entailing a qualitative review by this Court of the underlying basis for each aggravator and mitigator rather than a quantitative analysis. We underscored this imperative in *Tillman v. State*, 591 So. 2d 167 (Fla. 1991):

We have described the "proportionality review" conducted by this Court as follows:

Because death is a unique punishment, it is necessary in each case to engage in a thoughtful, deliberate proportionality review to consider the totality of circumstances in a case, and to compare it with other capital cases. It is not a comparison between the number of aggravating and mitigating circumstances.

Porter v. State, 564 So. 2d 1060, 1064 (Fla. 1990). The requirement that death be administered proportionately has a variety of sources in Florida law, including the Florida Constitution's express prohibition against unusual punishments. Art. I, § 17, Fla. Const. It clearly is "unusual" to impose death based on facts similar to those in cases in which death previously was deemed improper. *Id.* Moreover, proportionality review in death cases rests at least in part on the recognition that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than would lesser penalties. Art. I, § 9, Fla. Const.; *Porter*.

... Thus, proportionality review is a unique and highly serious function of this Court, the purpose of which is to foster uniformity in death-penalty law.

Id. at 169 (alterations in original) (citations and footnote omitted). As we recently reaffirmed, proportionality review involves consideration of "the totality of the circumstances in a case" in comparison with other death penalty cases. *Sliney v. State*, 699 So. 2d 662, 672 (Fla. 1997) (citing *Terry*, 668 So. 2d at 965).

Urbain v. State, 714 So. 2d 411, 416-417 (Fla. 1998) (death sentence for robbery-murder vacated where multiple aggravators

were out weighed by substantial mitigation including impaired capacity, deprived childhood, and youth).

Further, this Court has consistently held that because death is a unique and final punishment, the death penalty must be reserved only for those cases that are the most aggravated and least mitigated. *Kramer v. State*, 619 So. 2d 274, 278 (Fla. 1993). In *Almeida v. State*, 748 So. 2d 922 (Fla. 1999), we explained: "Thus, our inquiry when conducting proportionality review is two-pronged: We compare the case under review to others to determine if the crime falls within the category of both (1) the most aggravated, and (2) the least mitigated of murders." *Id.* at 933. Hence, our proportionality review requires us to consider the facts and circumstances in Crook's case to determine whether the case is among the most aggravated and least mitigated so as to justify the imposition of death as the penalty.

Crook v. State, 908 So. 2d 350, 356 (Fla. 2005).

The trial court found the heinous, atrocious and cruel aggravating circumstance and that the killing occurred during a sexual battery aggravating circumstance were established and gave each great weight (v4/R734-735). The trial court found none of the State's evidence rebutted, contradicted, or impeached the mitigating evidence (v4/R736). It found the following mitigating circumstances were established: (1) no significant prior criminal activity/little weight; (2) emotional, mental and physical abuse during childhood, diminished intellectual function, diminished impulse control due to drug dependency resulting in substantially impaired ability to conform conduct to the requirements of law, and diagnosed sexual obsessive disorder/moderate weight; (3) age of 39 at the time of the crime and a crime-free life until the time of the crime /little weight; (4) remorse/little weight; (5) cooperation with law enforcement, confession, guilty plea, and

waiver of jury penalty recommendation/moderate weight; (6) borderline verbal intelligence/little weight; (7) family history of mental illness/little weight; (8) not a sociopath or psychopath and does not have an antisocial personality disorder/little weight; (9) diminished impulse control due to methamphetamine abuse and exhibition of periods of psychosis, recognizing drug problem and seeking help, and methamphetamine use before, during, and after the crimes/moderate weight; (10) diagnosed with chemical dependence and sexual obsessive disorder, and has symptoms of attention deficit disorder/moderate weight; (11) good father/little weight; (12) good worker and craftsman/little weight; and (13) reputation for nonviolence/little weight (v4/R739-740). The trial court found there were sufficient aggravating circumstances to support a death sentence and the mitigating circumstances do not outweigh the aggravating circumstances, and sentenced Mr. Brant to death (v4/R741).

"A large number of the statutory mitigating factors reflect a legislative determination to mitigate the death penalty in favor of a life sentence for those persons whose responsibility for their violent actions has been substantially diminished as a result of a mental illness, uncontrolled emotional state of mind, or drug abuse." *Miller v. State*, 373 So. 2d 882, 886 (Fla. 1979) (evidence of mental illness, uncontrolled emotional state of mind, or drug abuse "may be sufficient to outweigh the aggravating circumstances involved even in an atrocious crime"). The effect of substance abuse on a defendant's ability to make

rational decisions is powerful mitigation. See *Voorhees v. State*, 699 So. 2d 602, 614-615 (Fla. 1997) (two codefendants drank heavily with victim, then a dispute arose and they tied him, repeatedly beat him, then repeatedly stabbed his throat - mitigating factors including alcohol abuse outweighed the two aggravating factors, in the course of a robbery and heinous, atrocious, or cruel); *Sager v. State*, 699 So. 2d 619, 623-624 (Fla. 1997) (codefendant of Voorhees and same result of proportionality review); *Nibert v. State* 574 So. 2d 1059 (Fla. 1990) (the intoxicated alcoholic defendant stabbed the victim seventeen times - mitigating factors outweighed the two aggravating factors, in the course of a robbery and heinous, atrocious, or cruel). An abusive childhood is a significant mitigating factor especially when coupled with factors such as youth, immaturity, and/or substance abuse. See *Mahn v. State*, 714 So. 2d 391, 400 (Fla. 1998) ("[T]he record shows that Mahn was far from a normal nineteen-year old boy at the time of the killings. Rather, Mahn had an extensive, ongoing, and unrebutted history of drug and alcohol abuse, coupled with lifelong mental and emotional instability. [Footnote deleted.] Mahn's unrefuted, long-term substance abuse, chronic mental and emotional instability, and extreme passivity in the face of unremitting physical and mental abuse provided the essential link between his youthful age and immaturity which should have been considered a mitigating factor in this case."). See also *Urbin v. State*, 714 So. 2d 411, 417 (Fla. 1998); *Clark v. State*, 609 So. 2d 513, 515

