IN THE SUPREME COURT OF FLORIDA

ROBERT JOE LONG,

Appellant,

v.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 69,259

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

BRIEF OF APPELLEE

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JY/ctc

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PRELIMINARY STATEMENT

This is a direct appeal from a judgment of first-degree murder and sentence of death imposed by the Circuit Court for the Thirteenth Judicial Circuit, Hillsborough County, Florida. In this brief, the parties will be referred to by their proper names or as they stand before this Court. The letter "R" will be used to designate a reference to the record on appeal. All emphasis is supplied unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Appellee accepts the Statement of the case and facts set forth in the Brief of Appellant with the following exceptions and additions.

Appellee objects to Appellant's representations regarding the circumstances under which his confession was obtained. These matters are outside the scope of this record on appeal and are improperly cited by reference to the brief of Appellant in Long v. State, Florida Supreme Court Case No. 67,103. Neither the brief nor the record on appeal in that case has been made a part of the record proper in this case. Accordingly, any factual matters cited in Appellant's brief by reference to briefs or pleadings in Case No. 67,103 are not properly considered by the Court in this case.

Appellee specifically invites the Court's attention to the following facts:

At the hearing on December 11, 1985, Appellant made a showing of good cause sufficient to satisfy the trial court that the plea of guilty had been entered upon the basis of a misapprehension of the defendant. Accordingly, the trial court granted the Motion to Withdraw the plea of guilty. (R. 1632-1635). Defense counsel, apparently recognizing the implications of withdrawing the guilty plea with respect to the possibility of death sentences upon conviction in the other pending murder cases, requested a continuance to discuss the matter more fully with Appellant. (R. 1636-1639). The continuance was granted. (R. 1639).

On December 12, 1985, after conferring with counsel, Appellant elected to not withdraw his plea of guilty. (R. 1759). Upon inquiry by the Court, Appellant stated he had considered fully the implications of his decision, had confidence in the advise of counsel, and felt the decision to retain his guilty plea was in his best interest. (R. 1760-1761). Appellant stated he fully understood the sentences which would be imposed pursuant to the plea agreement. (R. 1761-1763). Appellant also stated that by pleading guilty, he was waiving any right to appeal the issue involving his confession. (R. 1763-1764). Finally, Appellant stated he understood and agreed that by

pleading guilty, he was in no way guaranteed the appearance and testimony of Dr. Helen Morrison at the sentencing phase of the trial. (R. 1764-1766).

At the sentencing phase trial, Appellant's confession was introduced and showed that Appellant picked up the victim, who he thought was a prostitute, and drove her to a warehouse area. (R. 579). There, he forced her at knifepoint to remove her clothing. (R. 579). He tied her up, drove her to another area where he forced her to have sexual intercourse with him. (R. 579). Appellant then drove his victim to a secluded area where he tried to strangle her with a rope. (R. 580). The girl would not go unconscious, so Appellant hit her over the head with a board. (R. 580). Still failing to render her unconcious, Appellant tried to strangle her again. (R. 580). Finally, Appellant produced a knife and slashed her throat, and threw her body into the woods. (R. 580).

Dr. Lee Miller, the medical examiner, testified that the victim's death could have been caused by asphyxiation, by trauma to the head, or by exsanguination. (R. 616-617). His examination revealed that the victim had been strangled with the ligature found around her neck, (R. 617-621), that she had suffered several blows to the head with a blunt object, (R. 621-625) and that her throat had been slashed causing extensive hemorrhaging. (R. 625-627). Dr. Lee opined that the victim was alive when

strangled, beaten on the head and when her throat was slashed. (R. 620, 624, 627). He further stated that after the strangulation and beating, she could still have been conscious, and if so, would have suffered pain as a result of the strangulation, beating, and cutting of her throat. (R. 620, 625, 627). Dr. Lee agreed that his examination and conclusions were consistent with the sequence of events established by Long's confession.

