IN THE FLORIDA SUPREME COURT

ROBERT JOE LONG, :

Appellant, :

vs. : Case No. 67,103

STATE OF FLORIDA, :

Appellee. :

_____ :

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

INITIAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

The transcript of the trial in this case was not prepared in sequential volumes. Second Supplemental Transcript of Record Volumes I and II should be read after Volume VIII of the original transcript. The Third Supplemental Transcript of Record should be read following Volume IX.

STATEMENT OF THE CASE AND FACTS

1. Procedural Progress of the Case

On December 6, 1984, a Pasco County grand jury indicted Robert Joe Long for the first degree murder of Virginia Johnson. (R12-13) Because of extensive pretrial publicity regarding this case and other murder and rape cases Long had pending in Pasco and Hillsborough County, Long moved for a change of venue. (R248-255) The trial court denied the motion, and Long proceeded to a jury trial on April 22, 1985. (R290-298 The jury found Long guilty as charged on April 27, 1985, and, after hearing additional evidence, recommended a death sentence. (R310-311)

Circuit Judge Ray E. Ulmer, Jr. adjudged Long guilty of first degree murder (R350-351 and sentenced him to death. (R352-353, 356-357) (A1-2) In support of the death sentence, the trial judge found four aggravating circumstances; (1) a previous conviction for a violent felony; (2) during the commission of a sexual battery and kidnapping; (3) the homicide was especially heinous, atrocious or cruel; and (4) the homicide was committed in a cold, calculated and premeditated manner. (R356-357) (A2) The court found no mitigating circumstances. (R357) (A1)

Long filed his notice of appeal to this Court on May 29, 1985. (R359)

2. Facts--Guilt Phase

Virginia Johnson was a prostitute who worked in the Nebraska Avenue area of Tampa. (R1655) She was an alcoholic and a drug

abuser, primarily cocaine and heroin. (R1656) According to her friend, Sharon Martinez, Johnson lived with several different men during the one and a half years she knew her. (R1654, 1656-1657) In October 1984, Martinez reported Johnson missing. (R1655) Martinez had last seen her as Johnson was going to the health department for treatment for gonorrhea. (R1657) Alvin Duggan, the man with whom Johnson stayed occasionally, said he last saw Johnson as she left to buy a pack of cigarettes at a store about two blocks from his house. (R1661) Johnson left her clothes and about $90 at his residence. (R1659) At the time the police contacted him, Duggan had not seen Virginia Johnson for a couple of weeks. (R1662) He had not notified the police because it was not uncommon for her to come and go from his house in that manner. (R1662) Bernadine Herman, a nurse at the health department, said that she examined Virginia Johnson on October 15, 1984, and treated her for gonorrhea. (R1663-1669) Herman said that Johnson was otherwise healthy. (R1670) Johnson never returned for her follow up examination. (R1669)

On November 6, 1984, Linda Phethean and Candi Linville were horseback riding in the Morris Bridge Road area of Pasco County. (R1679-1680, 1695-1697 As they rode up the dirt road leading to Phethean's farm, they smelled an odor and rode into the pasture to investigate. (R1681) The pasture had areas of sand, weeds and high grass, about two feet high. (R1694) Twenty-five feet from the roadway, the two women found skeletonized human remains. (R1692, 1696) They rode to a nearby mobile home park and obtained

assistance in calling the sheriff's department. (R1693, 1697)

Investigators and crime scene technicians arrived and thoroughly searched the area for evidence. (R1708, 1716, 1727, 1752) They found the remains in two separate areas. (R1700-1701) A pair of women's panties were found nearby. (R1730) Technicians removed the bones as intact as possible and transported them to the medical examiner's office. (R1740-1744, 1755-1758, 1776) An examination of the remains revealed a cloth, which proved to be a tank top, a floating pendant necklace and a shoestring entwined around the neck bones. (R1759) The necklace was entangled in the shoestring, which was wrapped twice about the neck and tied with a square knot. (R1785-1786) Earrings were removed from the skull. (R1761-1762, 1782-1786) A second shoelace found with the bones had two loops large enough for a person's wrist tied in it. (R1790) Technicians also removed head hair samples from the scene and the skeleton and sent them to the FBI laboratory for analysis. (R1758, 2608-2618)

Dr. Joan Wood, the medical examiner, examined the skeleton at the scene and at her office. (R1776, 1780) She found no injury to any of the bones other than that caused by animals after death. (R1780-1781) What skin tissue remained could not be evaluated due to decomposition. (R1787) The hyoid bone, which is frequently broken during strangulation, was still intact. (R1787-1788, 1794) Wood concluded that the shoelace entwined about the neck was the manner of death. (R1793) She could not, however, exclude manual strangulation. (R1794) Wood estimated the time of death to be

approximately 15 days prior to the discovery of the body. (R1802-1803) Curtis Wilken, a forensic anthropologist, examined the skeleton and concluded the remains belonged to a female, about 20 years old and five feet five inches tall. (R1825-1826) A comparison of the teeth with dental records ultimately identified the remains to be those of Virginia Johnson. (R1651-1653, 1766-1773)

Michael Malone, a hair and fiber expert with the FBI, examined the hair samples taken from the remains. (R2608-2618) In looking through the head hairs, Malone found a bright red nylon fiber. (R2633) He compared the hair and the fiber to hair and fiber which had been removed from Robert Long's car when it was searched. (R2619-2736) Two blond caucasian head hairs found in the car microscopically matched the head hairs from Virginia Johnson. (R2621-2622) The red fiber found in the hair sample taken from Johnson's remains microscopically matched the red nylon fiber from the carpet of Long's automobile. (R2633-2636) Malone concluded that the fiber came from the same dye lot. (R2635) Relying upon the two independent events of finding the fiber on the body and the hair in the car, Malone opined that Johnson had been in Long's automobile. (R2636)

Robert Long was arrested in Tampa on an unrelated charge, the abduction of [redacted] Randall Latimer of the Hillsborough Sheriff's Office and Robert Price of the Tampa Police Department questioned Long. (R2643, 823) During this interview, Long confessed to the homicide of Virginia Johnson. (R2653-2659) Long said he picked up a young woman in her early twenties on Nebraska Avenue

in Tampa. (R2653, 2658) She asked him if he wanted a date. He said yes and paid her $30 or $40. (R2653) Long said he could tell she was a prostitute by the way she dressed. (R2656) He drove her to a night spot called Cheeks on Skipper Road (R2653); tied her up; stripped her; and drove her to the Morris Bridge Road area of Pasco County. (R2653-2655) There, he had sex with her (R2655) and strangled her with his hands. (R2655-2656) He dragged her off the dirt road into a horse pasture (R2655-2656 and left her tied with the shoestring. (R2656) Long did not remember what clothing she was wearing when he left her. (R2656) However, he did remember leaving the panties with the body. (R2657) Long did not know her name but said that she told him she was from Massachusetts. (R2657)

3. Motion to Suppress the Confession

Long moved to suppress his confession he gave to Detectives Price and Latimer. (R816-913) Both detectives testified at the pretrial hearing. (R816,861) At the conclusion of the hearing, the court ruled that Long's constitutional rights had not been violated and that the confession was admissible at trial. (R913)

On November 16, 1984, Long was arrested for the sexual battery and kidnapping of [redacted] (R816) Although Long was the primary suspect in the series of murders which had occurred in the Tampa area, detectives were careful not to suggest this fact to Long. (R830) Price admitted that the concealment of this fact was to aid in psychologically preparing Long for interrogation about the murders. (R830) Ultimately, Detective Price transported Long to an interview room at the Hillsborough County Sheriff's

Department. (R830-831) There, Detectives Price and Latimer extensively interrogated Long not only about the [redacted] case but the series of murders as well.

After hearing his Miranda rights read to him, Long read and signed a form waiving those rights and consenting to be interviewed. (R821-822) Long was not advised that he was a suspect in the murders. (R836-837) Additionally, the waiver and consent to be interviewed form designated only the charges of sexual battery and the abduction of [redacted]. (R836-837, 869-870, 2890) Latimer and Price questioned Long about the [redacted] case for over one and one-half hours. (R836) Long was cooperative and confessed. (R836-870)

After obtaining Long's confession on the [redacted] case, the detectives began to change the subject to the murders. (R837,871) They did not advise Long of their intentions. Instead, they employed certain psychological techniques to prepare Long emotionally to talk. Price left the room to secure photographs of five of the Tampa homicide victims who were prostitutes. (R837-839) Latimer began discussing the various types of physical evidence which can be left at a scene -- blood, fiber, hair, semen and fingerprints. (R837-838, 875-876) This was done to suggest to Long that he may have left such evidence in the murder cases. (R843, 876) According to Price, Latimer had also moved very close to Long which would have a subtly coercive effect. (R839) Price returned with the photographs and handed them to Latimer. (R840) Long's mood seemed to change. (R840)

As a lead into the subject of the homicide, Latimer asked Long if he ever picked up prostitutes. (R840, 872) Long said he did while he lived in Miami. (R840, 872) Latimer then asked about the Tampa area. Long then said, "I'd rather not answer that." (R841-842, 872) Latimer's response was to begin confronting Long about the murders. (R842-844, 872-873) There was no break in the interrogation. (R879) He handed Long photographs of the victims and asked if he had ever seen them. (R845, 872-873) Long stated that he had not seen any of them. (R875) However, Long lingered on the last photograph and said that he may have seen her somewhere. (R845) After seeing the photographs, Long said,

> The complexion of things sure have changed since you came back into the room. I think I might need an attorney.