(Fla. 1992); *Nibert v. State*, 574 So. 2d 1059, 1061-1063 (Fla. 1990); *Livingston v. State*, 565 So. 2d 1288, 1292 (Fla. 1988).

Even in cases where there are multiple aggravating circumstances including the heinous, atrocious and cruel aggravating circumstance, the death penalty is disproportionate if there are compelling mitigating circumstances, especially mental mitigation causally related to the commission of the crime. See *Morgan v. State*, 639 So. 2d 6, 14 (Fla. 1994) (mitigating circumstances, especially the age of 16 and the sniffing of gasoline for years and on the day of the murder, outweigh the aggravating circumstances - "The fact that one of the aggravating circumstances in this case was heinous, atrocious, or cruel does not preclude our finding that Morgan's sentence of death was disproportionate."); *Robertson v. State*, 699 So. 2d 1343, 1347 (Fla. 1997) ("Although the trial court found two valid aggravating circumstances [in the course of a robbery and heinous, atrocious, or cruel], we find that death is not proportionately warranted in light of the substantial mitigation present in this case: 1) Robertson's age of nineteen; 2) Robertson's impaired capacity at the time of the murder due to drug and alcohol use; 3) Robertson's abused and deprived childhood; 4) Robertson's history of mental illness; and 5) his borderline intelligence."); *Kramer v. State*, 619 So. 2d 274, 277-278 (Fla. 1993) ("[T]he trial court found two aggravating factors: prior violent felony conviction, and the fact that the murder was heinous, atrocious, or cruel. The first of these

factors clearly exists. We assume arguendo that the second exists. The factors establishing alcoholism, mental stress, severe loss of emotional control, and potential for productive functioning in the structured environment of prison are dispositive here.").

This is clearly not one of the least mitigated first-degree murders. The trial court found three statutory mitigating circumstances: section 921.141(6)(a), Florida Statutes (2003) "The defendant has no significant history of prior criminal activity."; section 921.141(6)(f), Florida Statutes (2003) "The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired."; and section 921.141(6)(g), Florida Statutes (2003) "The age of the defendant at the time of the crime." The trial court also found many nonstatutory mitigating circumstances. The mitigation here is compelling, many mitigating circumstances are causally connected to the crime and the aggravating circumstances, and the trial court found none of the State's evidence rebutted, contradicted, or impeached the mitigating evidence (v4/R677, 736; v7/R1201).

Both the heinous, atrocious or cruel aggravator and the during the commission of a sexual battery aggravator are causally connected to numerous mitigating circumstances: (2) emotional, mental and physical abuse during childhood, diminished intellectual function, diminished impulse control due to drug dependency resulting in substantially impaired ability to conform

conduct to the requirements of law, and diagnosed sexual obsessive disorder; (7) family history of mental illness; (9) diminished impulse control due to methamphetamine abuse and exhibition of periods of psychosis, recognizing drug problem and seeking help, and methamphetamine use before, during, and after the crimes; and (10) diagnosis of chemical dependence and sexual obsessive disorder, and symptoms of attention deficit disorder.

This is not one of the most aggravated, and not one of the least mitigated, first-degree murders. See *Crook v. State*, 908 So. 2d 350, 358 (Fla. 2005) (despite the three aggravating circumstances of committed in the course of a sexual battery, committed for pecuniary gain, and heinous, atrocious, or cruel placing this case among the most aggravated of murders, "this case falls squarely in the category of cases where we have reversed death sentences as being disproportionate in light of the overwhelming mitigation, especially the mental mitigation related to the circumstances of the crime."); *Cooper v. State*, 739 So. 2d 82, 85-86 (Fla. (1999) (evidence of brutal childhood, brain damage, mental retardation, mental illness, age of 18, and no prior criminal record outweighs three aggravating circumstances: commission of prior capital or violent felony; murder committed during a robbery and for pecuniary gain; and murder committed in a cold, calculated, and premeditated manner); *Bell v. State*, 841 So. 2d 329, 337-340 (Fla. 2002) (despite the presence of four valid aggravating circumstances -- HAC, CCP,

kidnapping, and pecuniary gain -- the death sentence was inappropriate in light of substantial mitigation).

"Our law reserves the death penalty only for the most aggravated and least mitigated murders, of which this clearly is not one." *Kramer v. State*, 619 So. 2d 274, 278 (Fla. 1993). Mr. Brant's death sentence should be reduced to life imprisonment.

CONCLUSION

Based on the foregoing arguments and authorities, this Court should reverse the death sentence and remand for imposition of a sentence of life imprisonment without possibility of parole.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Bill McCollum, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of October, 2008.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

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