In its Order imposing death, the judge expressly gave consideration to the expert testimony presented by Appellant regarding his mental condition at the time of the offenses and found the mitigating circumstances to exist upon the basis of that evidence. However, the Court's limited finding of the mitigating circumstances did not dissuade the Court from its belief that prior to the commission of these crimes, Appellant was able to appreciate the criminality of his conduct, to control his behavior and to conform his conduct to the requirements of law. (R. 1495-1496). This finding is supported by the expert testimony of Dr. Daniel Sprehe and Dr. Arturo Gonzalez, both of whom stated that their analysis of Long indicated that Long exhibits patterns of an antisocial personality disorder. (R. 648-650, 1110-1113). Sprehe and Gonzalez both testified that in their opinion, Long had the capacity to appreciate the criminality of his conduct and the ability to control his behavior. (R. 653-655, 1114-1115). Sprehe further stated that Long told him one reason he killed the victim was to eliminate her as a witness to his crimes of kidnapping and rape. (R. 1116-1117).

SUMMARY OF THE ARGUMENT

Issue I:

The trial court granted Appellant's motion to withdraw guilty plea on the grounds that it was entered under the misapprehension that Appellant would be able to appeal the issue concerning the voluntariness of his confession. After consultation with his counsel, Appellant stated he wished to allow his plea to stand and that he was making this decision freely, voluntarily and with full understanding that in so doing, he was waiving any right to further contest the admissibility of his confession. It was therefore not an abuse of discretion for the trial court to deny Appellant's successive motion to withdraw plea filed seven months later. Appellant failed to establish that his earlier decision to continue in his plea of guilty was not made knowingly and voluntarily.

Issue II:

Appellant's confession and the knife found near his home were admissible at the penalty phase trial upon the basis of Appellant's plea agreement with the State, in which he expressly agreed not to contest their admissibility. Moreover, the record on appeal before this Court does not establish that the confession and knife were the product of any violation of Appellant's constitutional rights.

Issue III:

The trial court granted Appellant's motions for continuance twice upon the basis of Appellant's inability to secure the expert testimony of Dr. Helen Morrison, and to permit Appellant to secure another expert to testify on Appellant's behalf instead. Appellant had seven additional months to prepare. Appellant, at trial, was able to present the testimony of four experts in psychology and psychiatry to establish the mitigating circumstances regarding Appellant's mental condition at the time of the offenses. It was not an abuse of discretion for the trial court to deny Appellant's successive motion for continuance.

Issue IV:

The evidence at trial establishes the aggravating circumstances beyond a reasonable doubt. The decision whether a mitigating circumstance is proven and the weight to be given it and the various aggravating circumstances rests with the judge and jury. The trial court considered the evidence and found the existence of both aggravating and mitigating circumstances. The weight to be accorded each was a matter for the Court. The Court's conclusion that the aggravating outweighed the mitigating circumstances does not mean the Court failed to consider the

evidence or that its conclusion must be set aside simply because Appellant disagrees with it. Accordingly, the sentence must be affirmed.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S SECOND MOTION TO WITHDRAW PLEA.

Appellant contends that the trial court erred in denying his second Motion to Withdraw his plea of guilty. Withdrawal of the guilty plea is not a matter of right, but of discretion, and will not be set aside absent showing of abuse, and the defendant must show good cause for withdrawal of a guilty plea prior to imposition of sentence. Adler v. State, 382 So.2d 1298 (Fla. 3rd DCA 1980); Onnestad v. State, 404 So.2d 403 (Fla. 5th DCA 1981).

At the hearing on December 11, 1985, Appellant made a showing of good cause sufficient to satisfy the trial court that the plea of guilty had been entered upon the basis of a misapprehension of the defendant. Accordingly, the trial court granted the Motion to Withdraw the plea of guilty. (R. 1632-1635). Defense counsel, apparently recognizing the implications of withdrawing the guilty plea with respect to the possibility of death sentences upon conviction in the other pending murder cases, requested a continuance to discuss the matter more fully with Appellant. (R. 1636-1639). The

continuance was granted. (R. 1639).

On December 12, 1985, after conferring with counsel, Appellant elected to not withdraw his plea of guilty (R. 1759). Upon inquiry by the Court, Appellant stated he had considered fully the implications of his decision, had confidence in the advise of counsel, and felt the decision to retain his guilty plea was in his best interest. (R. 1760-1761). Appellant stated he fully understood the sentences which would be imposed pursuant to the plea agreement. (R. 1761-1763). Appellant also stated that by pleading guilty, he was waiving any right to appeal the issue involving his confession. (R. 1763-1764). Finally, Appellant stated he understood and agreed that by pleading guilty, he was in no way guaranteed the appearance and testimony of Dr. Helen Morrison at the sentencing phase of the trial. (R. 1764-1766).