(R846, 877) Before Latimer could respond (R848), Price said, "Nothing has changed. I am still being honest with you." (R846, 878) He also asked Long, "Why would you need an attorney?" (R856-857) Price admitted that he was lying to Long and the quick response was to prevent Long from having adequate time to think. (R847,848-850) The detectives did not break the interrogation at that point. (R879)

The sheriff had personally selected Price to represent the Tampa Police Department in the interrogation of Long. (R831) Price was proud of his skills as an interrogator. He admitted to using nine different psychological techniques to persuade Long to talk and waive his rights. First, upon Long's arrest when he was

placed in the back seat of the patrol car, Price told him, "I want to thank you for not hurting that little girl." (R830-831) Long was then left alone giving him time to think about the statement. (R831) Second, Price carefully did not let Long know that he was being arrested on suspicion of the murder charges. (R830), 847-848) Third, Price told Long that he knew something about his background by mentioning that he knew Long was from West Virginia. (R833-834) Price stated this was the beginning of his psychological preparation for the interrogation. (R834) Fourth, when the interrogation turned to the murders, Price obtained photographs of the victims to show Long for the psychological effect they might have. (R837) Fifth, Detective Latimer talked to Long about physical evidence to imply to Long that he had left that kind of evidence. (R838) Sixth, the detectives told Long that the murder case investigation was complete when in fact they did not have a case against him without a confession. (R854) Seventh, during the interrogation, Detective Latimer moved closer to Long, about 1 to 1 1/2 feet away, solely for a psychologically coercive effect. (R839-840) Eighth, when Long said he did not want to talk about the case further, Price responded that nothing had changed that he was still being honest with Long. (R846) In fact, the nature of the interview had changed, and Price admitted that he was not being honest. (R847) Ninth, when Long asked for an attorney, Price interrupted with the statement that the investigation had not changed. (R848-850) Price also questioned why Long would need an attorney (R856) for the admitted purpose of preventing Long from thinking about an

an attorney and would continue to talk. (R849-850) Tenth, Price admitted he used a lot of flattery on Long to soften him up for the interrogation in hopes that it would have a psychological impact. (R850)

4. Motion to Suppress Evidence

Long moved to suppress the hair and carpet fiber evidence seized from his car as the product of an illegal stop. (R707-813) The trial court ruled the stop was legal and admitted the evidence at trial. (R813) Three detectives testified at the pretrial hearing. (R707-813)

On November 4, 1984, [redacted] reported to the Tampa Police Department that she had been raped. (R720) Investigator Polly Goethe interviewed [redacted] and obtained a description of the perpetrator and his automobile. (R721-722) [redacted] said the man was a white male in his mid-thirties with short, dark brown hair. (R722) He was five feet seven inches tall and perhaps slightly overweight. (R722) His car was a red or maroon two door with white seats. (R721) The dashboard contained a digital clock and a brown strip with the word "Magnum." (R721)

Based on some physical evidence sent to the FBI laboratory for analysis, the [redacted] case was linked to evidence found in a series of unsolved homicide cases pending in Hillsborough County. (R715,723) On November 14, 1984, the task force investigating these homicides became involved in the [redacted] case as well. (R723) Although she had been blind folded, [redacted] had been able to observe certain landmarks while the perpetrator transported her in his car. (R724-740)

This information gave the investigators a zone within which to search for the perpetrator, his vehicle or apartment. (R731, 742-743)

Detectives David Wolfe and Carson Helms participated in searching this zone on November 14, 1984. (R741-743, 772-773) They found nothing of significance. (R744) On the following day, Wolfe and Helms were assigned duties unrelated to the case. (R744, 774) However, Wolfe and Helms, on their own initiative, decided to continue the search. (R744,775) They began looking in a different area south of the identified zone. (R746) In that location, they stopped Robert Long as he drove his red Dodge Magnum on a downtown street at 11:30 A.M. (R747, 777-778) Long was not breaking any laws at the time, and the detectives stated Long was stopped solely because he was a white male driving a red car. (R747-748,778,792)

After the stop, the dectives advised Long they were investigating a hit and run accident and wanted some information. (R750-751) Long produced a valid driver's license and allowed the detectives to photograph him and his car. (R750-757,779-785) His car had a white interior and a brown strip with the word "Magnum" on the dash. (R791) The detectives had not observed this prior to the stop. (R792) After a detention of 20 to 25 minutes, the detectives allowed Long to leave. (R789)

Wolfe and Helms related the information gathered to detectives working in the task force. An arrest warrant for Long and search warrant for his apartment and car were obtained. (R716, 791) The subsequent search of Long's car produced the carpet

fibers and Virginia Johnson's head hair used as evidence at trial.

5. Pretrial Publicity--
Request for Change of Venue

The news media covered Robert Long and his various charges extensively. This subject saturated both the print and broadcast media in Hillsborough and Pasco Counties. (R248-254,2765-2870) These serial murders generated a great deal of interest and concern in the community even before Long's arrest. (R2765-2821) Accounts detailing the investigation were published. (R2765-2821) Biographical information of each murder victim appeared in print. (R2765-2821) Maps indicating the locations where bodies were found were also included. (R2765-2821 Long's arrest merely added to the momentum of the publicity. Media representatives appeared at Long's apartment just after his arrest, prompting him to waive his presence during the execution of a search warrant. (R819-830) At least thirteen newspaper articles published the fact that Long had confessed to the killings of these women including Virginia Johnson. (R248-255,2765-2821) And, the week prior to the trial of this case, Long was tried for a separate sexual battery charge in Pasco County. (R2927-3025) Local media coverage of this event was also extensive because the case was related to Robert Long and the series of murder charges he faced. (R2927-3025)

Long asked for a change of venue prior to trial and at the conclusion of jury selection. (R248-255,914,936,2527-2529) The court denied the request. (R2529) Long's alternative request for a continuance in order to distance the trial from the publicity

produced by Long's trial for sexual battery the previous week was also denied. (R261-265,673-704)

6. Jury Selection

During jury selection, virtually every prospective juror had heard or read something about Long and his various charges. Of the twelve jurors ultimately seated to try the case, everyone had read or heard something about Long. (R1129-1140,1161,1249,1356, 1435,1501,1570,2325,2427,2452,2508) Three jurors, Shirley Riegler, James Aldrich, and Martha Jackson, expressed knowledge of Long's Tampa murder charges. (R2511-2512,1165-1171,1177-1188,2363-2366) At least one juror, Russell Miller, stated he also knew about Long's sexual battery trial and conviction the previous week. (R1449-1450)

In an effort to secure an impartial juror, defense counsel challenged several potential jurors for cause. The trial court denied ten of those challenges. (R975-976,1390-1401,1621-1622,2324, 2366-2369) Counsel also exhausted all available peremptory challenges and asked for more. (R2475-2482) His request was denied. (R2482) As a result, two jurors for whom cause challenges had been denied--Shirley Riegler and James Aldrich--sat on the jury.

7. Penalty Phase and Sentencing

During the penalty phase of the trial, both the State and the defense presented additional evidence. First, the State introduced testimony establishing that Long was on probation for

an aggravated assault conviction. (R1878-1882) Second, the State introduced the judgment and sentence for the case tried the week before in which Long was convicted of sexual battery, kidnapping, robbery, burglary and aggravated assault. (R1887-1889) Long presented testimony from several friends and relatives about his background, character and his physical and psychological problems. (R1980-2039) Additionally, two psychiatrists testified about Long's mental condition and the causal relationship between that condition and the crime. (R1889,2040)

Dr. Michael Maher, a psychiatrist and professor at the University of South Florida, examined Long. (R1892-1893) Maher concluded that Long suffered from a mental defect which rendered his thinking, emotions and controls completely inadequate. (R1895) The defect manifested itself in episodes of impulsive, unpredictable and explosive violence. (R1895) Virginia Johnson's death was the result of one of these episodes. (R1895) During these times, Long was unable to function rationally. (R1916) He could not appreciate the criminality of his conduct or conform his conduct to any societal rules. (R1917) Maher stated that Long had no appreciation for his conduct and could not have stopped his violent behavior even if a police officer had been present. (R1917) Long did not kill in a cold, calculated and premeditated manner because he was not in control of his behavior. (R1918-1919) He operated on a

mechanical response. (R1918-1919)

Long's mental illness was the product of three factors. First was inherited traits. (R1895) Both his mother's and father's families had histories of mental illness. (R1896, 2019-2022) This gave Long an abnormally high level of impulsivity and irritability from birth. (R1896) Impulsivity manifests itself as an urge to act immediately without regard to consequenses. (R1896) The second factor was brain damage received as the result of two head injuries, one at six and the other at twenty. (R1897,1994-1995, 2013-2014) This exacerbated his impulsivity and inability to control his behavior during emotional times. (R1898, 1996-1998) The second injury marked the onset of Long's more violent episodes. (R1996-2000) Maher testified that under ideal environmental conditions during childhood, someone with Long's inherited traits and brain injuries could possibly develop normally. (R1899) However, the third factor, Long's chaotic and emotionally unstable home environment, prevented this possibility. (R1900-1901,2012-2039) His father was an alcoholic who was emotionally unavailable to Long, when not physically unavailable. (R1903,2018-2019) Long's mother worked as a waitress to support the family. (R2024) Since infancy, Long was placed in the care of a succession of people, and with none of them did he develop a stable emotional relationship. (R2024-2029) The family also moved a great deal requiring Long to attend several different schools. (R2024-2029) At six years old, Long's head injury also disfigured his mouth and teeth which subjected him to ridicule. (R2014-2015) Also during puberty, Long

suffered a hormonal imbalance causing him to develop breasts. (R1897, 2015-2016) He required surgery to correct the problem. (R1897, 2015-2016) This occurring at a time when sexual identity is developing further traumatized Long emotionally. (R2054-2055)