The record clearly shows that the misapprehensions of Appellant raised on December 11, 1985 were brought to light, considered, and resolved with the assistance of counsel. Nothing in the record supports the conclusion urged by Appellant that on December 12, 1985, Appellant was still misinformed as to the nature and effect of his plea agreement with the State. In his brief, Appellant suggests that "it is extremely

doubtful" that Appellant's misapprehension could have been resolved within a twenty-four hour period. (Brief of Appellant at 16). This is pure speculation refuted by the record in which Appellant himself states his full understanding of the plea agreement and his desire to maintain his plea of guilty. Appellant was given the opportunity to withdraw his plea of guilty, and freely and voluntarily decided not to withdraw his plea, affirmatively stating on the record that he knew and understood the implications of his decision specifically with respect to challenging the admissibility of the confession. Accordingly, the trial court did not abuse its discretion by later denying Appellant's second motion to withdraw his guilty plea on the same grounds on July 8, 1986. As the State argued below Appellant, as part of the plea agreement he knowingly ratified on December 12, 1985, waived his right to contest the admissibility of any statements given law enforcement officers in this case. (R. 1669-1672). Appellant's decision to plead guilty after consultation and advice from counsel is a tactical one and may not be whimsically revoked at a later time. State v. Pinto, 273 So.2d 408 (Fla. 3rd DCA 1973).

Appellant's contention that the plea agreement was entered into inadvisedly is unsupported by this record on appeal

and is an improper attempt to raise on direct appeal a claim of ineffective assistance of counsel. An ineffective assistance claim clearly involves matters which are outside the scope of this record on appeal including circumstances under which the confession was obtained, the discussions between Appellant and his counsel on December 11th and 12th, 1985, and the strategic and tactical reasons for the decisions of Appellant and his counsel. Whether Appellant may have a claim upon a motion for post-conviction relief in the trial court on an ineffective assistance claim, and the State does not so concede, Appellant clearly cannot raise such a claim on direct appeal from his conviction upon the basis of this record. See, Kelley v. State, 486 So.2d 578 (Fla. 1986); Perri v. State, 441 So.2d 606 (Fla. 1983); State v. Barber, 301 So.2d 7 (Fla. 1974).

Appellant has failed to show any entitlement to relief upon his second motion to withdraw plea, and has wholly failed to show that the Court abused its discretion in denying the second motion, after Appellant had previously declined to change his plea when given the opportunity to do so. Accordingly, the conviction must be affirmed.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN ADMITTING APPELLANT'S CONFESSION AND THE KNIFE FOUND PURSUANT TO THE CONFESSION WHERE APPELLANT EXPRESSLY WAIVED HIS RIGHT TO CHALLENGE THE ADMISSIBILITY OF THE KNIFE AND CONFESSION IN THE PLEA AGREEMENT.

Appellant contends the trial court erred in admitting his confession and the knife found subsequent to the confession on grounds that the confession was obtained in violation of his Fifth Amendment right against self-incrimination.

The confession and knife were admitted pursuant to the plea agreement Appellant entered into with the State. Under that agreement, Appellant pled guilty and agreed to the following:

> 1. Defendant waives his right to contest the admissibility of any statements he has given law enforcement and such statements are admissible at the sentencing hearing in Case Number 84-13346-B if otherwise relevant;
>
> 2. Defendant waives his right to contest the admissibility of evidence seized from his car or at or near his apartment, and specifically waives his right to contest the admissibility of a knife found in a wooded area near his apartment in the sentencing hearing in Case Number 84-13346-B.
>
> (R. 1254).

In exchange, the State agreed to life sentences in seven other first-degree murder cases and agreed to seek the

death penalty in this case only. (R. 1252-1255). As stated in Issue I of this brief, the plea agreement was voluntarily and knowingly entered into by Appellant with full understanding that he was waiving his right to challenge the admissibility of the confession and physical evidence. Accordingly, Appellant's challenge to the admissibility of the confession and knife is improper and cannot be reviewed.

Moreover, Appellant seeks review of the admissibility of the confession and knife, not on the record on appeal in this case, but upon the basis of references to Appellant's brief in Long v. State, Florida Supreme Court Case No. 67,103, an appeal from a conviction for a Pasco County murder involving a victim named Virginia Johnson. This is totally improper. That brief is not a part of this record on appeal. Nor is the record on appeal referenced in that brief in Case No. 67,103 part of the record on appeal in this case. More importantly, the trial court in this case cannot be shown to have committed reversible error upon the basis of a brief asserting error in a ruling by a different judge in a different case in a different circuit on the admissibility of a confession to a different murder. There is nothing in the brief

or in the record on appeal in Case No. 67,103 that shows that a confession to the murder of the victim in this case was obtained in violation of Appellant's constitutional rights.

This record is simply devoid of an order of the trial court on the constitutionality of the confession by virtue of Appellant's plea agreement waiving any challenge of the confession's admissibility. Accordingly, there is no evidence or order for this Court to review on the constitutionality of the confession. The confession was properly admitted upon the basis of Appellant's plea agreement. Accordingly, the only issue for review in that regard is the voluntariness of Appellant's guilty plea. (Issue I). For the reasons set forth in Issue I, the plea agreement waiving the right to challenge the admission of the confession and physical evidence was knowingly and voluntarily entered into by Appellant.

ISSUE III

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR CONTINUANCE FOLLOWING GRANTING OF TWO PRIOR CONTINUANCES TO PERMIT APPELLANT TIME TO SECURE A PSYCHIATRIC EXPERT TO TESTIFY ON HIS BEHALF.

Appellant contends that the trial court erred in denying his motion for continuance .Appellant asserts that a continuance was necessary because of the unavailability of psychiatric expert Dr. Helen Morrison and to permit further evaluation of Appellant by Dr. Dorothy Lewis.

The granting or denial of a motion for continuance is within a Court's discretion and will not be overturned absent a palpable abuse of that discretion. Lusk v. State, 446 So.2d 1038 (Fla. 1984), cert. den., __U.S.__, 105 S.Ct. 229, 83 L.Ed.2d 158; Cooper v. State, 336 So.2d 1133 (Fla. 1976), cert. den., 431 U.S. 925, 97 S.Ct. 2200, 53 L.Ed.2d 239.

On December 12, 1985, the trial court granted Appellant's request for a continuance on the basis of the inability of Appellant to secure the appearance of Dr. Morrison. (R. 1771). The record reflects the efforts of the State, the defense and even the Court to contact Dr. Morrison who apparently refused to appear and testify after she examined Appellant. (R. 1766-1771).

Accordingly, the Court agreed to grant Appellant additional time to select or find a forensic psychologist who could testify professionally on Appellant's behalf. (R. 2771). The trial was set for the week of April 7, 1986. (R. 1771). On March 11, 1986, the trial court again granted Appellant's motion for continuance. (R. 1390). Appellant again moved for a continuance on July 10, 1986. (R. 1718-1721).

Appellant argued to the Court that it was still unable to secure the attendance of Dr. Morrison, and that Dr. Dorothy Lewis, who would testify instead, needed more time to examine Appellant in order to prepare to testify at trial. (R. 1719-1721, 1722-1723). The Court denied the motion for continuance. (R. 1729-1730).

Appellant has failed to show how the Court's ruling constituted an abuse of discretion. The Court had twice granted continuances previously, since the difficulties in securing the testimony of Dr. Morrison first arose in December, 1985. Appellant had seven months to obtain another expert and to have further tests completed to aid the expert in preparing to testify.

At trial, Dr. Lewis was in fact able to testify on Appellant's behalf and concluded that based upon a reasonable psychiatric certainty, Appellant had committed these series of rapes and murders while under the influence of extreme mental

or emotional disturbance and that Appellant did not have the capacity to conform his conduct to the law. (R. 807, 811). Moreover, Appellant was able to present testimony from Dr. Robert Berland, an expert in psychology, Dr. Kathleen Heidi, an expert in criminology and psychology and Dr. Walter Afield, an expert in psychiatry.