Dr. Helen Morrison, a psychiatrist, also examined Long. (R2044) She diagnosed him as suffering from atypical psychosis. (R2046) Atypical psychosis is one which does not fit into one of the ordinary major forms of psychosis. (R2084) His disease is characterized by a lack of psychological structure as it relates to the ability to think and process information. (R2065,2085) Long does not have an adequate perception of reality regarding how the world functions. (R2065) He is not able to process thoughts to a decision or make judgments. (R2065) Moreover, he is not capable of making moral judgments and decisions. (R2065) Because of the various physical and environmental factors, Long never developed in these areas beyond the level of a six to nine month old infant. (R2048)

Morrison concluded that when Long killed Virginia Johnson he was not capable of appreciating the criminality of his acts. (R2064) He lacked the capacity to process to a decision regarding the question of whether his actions were right or wrong. (R2064) He suffered an extreme emotional disturbance at that time (R2064) and was not capable of planning a cold, calculated and premeditated homicide. (R2064)

SUMMARY OF ARGUMENT

1. Long was subjected to custodial interrogation after his arrest on sexual battery charges. He waived his rights and consented to be interviewed regarding those offenses. However, without advising Long, the detectives changed the inquiry to a series of murders. Long asserted his right to remain silent and asked for counsel when this subject arose. The detectives did not break their interrogation and did not honor Long's requests. The subsequent confession was thus obtained in violation of the Fifth Amendment.

2. A series of murders of young women in the Tampa area had captured the interest of the news media. Details of the lengthy investigation were presented on both print and broadcast news media. Long's arrest for these crimes fueled the already raging publicity fire. Exacerbating the publicity surrounding the trial in this case was the fact that the State tried Long for an unrelated Pasco County sexual battery case the week before the murder trial. Several potential jurors who had significant knowledge of the unrelated murder charges ultimately sat on the jury. Long's motion for change of venue should have been granted in order to protect his Sixth Amendment right to an impartial jury.

3. Several prospective jurors had significant knowledge about Long's various charges. Ten of Long's challenges for cause to these jurors were erroneously denied. Long exhausted his peremptory challenges in an effort to secure an impartial jury but two of these ten sat on the jury. Because Long's challenges for

cause were not granted, he was forced to trial with a prejudiced jury.

4. The trial judge denied Long a change of venue in this heavily publicized case; denied Long's challenges for cause on jurors who should have been excused; and finally, limited Long to ten peremptory challenges. In view of the difficulties created by prior rulings, the trial court abused its discretion in refusing to grant additional peremptory challenges.

5. After denying the motion for change of venue, the trial court should have granted a continuance to minimize the effect of the publicity. Instead, the continuance was denied, and Long was forced to trial for murder and his life in the same county where he had been convicted for sexual battery in a publicized trial the week before.

6. Long was originally stopped and detained in Tampa because he fit a general description given by a kidnapping victim--he was a white male driving a red car. The detectives did not have a reasonable suspicion for the stop under Terry v. Ohio. As a result, the hair and fiber evidence later obtained from Long's car should have been suppressed.

7. The prosecutor examined a potential juror regarding his beliefs against capital punishment and his ability to serve on the jury. After obtaining some ambiguous responses, he challenged the juror for cause. The court granted the challenge over defense counsel's objections that he had not been afforded the opportunity to question the juror.

8. Irrelevant evidence suggesting that Long may have

committed other murders was improperly introduced at trial. The evidence had no probative value other that to show propensity to commit crime. A mistrial should have been granted.

9. Long's death sentence should be reversed because it is based in part upon a death recommendation from a tainted jury. At least two jurors knew details about Long's unrelated murder charges in Tampa. This information constituted evidence of nonstatutory aggravating circumstances and hopelessly prejudiced the jury.

10. The trial court sentencing process was skewed. Aggravating circumstances were improperly found and weighed. Existing mitigating circumstances based on Long's severe psychological disturbance were not even considered. As a result, Long's death sentence was unconstitutionally imposed.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN ADMITTING LONG'S CONFESSION IN EVIDENCE, SINCE THE CONFESSION WAS OBTAINED DURING CUSTODIAL INTERROGATION WHICH PERSISTED AFTER LONG HAD ASSERTED HIS RIGHT TO REMAIN SILENT AND REQUESTED COUNSEL.

Although Robert Long was the primary suspect in the series of murders in the Tampa area, he was arrested only on the sexual battery and kidnapping case involving [redacted]. (R816,830) Detectives carefully concealed from Long the fact that he was a murder suspect. (R830) Long waived his rights and signed a consent to be interviewed form regarding the [redacted] case. (R836-837, 869-870,2890) Detectives Price and Latimer questioned Long and secured a confession on the [redacted] charges. (R836,870) Then, without advising Long, the detectives subtly changed the focus of the interrogation to the murders. (R837,871) They did not tell Long that he was a murder suspect or that questioning on murder charges had commenced (R837,871) Moreover, they did not secure a waiver of Long's rights regarding the murder charges before questioning. (R837,871)

Latimer began questioning about the murders by asking Long if he ever picked up prostitutes. (R840,876) Several of the homicide victims had been prostitutes. (R837-840) Long said that he had while in Miami. (R840,872) Latimer then asked about the Tampa area. (R841-842,872) Long responded, "I'd rather not answer that." (R841-842,872) Instead of honoring Long's request,

Latimer immediately began confronting him about the murders. (R842-844,872-873) He began handing Long photographs of the murder victims who had been prostitutes and asking if he knew them. (R845,872-873) Price had just returned to the interview room with the pictures. (R837-839) Long denied having seen any of the women. (R875) After viewing the photographs, Long said,

> The complexion of things sure have changed since you came back into the room. I think I might need an attorney.

(R846,877) Detective Price quickly lied to Long (R847-850) and said, "Nothing has changed. I am still being honest with you." (R846,878) Price admitted he was attempting to prevent Long from thinking about an attorney and to keep the interrogation in progress. (R847-850) Price also asked Long why he would need an attorney.[1/] (R856-860) Telling another lie, Price then said,

> Bobby our case is made. We don't need you. We've got all the evidence we need.

(R854) Long subsequently confessed.

Long's confession was obtained in violation of his constitutional rights. Amends. V, VI, XIV U.S. Const., Art I, §§9,16 Fla. Const.; Miranda v. Arizona, 384 U.S. 436 (1966). The State failed to establish that Long waived his right to remain silent

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1/ Price testified to making this statement during a discovery deposition. He denied the remark during the suppression hearing. (R856-860)

and right to counsel. His confession should have been suppressed.

Initially, the detectives never even asked Long to waive his Miranda rights and consent to questioning on the murder charges. This fact, alone, militates against a valid waiver. Recently, the United States Supreme Court granted certiorari to review a Colorado case concerning this question. Colorado v. Spring, 54 U.S.L.W. 3738 (1986). The Supreme Court of Colorado held, in a case similar to this one, that failure to advise the suspect being interrogated on certain charges that he might also be questioned on a separate, unrelated murder charge undermined the validity of any waiver. People v. Spring, 713 P. 2d 865 (Colo. 1985). The defendant in Spring, like Long, had consented to be interviewed and confessed to charges unrelated to the murder charges. At the time he waived his rights, Spring, like Long, was not aware that he would also be questioned about the murder. Just as in Spring, no valid waiver can be demonstrated in this case.

When the subject of the homicides first arose, Long asserted his right to remain silent. He said, "I'd rather not answer that." (R841-842,872) A brief time later, Long then requested counsel. He noted how the interview had changed and said, "I think I might need an attorney," (R846,877) After the assertions of these rights, the detectives were not free to question Long about the charges. Edwards v. Arizona, 451 U.S. 477 (1981); Miranda, 384 U.S. 436; Smith v. State, __So.2d__, 11 FLW 345 (Fla. 1986); Drake v. State, 441 So.2d 1079 (Fla. 1983).

> Edwards set forth a "bright-line rule" that all questioning must cease after an accused requests counsel. Solem v. Stumes, ___US___, 79 L Ed 2d 579, 104 S Ct 1338 (1984). In the absence of such a bright-line prohibition, the authorities through "badger[ing]" or "overreaching"--explicit or subtle, deliberate or unintentional--might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance. Oregon v Bradshaw, US___, ___, 77 L Ed 2d 405, 103 S Ct 2830 (1983); Fare v Michael C., 442 US, at 719, 61 L Ed 2d 197, 99 S Ct 2560.

Smith v. Illinois, 469 U.S.___, 83 L.Ed. 2d 488, 495-496 (1983). The only permissible inquiry once an assertion of these rights is made is to clarify any equivocal request. Valle v. State, 474 So.2d 796 (Fla. 1985); Thompson v. Wainright, 601 F.2d 768 (5th Cir. 1979); Nash v. Estelle, 597 F.2d 513 (5th Cir. 1979).

While an argument can be made that Long's request for counsel was equivocal,[2/] the detectives did not limit their questions to clarifying the request. In fact, no effort was made to clarify the request. Price admitted that he tried to keep Long from thinking about an attorney, (R847-850) Both detectives

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2/ See, Valle, 474 So.2d at 799; Waterhouse v. State, 429 So.2d 301, 305 (Fla. 1983); but, see, Singleton v. State, 344 So.2d 911, 912 (Fla. 3rd DCA 1977) ("Maybe I better ask my mother if I should get me [an attorney]."); Wentela v. State, 290 N.W. 2d 312,316 (Wisc. 1979) ("I think I need and attorney" or "I think I should see an attorney"); People v. Traubert, 608 P.2d 342 (Colo. 1980) ("I think I need to see an attorney"); State v. Blakney, 605 P.2d 1093 (Mont. 1979) ("Maybe I should have an attorney").

were using various psychological techniques in an effort to secure Long's confession after Long's assertion of his right to remain silent and right to counsel. The detectives did not change their methods. Price told Long that they had sufficient evidence, and they did not need his statement anyway. (R854) This information was not true, and its only purpose was constitutionally impermissible--to induce Long to talk. See, Brewer v. Williams, 430 U.S. 387 (1977); Beuhler v. State, 381 So.2d 746 (Fla. 4th DCA 1980); Jones v. State, 346 So.2d 639 (Fla. 2d DCA 1977).

The trial court should have granted Long's motion to suppress. This Court must now reverse this case for a new trial.

ISSUE II

THE TRIAL COURT ERRED IN DENYING LONG'S MOTION FOR CHANGE OF VENUE.

The Sixth and Fourteenth Amendments secure every criminal defendant the right to a fair and impartial jury. Irvin v. Dowd, 366 U.S. 717 (1961); Singer v. State, 109 So.2d 7,14 (Fla. 1959). When pretrial publicity so taints the community as to render the selection of an impartial jury unlikely, a change of venue must be granted. Rideau v. Louisiana, 373 U.S. 723 (1963); Murphy v. Florida, 421 U.S. 794 (1975); Manning v. State, 378 So.2d 274 (Fla. 1980).

> An application for change of venue is addressed to the sound discretion of the trial court, but the defendant has the burden of coming forward and showing that the setting of the trial is inherently prejudicial because of the general atmosphere and state of mind of the inhabitants in the community. A trial judge is bound to grant a motion for a change of venue when the evidence presented reflects that the community is so pervasively exposed to the circumstances of the incident that prejudice, bias, and preconceived opinions are the natural result. The trial court may make that determination upon the basis of evidence presented prior to the commencement of the jury selection process, see Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963), or may withhold making the determination until an attempt is made to obtain impartial jurors to try the cause. Murphy v. Florida.

Manning, 378 So.2d at 276. The prejudicial publicity in this case, which included references to Long's confession, presumptively prejudiced the community requiring a pretrial change of venue. Rideau, 374 U.S. 723; Manning, 378 So.2d 274; Oliver v. State, 250 So.2d 888 (Fla. 1971); Coleman v. Kemp, 778 F.2d 1487 (11th Cir. 1985). Furthermore, after jury selection, it

was apparent that the community had actually been prejudiced by the media coverage. A fair and impartial jury was not selected, and the trial court should have granted a change of venue at that time. Murphy v. Florida, 421 U.S. 794.

Both the print and broadcast news media saturated the area with information about Long and the series of crimes he allegedly committed. The newspaper articles filed in support of the motion for change of venue captures the tone of the publicity. Thirteen news articles highlighted in the motion noted Long's confession to killing the women, including Virginia Johnson. (R248-255) Several articles detailed the investigation of the cases prior to and after Long's arrest. (R2765-2821) Biographical information on each victim was published. (R2765-2821) Moreover, an extensive biography of Long also appeared in print. (R2765-2821) The week prior to Long's trial in this case, he was tried for a sexual battery which also occurred in Pasco County, (R2927-3025) Local media covered this event and indicated that Long faced a murder trial the following week. (R2927-3025)

Responses of potential jurors during voir dire was the most telling evidence of the prejudice created by the media. All of those questioned had at least heard, if not read or seen, something about Long and his charges. As one potential juror said when asked if she knew about Long's Tampa cases, "Oh, yes, I think everybody does." (R967) This was also true for the twelve jurors who tried Long's case. (R1129-1140,1161,1249, 1356,1435,1501,1570,2325,2427,2452,2508) The trial court had

improperly denied cause challenges on two of these jurors. (See, Issue III, infra.) Long also exhausted all of his peremptory challenges in an effort to secure an impartial jury. (See, Issue IV, infra.) Jurors Reigler, Aldrich and Jackson had knowledge of Long's Tampa murder charges. (R2511-2512, 1165-1171,1177-1188,2363-2366)(See, Issue III, infra.) Juror Miller also knew about Long's trial for sexual battery the previous week and his ultimate conviction. (R1449-1450)

Knowledge of unrelated pending charges and convictions alone is sufficient to prejudice a juror. Wilding v. State, 427 So.2d 1069 (Fla. 2d DCA 1983). However, at least two jurors admitted that the knowledge would make it impossible for them to impartially try the case. (R1164-1193,2327-23650 Jurors Reigler and Aldrich should have been excused for cause for that reason. (See, Issue III, infra. for details regarding these jurors' responses). Certainly, their presence on the jury denied Long his right to a fair and impartial trial.

The pervasive pretrial publicity prejudiced Long's ability to secure an impartial jury trial in Pasco county. A change of venue should have been granted. Long now urges this Court to grant him a new trial.

ISSUE III

THE TRIAL COURT ERRED IN DENYING SEVERAL CHALLENGES FOR CAUSE TO PROSPECTIVE JURORS, THEREBY CAUSING LONG TO EXHAUST HIS PEREMPTORY CHALLENGES AND ULTIMATELY FORCING HIM TO TRIAL WITH TWO JURORS WHO SHOULD HAVE BEEN EXCUSED FOR CAUSE.

Due to the intense pretial publicity regarding this case and Long's other pending charges, several potential jurors had knowledge of these matters. Defense counsel challenged these jurors for cause. The trial court improperly denied ten of those challenges. (R975-976,1390-1401,1621-1622,2324,2366-2367, 2568-2569) In an effort to secure an impartial jury, Long exhausted all of his peremptory challenges (R2476-2485,2568-2569) and the court refused to grant additional ones. (R2475-2482) See, Issue IV, infra. As a result, two of the ten potential jurors who should have been excused for cause--Shirley Riegler and James Aldrich--became jurors on the case.

The standard to be applied when a potential juror's competency has been challenged is "whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law." Lusk v. State, 446 So.2d 1038,1041 (Fla. 1984); accord, Hill v. State, 477 So.2d 553 (Fla. 1985); Singer v. State, 109 So.2d 7 (Fla. 1959). A juror's ability to control any bias or prejudice is insufficient. Singer; Leon v. State, 396 So.2d 203,205 (Fla.3d DCA 1981). If there is a reasonable doubt as to the juror's having the state of mind enabling him to meet this requirement, the cause challenge must be granted. E.g., Singer, 109 So.2d at 23-24; Hill, 477 So.

2d at 556; Graham v. State, 470 So.2d 97,98 (Fla. 1st DCA 1985); Leon v. State, 396 So.2d 203,205 (Fla. 3d DCA 1981). Moreover, the juror's statement that he does have the appropriate state of mind to fairly decide the case is not determinative of the question of his competence. Singer, 109 So.2d at 24; Graham, 470 So.2d at 98; Leon, 396 So.2d at 205. Applying these principles to the instant case, it is apparent that the trial court should have granted Long's challenges for cause.

Juror James Aldrich, one of the two jurors challenged for cause who actually sat on the jury, admitted that he had "read everything on it." (R1177) He knew that Long was charged with a series of systematic murders. (R1187) He also knew that evidence was obtained from Long's car and from his apartment. (R1188) When the judge first asked Aldrich if he could set aside what he had heard and read about the case and Long's other charges, Aldrich said, "I would hope so." (R1165) Aldrich's responses to questions during voir dire demonstrate that he should have been excused for cause:

> [COURT] Q. Alright, sir. And at this moment, Mr. Aldrich, as you were seated as a prospective juror, do you believe your mind to be free from any prejudice, bias, or sympathy, for or against the State of Florida, or for or against Mr. Long?
>
> A. To be quite frank, I have read in the newspaper about this, obviously -- (pause)
>
> Q. That was my next question that I wanted to chat with you about. And I encourage you to be frank.
>
> In the event that you have been selected as a member of this jury panel, it will be your responsibility to decide your verdict, based solely on the evidence, testimony of the witnesses offered in this case and the evidence that is introduced

in this case, here in the presence of Mr. Long and the attorneys and myself and the other members of the jury panel. And since you have indicated that you have some knowledge of the case from--perhaps in the newspapers or perhaps elsewhere.

Would you be able to set from your mind, anything that you have learned about this case and decide this case solely based upon the evidence and testimony in this case?

A. Again, I would hope so.

Q. Yes, sir.

A. I feel that I'm a fair minded individual and do feel that I would try to listen to what is going on..

* * *

(R1164-1165)(emphasis added)

[PROSECUTOR] Q. Here again, only you know your own mind. Do you feel that you could set aside anything that you may have heard or read or seen on television, and render a verdict based solely on the evidence presented during this trial?