This case is distinguishable from Marshall v. State, 440 So.2d 638 (Fla. 1st DCA 1983), relied upon by Appellant, in that the experts sub judice were able to testify on Appellant's behalf, and were able to establish the existence of the mitigating circumstances Appellant sought to establish. In contrast, no experts in Marshall were able to testify to the defendant's competence to stand trial thereby necessitating a continuance to permit further examinations so that such a determination could be made.

Appellant has failed to show that the trial court abused its discretion in denying a third continuance upon the basis of Appellant's inability to secure the appearance of an out-of-state expert. See, Goss v. State, 398 So.2d 998 (Fla. 5th DCA 1981). Accordingly, the judgment should be affirmed.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN FINDING AND WEIGHING THE AGGRAVATING CIRCUMSTANCES IN IMPOSING THE SENTENCE OF DEATH IN ACCORDANCE WITH THE JURY'S RECOMMENDATION.

A. Especially Heinous, Atrocious or Cruel

Appellant contends that the trial court erred in finding and weighing the aggravating factor that the murder was especially heinous, atrocious or cruel. The record sub judice clearly supports the trial court's finding of this aggravating factor.

By Appellant's own confession, he picked up the victim, who he thought was a prostitute, and drove her to a warehouse area. (R. 579). There, he forced her at knifepoint to remove her clothing. (R. 579). He tied her up, drove her to another area where he forced her to have sexual intercourse with him. (R. 579). Appellant then drove his victim to a secluded area where he tried to strangle her with a rope. (R. 580). The girl would not go unconscious, so Appellant hit her over the head with a board. (R. 580). Still failing to render her unconcious, Appellant tried to strangle her again. (R. 580). Finally, Appellant produced a knife and slashed her throat, and threw her body into the woods. (R. 580).

Dr. Lee Miller, the medical examiner, testified that the victim's death could have been caused by asphyxiation, by trauma to the head, or by exsanguination. (R. 616-617). His examination revealed that the victim had been strangled with the ligature found around her neck, (R. 617-621), that she had suffered several blows to the head with a blunt object, (R. 621-625) and that her throat had been slashed causing extensive hemorrhaging. (R. 625-627). Dr. Lee opined that the victim was alive when strangled, beaten on the head and when her throat was slashed. (R. 620, 624, 627). He further stated that after the strangulation and beating, she could still have been conscious, and if so, would have suffered pain as a result of the strangulation, beating, and cutting of her throat. (R. 620, 625, 627). Dr. Lee agreed that his examination and conclusions were consistent with the sequence of events established by Long's confession. This evidence clearly is sufficient to support a finding that the murder of Michelle Denise Simms was especially heinous, atrocious and cruel. See, Delap v. State, 440 So.2d 1242 (Fla. 1983), Lemon v. State, 456 So.2d 885 (Fla. 1984). Death caused in the manner sub judice is the "conscienceless or pitiless crime which is unnecessarily torturous to the victim" and which warrants imposition of the death penalty. State v. Dixon, 283 So.2d 1, 9 (Fla. 1973). This is the type of outrageously wicked, shockingly evil and vile murder that defines

the aggravating factor of especially heinous, atrocious, or cruel.

Appellant also challenges the weight the trial court accorded the aggravating and mitigating circumstances. Appellant relies upon Burch v. State, 343 So.2d 831 (Fla. 1977); Jones v. State, 332 So.2d 615 (Fla. 1976); and Swan v. State, 322 So.2d 485 (Fla. 1975). Those cases do demonstrate that evidence regarding a defendant's mental state may be taken in mitigation. However, the greater emphasis in those cases was on the deference which should be accorded a jury's sentencing recommendation of life imprisonment. cf., Smith v. State, 407 So.2d 894 (Fla. 1981).

Appellant also relies upon Miller v. State, 373 So.2d 882 (Fla. 1979) and Huckaby v. State, 343 So.2d 29 (Fla. 1977). In Miller, the trial court erred by considering non-statutory aggravating circumstances. Huckaby is distinguishable from the instant case in that the trial court there ignored every aspect of the medical testimony and failed to recognize the existence of certain mitigating circumstances.

In the case sub judice, the Court specifically considered the medical testimony presented on Appellant's behalf and found that it adequately supported two mitigating circumstances. (R. 1495-1496). The Court, however, specifically found that the mitigating circumstances were not sufficient to offset the Court's

belief that before and until a certain point during the commission of the criminal acts against the victim, Appellant had full capacity to appreciate the criminality of his conduct and to conform his conduct to the requirements of law. (R. 1495-1496). Accordingly, the Court found that the statutory aggravating circumstances far outweigh the mitigating circumstances established including any other aspect of Appellant's character and any other circumstance of the offense. (R. 1496).