A. As I said, I hope--hopefully, I feel that I personally am open-minded enough to render an impartial--whatever, I always felt that I was a fair person.

Q. This goes a little bit beyond fairness, it is more like--I guess, self discipline, than fairness. I'm certain that you could be fair, don't get me wrong.

But for instance, if you're seated in the jurybox or the juryroom, or--let's say the jurybox. And a witness is testifying and all of a sudden, it comes to mind that you have read an article that related to the area that the witness is testifying to.

And maybe the article said something about that, that was different then [sic] what the witness is saying, or elaborated more upon it then [sic] what the witness said. Would you be able to seperate [sic] what you read and disregard it, from what you heard here in the courtroom?

A. The mind is a funny thing. I never actually

got into it, I'll be honest with you. I couldn't answer that question.

* * *

(R1172-1173)(emphasis added)

Q. Can you think of any reason, no matter how--well, no matter what it is, that would cause you not to be able to listen attentively and listen to all the evidence that's presented, and render a verdict that's fair to the State of Florida, and to Mr. Long?

A. No, sir.

Q. Only you know your own mind.

A. Quite frankly, I have read the papers. I haven't looked at ah--individual things.

Q. I understand.

A. But I have read, you know, read everything on it.

Q. Okay.

A. And--but I do have some preconceived--(pause)

Q. That's where we're going. Everybody has things they like and things they don't like. The law is like medicine and other areas where they put labels on everything.

And we have labels for things that you like and things that you don't like. And they're called bias and prejudices.

And nobody in this courtroom today, expects you to forget about the bias and prejudices that you have had over your lifetime.

The only thing we ask is that you recognize that you have them and if a bias or prejudice causes you to have a preconceived idea or notion or opinion about the guilt or innocence of Mr. Long, I don't suspect that anyone could make you forget it.

As I said, it's not a question of being fair, but a question of being disciplined. And if you feel that you have a preconceived notion or idea one way or the other, about the guilt of Mr. Long, that you would not be able to disregard, for heaven's sake, let us know about it.

A. Like I said, it is in my mind. I do feel that I could be equitable and--

Q. Or fair?

A. Yes, in looking at what is there.

* * *

(R1177-1179)(emphasis added)

[DEFENSE COUNSEL] Q. ...we discussed the publicity, and discussed your belief in the death penalty.
One other thing I would like to touch upon is something that's perhaps along the lines that you mentioned, that you did have some opinion in this case. Is that your response?

A. When I said that I had opinions about it, my opinion is based quite frankly on what I've read and what I have seen on television.

Q. What is your opinion, based on what you've read and seen on television?

A. Quite frankly, I think they have got him, guilty.

Q. Do you feel that you could put aside--(interrupted)

A. I'm going back to my first statement; I would hope so. I have to look at what is being presented, as far as the evidence.

(R1192-1193)(emphasis added)

In view of Juror Aldrich's sincere expression of his doubts about his ability to fairly try the case, the trial judge erroneously denied Long's challenge for cause. (R1398-1400) See, Smith v. State, 463 So.2d 542 (Fla. 5th DCA 1985). Aldrich did at one point say he could be fair. (R1178-1179) However, this occurred after the prosecutor had told him that the real question was his ability to discipline himself to disregard previously received information. (R1172-1173,1178) The prosecutor used an

incorrect legal standard to elicit this response. Discipline or ability to control bias or prejudice is not the test. Singer, 109 So.2d 7; Leon, 396 So.2d at 205. Juror Aldrich tried to advise the court of his problems, but the prosecutor persisted with misleading questions until Aldrich used the" magic words" --he said he could be fair. Looking no further, the court erroneously denied Long's challenge for cause. It was apparent that Aldrich had a preconceived opinion of guilt which would have to be overcome. See, Hill v. State, 477 So.2d 553 (Fla. 1985).

Juror Shirley Reigler was the second of two jurors challenged for cause who sat on the jury. (R2366-2367) She had also heard about Long's other murder charges. (R2327-2328,2352-2353,2363-2364) Like Aldrich, she should have been excused for cause. Defense counsel said he would have used an additional peremptory challenge to excuse her if one had been granted. (R2458) Inquiry of her abilities to be a fair and impartial juror proceed as follows:

> [COURT] Q. At this moment, as you are in the jurybox, do you believe your mind to be free from any bias or prejudice, either for or against the State of Florida, or for or against Mr. Long?
>
> A. Oh--well, perhaps.
>
> Q. Okay. Let me ask you a couple of other questions.
> Do you know anything about this case, other than what you have heard in the courtroom in being here this week?
>
> A. Just from reading the newspaper in the past.
>
> Q. That's what I want to talk to you about.

In this country, and I'm sure everyone will agree that it is certainly proper, anytime a citizen has been accused of violating the law, that person has the right to have their guilt or innocence decided by a jury.

And that jury decides the verdict based solely on the evidence that is introduced in this trial, in the presence of the accused person, and the State and other lawyers, and other jurors, and the judge.

As a member of this jury panel, if you were to be selected, this would be your responsibility.

Do you feel that you would be able to sit [sic] from mind, anything that you know about this case, from any other source, and base a verdict in this case solely on the evidence and the law that I instruct you on, as being applicable to that evidence?

Do you think that you could do that?

A. I think I could.

* * *

(R2327-2328)(emphasis added)

Q. Did you indicate that you did hear about some publicity, as it related to Mr. Long?

A. Yes.

Q. Okay. Could you share with me what information you've heard about Mr. Long?

A. Well, just the several cases, that were found--(pause) Maybe a little bit of background.

Q. U-huh. (affirmative)

A. That's all.

Q. Do you recall what the cases were that you heard about?

A. Well, just the ones in this county and Hillsborough County.

Q. Okay. Let me ask you this ma'am.

I'm not sure whether it was the judge or the prosecutor that asked you this question.

But they asked you about putting aside and basing this case solely on the evidence in this case, and if I'm not mistaken, your response was, "I think I could." Speaking about following the law about the evidence, or something to that effect.

A. Yes.

Q. I don't want to have to put you on the spot, but the Judge's instructions are that you must base the case solely on the evidence and solely on the law.
Can you assure us that you will follow that law and not allow any other knowledge that you have about the case interfere or enter into your verdict?

A. Uh--I think so, uh-huh. (affirmative)

Q. Okay. Would you find it difficult?

A. Um--no.

Q. Okay. If you found yourself having any problem or difficulty putting that aside, the extraneous material that you've heard about the case, you would let us know?

A. Yes.

* * *

(R2352-2353)

[DEFENSE COUNSEL] Q. I think you--I know that I asked you about the publicity in this case that you had knowledge of, and you mentioned that you knew about other cases.
Do you recall any specific details about the other cases?

A. Hum--not really, no.

Q. Do you know the type of cases that they are?

A. Well some similar to this.

Q. Murder charges?

A. Right.

Q. But you don't know any other details about those other murder charges?

A. No.

* * *

[DEFENSE COUNSEL] Q. Let me ask you this, ma'am.

Would you be able to put this knowledge completely out of your mind when you went back in that juryroom? Would it still be something that you remember?

A. I'm supposed to consider the facts.

Q. I guess what I'm trying to get at, between now and the time you're asked to deliberate, you're not going to forget what you know about other cases, is that safe to say?

A. Well, you don't put something out of your mind that you've already had in the past. But you try to concentrate on what you're doing now, you know.

And this is like that.

Q. Okay. Do you feel that those--that your knowledge of those facts about other murder charges, would that in any way effect your ability to follow the law?

A. No.

Q. Can you assure us of that?

A. I would try to listen to everything and try to follow the law and try--(interrupted)

Q. Again, I don't want to be continually putting you on the spot. But the Judge will tell you that by the law, you have to.

Do you feel that you could do that?

A. Yes.

Q. If you felt that became too difficult for you to do that, to accomplish that, would you bring that to our attention?

A. Yes.

Q. Thank you very much, ma'am.

(R2363-2365)(emphasis added)

The trial court denied eight other challenges for cause to prospective jurors who were later excused peremptorily. (R1391-

1401,1621-1622,2324,2568-2569) Each of these should have been excused for cause.

Grace Browning had read articles and watched television reports about Long and his various cases including the other pending murder charges. (R944,958-959,966-969) When asked specifically if she knew about the Tampa cases, Browning said, "Oh, yes, I think everybody does." (R967) The following exchange occurred when defense counsel questioned her about her ability to sit as an impartial juror. (R968-969)

> [DEFENSE COUNSEL] Q: Could you put aside any particular knowledge that you have about this case from the cases in Tampa?
>
> A. I think so. I think everybody has a right to be proven guilty.
>
> Q. Okay. Do you feel that you would be fair and impartial, even having in mind the publicity that you've heard about the case?
>
> A. Yes, I think so.
>
> Q. Have you ever talked with anyone about this case, or Mr. Long?
>
> A. No, just my husband.
>
> Q. Okay. And have you or he ever expressed an opinion about the case?
>
> A. Not really. I mean we just talked about it. I mean we haven't expressed an opinion one way or the other.
>
> Q. Have you formed any opinions in your own mind as to the guilt or innocence of the defendant?
>
> A. Well, I'm sure that he's not--no, I'm not sure he's guilty. I think that everybody has a right to be proven guilty.
> I don't--well--I still think that a person is not guilty until he's proven guilty, put it that way.

Q. Alright. Understanding that the Judge is going to go over with you, that constitutional principle of innocence until proven guilty.

A. That's right.

Q. I realize that you're utilizing principle and not making a statement as to guilt or innocence. Have your formed any opinion as to the guilt or innocence of Mr. Long?

A. No, not really.

(R968-969)(emphasis added)

The seven other potential jurors for whom the court denied cause challenges had heard about Long and his various charges. (R1013-1020,1067,1117-1118,1212,1338-1341,1597,1604-1606, 1613,1617,2310-2311) All had heard something about the Tampa murder charges. Five of the seven--Tillis; Casperon; Seay; Barth; Rosche--had also heard about Long's trial and conviction for rape which had occurred the previous week in the same county. (R1067,1117-1118,1212,1338-1341,2310-2311) Prospective Juror William Barth even remembered an admission of guilt attributed to Long on a television newscast. (R1211) Knowledge of these unrelated charges and convictions, alone, was sufficient to render these potential jurors incompetent to serve. See, Wilding v. State, 427 So.2d 1069 (Fla. 2d DCA 1983).

Long's challenges for cause should have been granted. His Sixth Amendment right to a fair and impartial jury has been violated because of the incompetent jurors who ultimately served and the limitations placed on peremptory challenges. This Court must remand for a new trial.

ISSUE IV

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO GRANT LONG ADDITIONAL PEREMPTORY CHALLENGES.

In an effort to select a fair and impartial jury, defense counsel exhausted all 10 peremptory challenges allotted to him pursuant to Florida Rule of Criminal Procedure 3.350(a). (R2475-85) Counsel requested more challenges and stated, that if granted, he would exercise one on Juror Reigler. (R2485) The trial court had earlier denied a challenge for cause as to this juror. (R2366-67) See, Issue III, supra. Nevertheless, the trial judge denied the request for additional peremptory challenges. (R2475-2485)

Long is aware that Florida Rule of Criminal Procedure 3.350(e) allows a trial judge the discretion to grant additional peremptory challenges when an indictment or information contains two or more counts or if two or more charging documents are consolidated for trial. Johnson v. State, 222 So.2d 191 (Fla. 1969); Moore v. State, 335 So.2d 877 (Fla. 4th DCA 1976). Long is also aware that the indictment in this case charged only a single count of murder. (R12-13) However, in a highly publicized capital case which is being tried in the county of the crime after the denial of a change of venue, the trial court must have the discretion to grant additional peremptory challenges. To deny the court this tool would thwart the role of peremptory challenges in securing a fair and impartial jury. See, e.g., Swain v. Alabama, 380 U.S. 202 (1965); Meade v. State, 85 So.2d 613,615 (Fla. 1956). It would also unduly limit the trial

court's option of attempting to select a fair jury as an alternative to changing venue. In many instances, the greater latitude additional peremptory challenges affords, can result in the selection of a fair jury even where extensive publicity surrounds the case. The mechanical application of Florida Rule of Criminal Procedure 3.350 to strip the trial judge of the discretion to grant additional peremptories is inappropriate in these circumstances. It would defeat justice and its effective administration.

The trial judge abused his discretion in this case. Long's request for additional peremptory challenges should have been granted. Given the intensity of the publicity; the court's denial of a change of venue and a continuance; the number of jurors who had knowledge about the case or Long's other charges; and the court's denial of most of Long's challenges for cause; granting additional peremptories was the absolute minimum requirement for Long to even have a chance at securing his Sixth Amendment right to a fair and impartial jury. This Court should reverse his conviction and remand for a new trial.

ISSUE V

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING LONG'S MOTION FOR CONTINUANCE.

Where, as in this case, this prejudicial pretrial publicity threatens a defendant's right to a fair trial, the trial court "should continue the case until the threat abates, or transfer [the case] to another county not so permeated with publicity." Sheppard v. Maxwell, 384 U.S. 333,363 (1966). Since the trial court refused to change venue in this case, it should have at least granted Long's request for a continuance. (R261-265,673-704)

During the week prior to his murder trial, Long proceeded to trial on a sexual battery case. This trial was also in Pasco County in the New Port Richey division of the court. Many of the potential jurors had heard of the case. Three who acutally served on the jury had heard if the sexual battery case and knew that Long had been convicted. (R1177,1449-1450,2280-2289) This information should have rendered these jurors incompetent to serve (see Issue III, supra.), and their being seated on the jury demonstrates the prejudicial impact of the court's decision to deny a continuance.

The trial judge abused its discretion in denying a continuance in this case thereby forcing Long to trial for murder only one week after his publicized trial for sexual battery. This Court should reverse this case for a new trial.

ISSUE VI

THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS HAIR AND FIBER EVIDENCE SEIZED FROM LONG'S AUTOMOBILE, SINCE THE SEARCH WAS THE PRODUCT OF AN ILLEGAL STOP.

Detectives Wolfe and Helms stopped Long without a reasonable basis. [redacted] had described her assailant as a white male in his thirties, driving a red car with white seats and the word "Magnum" on the dash. (R721-722) The detectives, acting outside of the zone identified as the possible location of the perpetrator's residence (R731,742-743,746), admitted they were prepared to stop any white male driving a red Dodge Magnum. (R747-748,778,792) They stopped Long on the basis of this general description alone. (R747-748, 778,792) Not until after the stop did the detectives notice that Long's car had a white interior and the word "Magnum" on the dash. (R791-792)

Police officers may not make investigatory stops except upon a reasonable or grounded suspicion--"a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417-418 (1981); e.g., §901.151, Fla.Stat.; Terry v. Ohio, 392 U.S. 1 (1968). "A 'mere' or 'bare' suspicion will not suffice." Sumlin v. State, 433 So.2d 1303 (Fla. 2d DCA 1983); e.g., Watts v. State, 468 So.2d 256 (Fla. 2d DCA 1985); L.T.S. v. State, 391 So.2d 695 (Fla. 1st DCA 1981). Wolfe and Helms had only a bare suspicion when they stopped Long. The fact that Long was a white male driving a red Dodge automobile was not a particularized objective basis for suspecting him

of the rape of [redacted]. See, e.g., Sumlin, 433 So.2d 1303. The stop violated the Fourth Amendment, and the evidence derived from it should have been suppressed.

In Sumlin v. State, the Second District Court held a similar stop violated the Fourth Amendment. The police officer stopped Sumlin thinking he matched the description of a robbery suspect given in a BOLO within a few weeks of the stop. The BOLO stated the suspects were three black males, one in his twenties, driving a white and gold Oldsmobile. Willie Sumlin was a black male in his twenties riding as a passenger in a white and gold Pontiac. No other basis for the stop existed. Reversing the denial of a motion to suppress, the District Court said,

> The facts herein do not sustain a founded suspicion by Officer Hulthusen. The officer stopped the car in midafternoon on a well-traveled street. The car was not being driven in any unlawful manner, and neither the car nor the occupants directly matched the actual description of the BOLO. A vague description will not justify a law enforcement officer in stopping every individual or vehicle which might possibly meet that description.

Sumlin, 433 So.2d at 1304; see, also State v. Hetland, 366 So.2d 831,839 (Fla. 2d DCA 1979), affirmed, 387 So.2d 963 (Fla. 1980); Watts v. State, 468 So.2d 256 (Fla. 2d DCA 1985).

A case from the First District Court of Appeal is also on point. In L.T.S. v. State, 391 So.2d 695, the police officer received a BOLO relevant to a recent robbery of a liquor store on U.S. 1 and Wagner Road. The description given was two white males with curly hair. Within two minutes, the officer saw a

car traveling on Wagner Road within three-quarters of a mile from the robbery scene. Three or four persons occupied the car and two of them had bushy hair. Upon this observation alone, the officer stopped the car. The appellate court reversed the denial of a motion to suppress holding that the officer did not have a founded suspicion to justify his stop.

Detectives Wolfe and Helms stopped Long merely because he was a white male driving a red car. While [redacted] gave additional descriptive details, some of which proved to match Long's car, these were not observed until after the stop. This is not a case where the stop was made on the basis of a vehicle matching an unusual or distinctive description. See, Finney v. State, 420 So.2d 639 (Fla. 3d DCA 1982); State v. Delgado, 402 So.2d 41 (Fla. 3d DCA 1981). Just as in Sumlin and L.T.S., the detectives made an illegal stop in the instant case. The stop was based upon the mere fact that Long's car might possibly meet the victim's description. Such a stop is constitutionally impermissible.

Robert Long's rights under the Fourth Amendment were violated and the fruit of that violation should have been suppressed. The trial court failed to do so, and this Court must correct the error. A new trial is required.

ISSUE VII

THE TRIAL COURT ERRED IN REFUSING TO ALLOW DEFENSE COUNSEL TO QUESTION A POTENTIAL JUROR REGARDING BELIEFS AGAINST CAPITAL PUNISHMENT BEFORE EXCUSING THE JUROR FOR CAUSE.