It is within the province of the trier of fact to weigh the evidence presented. The weight to be accorded the aggravating and mitigating circumstances is for the judge and jury, and cannot be disturbed simply because Appellant reaches a different conclusion from the evidence than did the judge or jury. Smith v. State, supra; Fitzpatrick v. State, 437 So.2d 1072 (Fla. 1983); Lucas v. State, 376 So.2d 1149 (Fla. 1979); Hargrave v. State, 366 So.2d 1 (Fla. 1978). Appellant has failed to establish error in this regard.

B. Cold, Calculated and Premeditated

Appellant also contends that the trial court erred in finding and weighing the aggravating circumstance that the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. Appellant

argues that the expert psychiatric testimony of his inability to control his behavior precludes the finding of cold calculation and premeditation. Again, the weight to be accorded this evidence is a matter for the trial judge and jury. Smith, supra; Fitzpatrick, supra; Hargrave, supra; Lucas, supra.

As stated above, the judge expressly gave the expert testimony consideration and found the mitigating circumstances to exist upon the basis of that evidence. However, the Court's limited finding of the mitigating circumstances did not dissuade the Court from its belief that prior to the commission of these crimes, Appellant was able to appreciate the criminality of his conduct, to control his behavior and to conform his conduct to the requirements of law. (R. 1495-1496). This finding is supported by the expert testimony of Dr. Daniel Sprehe and Dr. Arturo Gonzalez, both of whom stated that their analysis of Long indicated that Long exhibits patterns of an antisocial personality disorder. (R. 648-650, 1110-1113). Sprehe and Gonzalez both testified that in their opinion, Long had the capacity to appreciate the criminality of his conduct and the ability to control his behavior. (R. 653-655, 1114-1115). Sprehe further stated that Long told him one reason he killed the victim was to eliminate her as a witness to his crimes of kidnapping and rape. (R. 1116-1117).

The Court's finding of mitigating circumstances was not inconsistent with the trial court's finding that these crimes

were committed in a cold, calculated and premeditated manner. Specifically, the Court found this aggravating factor supported by evidence that prior to the murder and in preparation thereof, Appellant secured a supply of rope or cord and cut it into lengths appropriate for use to tie and immobilize his victim. (R. 1494, 657). Appellant also armed himself with a hunting knife eventually used to slash his victim's throat. Appellant then went in search of his victim, invited her into his car, stripped her, bound her with the rope prepared for that purpose and raped her. (R. 578-579). Appellant thereafter took his victim to another secluded area and proceeded to strangle her. (R. 579-580). Unable to affect her death in that manner, Appellant then repeatedly beat his victim on or about the head with a board and failing in this manner, slashed the victim's throat with his hunting knife. (R. 580).

Based upon this evidence, the Court properly found this aggravating circumstance proven beyond any reasonable doubt. (R. 1494). See e.g. Harich v. State, 437 So.2d 1082 (Fla. 1983). The relative weight to be accorded this and the other aggravating circumstances and the mitigating circumstances is within the domain of the trial judge and jury. There was nothing improper

in the conclusions reached by the trial court, and accordingly, its decision should not be disturbed.[1/]

1/ Appellant suggests that if Long's conviction in the Pasco County case is reversed by this Court, that such reversal would vitiate the aggravating factor that Long was previously convicted of another capital felony or a felony involving use or threat of violence to the person. This is incorrect, however, in that this aggravating circumstances was found by the Court to also be supported by evidence of Appellant's convictions for armed robbery, armed burglary, kidnapping and three counts of sexual battery in Pinellas County, Florida. (R. 1492).

CONCLUSION

WHEREFORE, based on the foregoing reasons, arguments and authorities, the Appellee would urge this Court to render an opinion affirming the judgment and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to DAVID M. RAPPAPORT, ESQUIRE, of Ellis Rubin Law Offices, P.A., 265 N.E. 26th Terrace, Miami, Florida 33137 on this 21st day of September, 1987.

Of Counsel for Appellee