The importance of complete voir dire of prospective jurors has long been recognized, e.g., King v. State, 390 So.2d 315,319 (Fla. 1980); Cross v. State, 89 Fla. 212, 103 So.636 (1925); Ritter v. Jimenez, 343 So.2d 659, 661 (Fla. 3d DCA 1977); Barker v. Randolph, 239 So.2d 110 (Fla. 1st DCA 1970). Its purpose is "to determine whether the juror is qualified and will be fair and impartial, free from all bias, prejudice or interest in the cause being tried." Ritter, 343 So.2d at 661. And, counsel's right to fully examine the juror should not be abridged. As the First District Court noted in Barker,

> It is not infrequent that the answer to a question or questions propounded by opposing counsel develops a lead indicating a juror may not be impartial in his views or thinking. The juror's answer may reflect such a strong distaste for given circumstances as to make him completely unfair and unacceptable. It is not likely that the party in whose favor the juror's attitude slants will pursue a line of questioning designed to develop the bias of prejudice of the juror. Further examination may well disqualify the juror, perhaps not for cause, but for the proper exercise of the peremptory challenge. Full exploration of a questionable juror by the party who may be the receiver of the unfairness of the juror should not be denied when his counsel fully and in good faith previously interrogated the panel, but prejudicial information was not forthcoming until his adversary questioned the jury.

Barker, 239 So.2d at 113. Defense counsel was completely prohibited from questioning Prospective Juror Lewis McLeod (R2250), and this court should reverse Long's case for a new trial.

The prosecutor questioned McLeod about his beliefs regarding capital punishment and moved to excuse him for cause. (R2233-2249) Without affording defense counsel an opportunity to question the juror, the court granted a cause challenge. (R2250) McLeod's responses about his beliefs and ability to follow the law were, at best, equivocal. (R2233-2249) A basis for excusal for cause was not clear. See, Wainwright v. Witt, 469 U.S.___, 83 L.Ed.2d 841 (1985). Defense counsel should have been allowed to question and rehabilitate the juror. Ibid. at 856.

The prosecutor's inquiry of McLeod proceeded as follows:

> Q. In the event that based upon the evidence that's presented, you find either that the aggravating circumstances outweighs the mitigating circumstances, or, that there are no mitigating circumstances, and there are only aggravating circumstances, would you be able to recommend to the Judge a sentence of death in the electric chair?
>
> A. No.

(R2228)

* * *

> MR. VAN ALLEN: Mr. McLeod, in considering the penalty phase evidence and the instructions that the Judge will give to you, would you be able to maintain an open mind and follow the Judge's instructions that the penalty is in fact, one penalty that can be imposed is the death penalty.
>
> Would you be able to follow the law and maintain an open mind and consider the death penalty as an alternative?

A. I could maintain an open mind.

(R2238)

* * *

MR. VAN ALLEN: Do you understand that if there are no mitigating circumstances or there are no mitigating factors, but they are outweighed by the aggravating circumstances, then the appropriate recommendation should be death in the electric chair.

And in that regard, could you follow the law?

A. The recommendation can be the death penalty?

Q. Can be, and it should be if there are no mitigating circumstances, or if the aggravating circumstances outweigh the mitigating circumstances.

A. Okay, you're saying it should be?

Q. Yes, sir.

A. Okay.

Q. Yes, sir, that's the law; can you follow that law?

A. I can follow the law, that don't make me say that it would be the death penalty. It could be recommended to me.

(R2240-2241)

* * *

MR. VAN ALLEN: That means Mr. McLeod, your recommendation should be death, regardless of your scruples or principles concerning death in the electric chair, or the death penalty.

And under your oath in the second phase, you would be required to follow that law.

Now, no one here is asking you to change your mind about whatever feelings you have about the death penalty.

We don't expect you to.
The only thing we require of you, is that you would be able to follow the law.

A. Yes, I could follow the law.

Q. And if the law says that you, that under the circumstances that I have enumerated, that you should recommend the death penalty, would you follow the law:

A. The way it's put to me that what you're saying -- (interrupted)

Q. What the Judge is saying -- (interrupted)

A. That what all the evidence is pointing to outright murder, and you should follow the law and send this guy, or girl, to the chair?

Q. Okay -- (interrupted)

A. That's the way it comes across to me.

Q. That's correct -- (interrupted)

A. I could follow the law.

(R2242-2243)

* * *

A. Okay, before you ask the question, I'm going to say -- you said 'recommend', is it 'recommended' or 'directed'?

Q. It is recommended that you return that verdict to the -- no, it is directed. The law is, if there are aggravating circumstances and no mitigating circumstances, your responsibility, under your oath, is to return an advisory sentence of death in the electric chair. That's directed.
Now, your recommendation to the Judge is only advisory. He can follow or he doesn't have to follow it. It depends. There are laws that govern him also.

A. Right.

Q. So, my question to you is this, now,

in the event that you find that there are no mitigating circumstances, and only aggravating circumstances, could you follow the law and return a recommendation of death?

A. I guess I have to say, no.

(R2249)

The prosecutor's questions to the juror were less than clear. (R2233-2249) No less than eight times, objections were made to the prosecutor's questions. (2235-2249) The judge sustained some of the objections and noted that there was a lack of communication between the prosecutor and the juror. (R2245) Additionally, the prosecutor's clearest statement of the applicable law was still incomplete. He persisted in telling the juror that only a recommendation of death could be returned if the aggravating circumstances outweighed the mitigating circumstances. Florida capital sentencing law has not deprived a juror of the authority to recommend mercy. See, State v. Dixon, 283 So.2d 1 (Fla. 1973) Moreover, the fact that there are aggravating circumstances and no mitigating circumstances does not necessarily mean that death is always the appropriate penalty. Wilson v. State, ___So.2d___, 11 FLW 471 (Fla. 1986); Williams v. State, 386 So.2d 538 (Fla. 1980). The prosecutor was demanding that the juror commit to a vote for death if the aggravating circumstances outweighed the mitigating ones. The juror need only be able to consider death as a possible penalty to be qualified to serve. See, Witt, 83 L.Ed. 2d 841.

Faced with questions which asked for an absolute commitment, the juror nevertheless said he could follow the law and

keep an open mind. Not until the prosecutor's final question did the juror give an equivocal negative answer to the question of following the law, "I guess I have to say, no." (R2249)

The trial court should have allowed defense counsel to voir dire the prospective juror. He had the right and the duty to attempt to rehabilitate this juror, and a cause challenge should not have been granted before he had the opportunity to do so. This Court must reverse this case for a new trial.

ISSUE VIII

THE TRIAL COURT ERRED IN ALLOWING IN EVIDENCE IRRELEVANT REFERENCES SUGGESTING THAT LONG HAD COMMITTED OTHER HOMICIDES.

Evidence of a collateral crime is admissible if relevant to prove an issue at trial. §90.404 (2)(a) Fla.Stat.; Williams v. State, 110 So.2d 654 (Fla. 1959); Jackson v. State, 451 So.2d 458 (Fla.1984); Drake v. State, 400 So.2d 1217 (Fla.1981) However, even if relevant, there must be proof that the defendant was the perpetrator of the collateral crime; a mere suspicion is not enough. Green v. State, 190 So.2d 42,45 (Fla.1966); State v. Norris, 168 So.2d 541 (Fla. 1964); Dibble v. State, 347 So.2d 1096 (Fla. 2d DCA 1977). Two references admitted in Long's trial suggesting that he committed other homicides fails both of these tests. (R1681-1690, 2587-2588, 2657-2658) The trial court erred in admitting the evidence and in not granting Long's motion for mistrial. Long's constitutional right to due process and a fair trial has been denied. Amends. V, XIV, U.S. Const.; Art I, §9 Fla. Const.

The first incident occurred during the testimony of Linda Phethean. (R1679, 1681-1692) She testified to finding the victim's remains in the pasture. (R1679-1695) Part of her testimony proceeded as follows:

> Q. Did you have occasion to be riding with Ms. Linville November 6th, 1984, during the morning hours?
>
> A. Yes.
>
> Q. Anything unusual happen to you that morning?

A. We decided to ride up the dirt road.

Q. Brummell Road?

A. Brummell Road.

Q. What happened?

A. We smelled an odor and went to investigate it.

Q. Why, what odor did you smell? Why did you want to investigate it?

A. We smelled the odor of rotted material and with recent occurrences, we decided we would look around.

Q. What recent occurrences?

A. The murders of women in the area.

(R1681) Defense counsel objected and moved for a mistrial. (R1681-1690) The court denied the motion (1690) but gave a curative instruction. (R1690-1692)

The second problem arose during the playing of Long's tape recorded confession. (R2582-2592) Although Long confessed to several murders during the same interview, the irrelevant confessions were omitted. (R2653-2659) However, at one point, the detective was probing for information about a missing girl from Minnesota. (R2587-2588, 2657-2658)

[Detective] "Did she tell you her name?".

[Long] "No. Do you know her name?".

[Detective] "No, I don't.".

[Long] "She said she was from up north, Massachusetts maybe.".

[Detective] "What about Minnesota?".

[Long] "Maybe.". "Yeah, maybe Minnesota.".

[Detective] "They got a young girl missing from Minnesota --" (inaudible)

[Long] "She moved back and forth.".

[Detective] "How old was this girl?".

[Long] "Early twenties.".

[Detective] "That's a little old --.". "But I got some photographs I'll show you later if you want to look at them.". "Short blond hair?".

[Long] "Yeah, very blond. Very healthy.".

[Detective] "All I got is photographs.".

[Long] "You got it with you?".

[Detective] "No.".

[Long] "It may be her.".

(R2657-2658) Long had asked that this reference to the missing girl from Minnesota be deleted since it suggested Long committed another crime. (R2582-2592) The mere fact that the information came in the form of Long's own statements does not render it admissible. Jackson, 451 So.2d 458; Paul v. State, 340 So.2d 1249 (Fla. 3d DCA 1976); Curry v. State, 355 So.2d 462 (Fla. 2d DCA 1978).

Suggestions that Long may have been involved in other murders showed nothing but a propensity to commit crime. There was no proof that he had committed other murders in the area or murdered a girl from Minnesota. See, State v. Norris, 168 So.2d at 543. Even if he had committed such crimes, they had no evidentiary value to any issue in this trial. This Court must reverse this case for a new trial.

ISSUE IX

THE TRIAL COURT ERRED IN SENTENCING LONG TO DEATH, SINCE THE JURY'S RECOMMENDATION OF DEATH WAS TAINTED BY THE JURORS' KNOWLEDGE OF LONG'S OTHER PENDING MURDER CHARGES.

Aggravating circumstances are limited to those enumerated in Section 921.141(5), Florida Statutes. State v. Dixon, 283 So.2d 1,9 (Fla.1973). The list of circumstances does not include pending charges which have not resulted in a conviction; only a previous conviction for a violent felony qualifies. §921.141 (5)(b), Fla. Stat.; Elledge v. State, 346 So.2d 998 (Fla. 1977); Provence v. State, 337 So.2d 783 (Fla. 1976). A capital sentencing jury may not be apprised of pending charges as an aggravating circumstance via any method. Robinson v. State, 487 So.2d 1040 (Fla. 1986). "Hearing about other alleged crimes could damn a defendant in the jury's eyes and be excessively prejudicial." Ibid. at 1042.

At least two jurors had read or heard about Long's pending murder charges in Tampa. (R292,1177-1193,2327-2328,2352-2353) (See, Issue III, supra.) James Aldrich said he had, "read everything on it." (R1177) He knew Long was charged with a series of systematic murders. (R1187) When asked his opinion about what he read, Aldrich said, "Ouite frankly, I think they have got him, guilty." (R1193) Shirley Riegler had similar information about Long's pending charges (R2352) and was equivocal when asked if she could disregard that information. (R2353)

The jury's knowledge of Long's pending murder charges was tantamount to the jury's receiving evidence of a nonstatutory

aggravating circumstance. Long's death sentence based upon this jury's death recommendation is unconstitutional. Amends. V, VIII, XIV, U.S. Const. This Court must reverse the sentence and order a new sentencing trial with a new jury which has not been so prejudiced.

ISSUE X

THE TRIAL COURT ERRED IN SENTENCING LONG TO DEATH BECAUSE THE SENTENCING WEIGHING PROCESS INCLUDED IMPROPER AGGRAVATING CIRCUMSTANCES AND EXCLUDED EXISTING MITIGATING CIRCUMSTANCES, RENDERING THE DEATH SENTENCE UNCONSTITUTIONAL.

The trial court improperly applied Section 921.141 Florida Statutes in sentencing Long to death. This misapplication renders Long's death sentence unconstitutional under the Eighth and Fourteenth Amendments. See, Proffitt v. Florida, 428 U.S. 242 (1976); State v. Dixon, 283 So.2d 1 (Fla. 1973). Specific misapplications are addressed below:

A.

The Trial Court Erred In Finding That The Homicide Was Committed In A Cold, Calculated And Premeditated Manner Without Any Pretense Of Moral Or Legal Justification.

This Court has held that the cold, calculated and premeditated aggravating circumstance requires proof of something more than premeditation alone; a greater level of premeditation is necessary. §921.141 (5)(i) Fla.Stat.; Jent v. State, 408 So.2d 1024 (Fla. 1981); Combs v. State, 403 So.2d 418 (Fla. 1981). The circumstance is designed to reflect the mental state of the perpetrator. See, Mason v. State, 438 So.2d 374,379 (Fla. 1983).

Unrefuted evidence in this case establishes that Long was incapable of committing this homicide in a cold, calculated and premeditated manner without moral or legal justification. Both psychiatrists who examined him concurred on this conclusion. (R1918-1919,2064) Dr. Maher testified as follows:

Q. Now, with respect to the crime involving Virginia Johnson, in your opinion at the time Mr. Long did this was he operating with the mental intent that was cold, calculated, premeditated without any pretense of moral justification?

A. No, he was not. He was operating according to a mechanical response to a situation which was part reality, but more fantasy. Within his own head, he was reacting like a knee-jerking to something that happened. He did not and does not in that circumstance have the capacity to do something in a premeditated, calculating way. He has the capacity only to react as one might react if you touch something that's hot and you pull your hand away. He had only the capacity to act to something that was happening within his own distorted, sick mind, and in response to what he saw of the external world, that this woman had certain characteristics.

Q. Now, with respect to the situation mentioned, the pretense of moral justification, in his mind would he find any pretense of moral justification?

A. He's not capable of formulating any pretense of moral justification. It's not within his capacity to make a moral judgment. Making a moral judgment requires the foundation of having a concept of other people as real feeling creatures. Mr. Long doesn't have the capacity to do that. He can read in a book that it's not nice to do this or that or the other thing. He can know intellectually that if you twist somebody's arm, it hurts them, but he has, in order to form a moral judgment one needs to have an appreciation for the feelings of other human beings. He does not have that.

(R1918-1920)

The trial judge's findings failed to address Long's mental problems and how they affected this circumstance. Only the following appears in the order:

> There was not one scintilla of evidence that the Defendant committed the subject offense under the pretense of any justification or reason (no matter how deranged) other than committing the acts of kidnapping, sexual

> battery and finally murder by strangulation for no other purpose than simply to gratify his own lust and kill his victim.

(A2) (R357) There is no discussion of the enhanced form of premeditation required for this circumstance. There is no discussion of Long's inability to control his behavior. There is no discussion of Long's retarded moral and judgmental development. This factor cannot conscionably be applied to someone mentally incapable of making moral judgments and controlling his behavior.

The premeditation aggravating circumstance should not have been used in the sentencing process. Long's sentence is unconstitutionally infirm.

B.

The Trial Court Erred In Finding And Weighing As An Aggravating Circumstance That The Homicide Was Especially Heinous, Atrocious Or Cruel.

In State v. Dixon, 283 So.2d 1, (Fla. 1973), this Court defined the aggravating circumstance of especially heinous, atrocious or cruel and the type of crime which it was intended to characterize:

> It is our interpretation that heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies--the conscienceless or pitiless crime which is unnecessarily torturous to the victim.

Ibid. at 9. The trial court concluded that this circumstance applied in this case because the victim was kidnapped, tied and raped before being strangled. (A1-2)(R356-357)

Knowledge of impending death and strangulation can qualify a homicide as heinous, atrocious or cruel. E.g., Adams v. State, 412 So.2d 850,857 (Fla.1982); Alvord v. State, 322 So.2d 553 (Fla. 1975). However, the weight to be afforded this factor must be evaluated in light of the perpetrator's mental condition. E.g., Miller v. State, 373 So.2d 882 (Fla. 1979); Burch v. State, 343 So.2d 831 (Fla. 1977); Jones v. State, 332 So.2d 615 (Fla. 1976). Where there is a causal link between a defendant's mental condition and the crime, the heinous, atrocious or cruel factor is entitled to little weight. Ibid. Long's mental condition caused the crime in this case. (R1915-1920,2064-2065)(See, Issue X, C, infra). The trial court erred in failing to consider this fact when finding and assigning weight to the heinous, atrocious or cruel circumstance.

C.

The Trial Court Erred In Weighing The Mitigating Evidence Concerning Long's Impaired Mental Condition At The Time Of The Crime.

The sentencing judge refused to consider Long's mental condition as either a statutory, see, §921.141(6)(b) and (f), Fla. Stat., or nonstatutory mitigating circumstance. (A1-2)(R356-357) In Eddings v. Oklahoma, 455 U.S. 1 (1982), the United States Supreme Court held that a defendant's mental condition must be considered in sentencing. Failure to do so renders any death sentence unconstitutional. Amends. V, VIII, XIV, U.S. Const. While not compelled to find the existence of the statutory mitigating factors, the

court was required to consider the unrefuted evidence of Long's mental impairment as a nonstatutory mitigating factor. Eddings, 455 U.S. 1; Lockett v. Ohio, 438 U.S. 586 (1978); Songer v. State, 365 So.2d 696 (Fla. 1978).

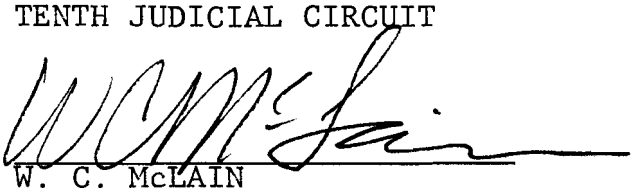
Both psychiatrists who examined Long agreed that he suffered from an extreme mental or emotional disturbance and that his capacity to appreciate the criminality of his conduct was substantially impaired. (R1895-1919, 2064) Moreover, Long had no control over his behavior once under emotional stress. (R1895-1919) His mental illness caused the crime. A sentencing decision which does not consider this factor simply cannot stand.

CONCLUSION

Upon the reasons presented in Issues I through VIII, ROBERT LONG asks this Court to reverse his case for a new trial. Alternatively, for the reasons expressed in Issues IX and X, Long asks this Court to reduce his death sentence to life imprisonment.

Respectfully submitted,

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy has been furnished to the Attorney General's Office, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this 6th day of October, 1986.

W. C. McLAIN