IN THE SUPREME COURT OF FLORIDA

ROBERT JOE LONG,

Appellant,

v. Case No. 74,017

STATE OF FLORIDA,

Appellee.

BRIEF OF THE APPELLEE

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. LANDRY
Assistant Attorney General
2002 North Lois Avenue, Suite 700
Westwood Center
Tampa, Florida 33607
(813) 873-4739

OF COUNSEL FOR APPELLEE

TABLE OF CONTENTS

PAGE NO.

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Appellant was charged by indictment with the first degree murder of Virginia Johnson (R 2711). He was tried and convicted of that offense, received a death sentence and appealed to this Honorable Court. On November 12, 1987, this Court vacated the conviction and sentence and remanded for a new trial. Long v. State, 517 So.2d 664 (Fla. 1987).

The state's first witness, Sharon Martinez, testified that she knew Virginia Johnson from the Alamo Liquors' Lounge on Nebraska Avenue in Tampa where the witness worked. She described her as 5'5" tall, 135 lbs., a natural blonde with green eyes and well built (R 534). Virginia was a waitress, but she told her she had changed occupations. She was hitchhiking and making money from guys, prostitution, on Nebraska and Kennedy Avenue. She was an alcoholic (R 535). Martinez tried to dry her out. She saw her once on her return to Florida and Johnson said she was doing drugs and prostitution (R 536). Martinez last saw the victim on October of 1984 (R 537).

Alvin Terry Duggan knew Virginia Johnson and gave a description of her. The victim had a floating heart necklace and he had heard rumors of her prostitution (R 533, 534). He last saw her on October 11th or the 18th of 1984 walking to the Alamo Lounge to get her cigarettes (R 534). On one occasion, he took her to the County Health Department. Duggan showed Detective Hagan the room at her house where she stayed; her clothes and $90.00 were still there (R 545). Bernadine Herman was a public

health nurse with the Hillsborough County Health Department and is now an S.T.D. Clinician (R 549). She examined Virginia Johnson on October 15, 1984, and found she had gonorrhea (R 551). Johnson complained of vaginal itching and burning for approximately three weeks. She said she last had sex on the day before, October 14, 1984 (R 552). Johnson did not return (R 554). Linda Phethean has a horse farm and give riding lessons; she knows Candy Linville (R 559). On November 6, 1984, they smelled something dead, went to investigate and found parts of a body. For example: leg bone and foot bone (R 560). They showed their findings to the Sheriff's Office (R 561). Candy Linville was with Ms. Phethean when the bones were found (R 566 - 567).

Pasco County Deputy Sheriff Chris White responded on November 6, 1984, to a call off Brumwell Road in Zephyrhills, Pasco County (R 571). He talked to Ms. Phethean and Candy Linville. He described the bones that he found: a skull and upper torso (R 572). There was a scarf or type of cloth tied around the neck and a pair of womens' underwear (R 574). F.D.L.E. crime analyst Barbara Vohlken went to the scene on November 6, 1984 (R 578). She testified that grids were made of the area and described a package of hair mass, a pair of panties and a skull portion (R 584 - 589). Pasco County Sheriff's Officer, Sergeant Ken Hagin was at the crime scene and talked to Phethean and Linville (R 644). There was a darkened area where the victim was killed and hair and panties were there. Another area where they found part of the torso and skull and bones and

blouse and some ligatures (R 645). In addition, there was a shoe lace twisted around her neck. The witness also described a heart shaped pendant necklace and an earring (R 647). Hagin testified that the darkening in the area was caused from the body fluids going into the ground (R 648). He attended the autopsy that Dr. Wood performed on the bones (R 653). The victim was 5'5" tall, white (R 654). Hagin also,talked to Sharon Martinez and Terry Duggan (R 655). The victim was apparently a hooker (R 657). Hagin located Dentist Dr. Jack Gish (R 658). And, he delivered X-rays to forensic dentist Dr. Ken Martin (R 660). The victim was Virginia Johnson.

Karen Collins of the Pasco County Sheriff's Office was a detective in the Crimes Against Persons Division November 6, 1984. She stayed at the crime scene to make sure no one messed with the crime area (R 668). Other witnesses also testified that there had been no tampering with the crime scene area after the discovery of the bady (R 669 - 676).

Chief Medical Examiner Dr. Joan Woods went to the crime scene on November 6, 1984 (R 685). She found human banes and white underpants (R 686). Body fluids had leaked from the body as it decomposed and stained the grass (R 687). She estimated that the body had been dead from ten to fifteen days and the majority of that time the body was there in the field (R 687). Wood requested that all recovered remains be delivered to the Medical Examiner's Office (R 688). Dr. Wood described the evidence from examining the bones of the face and skull. They

were the remains of a white female. She could not find any injury to them caused prior to death. The only injury to the bones was some gnawing by animals (R 689). There was some cloth around the neck of the victim. The remains were x-rayed and Dr. Wood found no evidence of bullets, but did find a metal present, earring and a necklace (R 691). The shirt was a ribbed, knit tanktop stained by post-mortem fluid (R 692). The shoelace around the neck was tied twice and had a double knot tied like a leash over nine inches in length (R 692). Dr. Wood requested the use of dentist, Dr. Kenneth Martin, who reported to her no injury to the jaw or teeth (R 697). Dr. Wood also used Anthropologist Dr. Wienker (R 698). Dr. Wood gave an opinion that the cause of death was homicidal violence, probably garrotment (R 699). The victim had been found semi-nude in a field not in her county of residence, a shoe lace about her neck, evidence of shoelace used to bind writs and no other evidence of another type of injury (R 700).

Professor of anthropology and forensic expert Dr. Curtis Wienker (R 719 examined the remains and he indicated that the bones were from a Caucasian female age nineteen to twenty plus or minus one year, 5'5" tall (R 720). Dr. Gish, the victim's dentist, forwarded the records of Virginia Johnson to the Pasco County Sheriff's Office (R 724). Dr. Kenneth Martin the forensic dentist consultant examined the mandible at the Medical Examiner's Office on November 8, 1984 (R 727) and compared the post-mortem and antemortem x-rays of Virginia Johnson (R 729 - 730).

Lisa McVea Copeland lived in Tampa on November of 1984, at Rome and Sligh Avenue and worked at a doughnut shop (R 774). She was seventeen years of age when she was abducted at gunpoint on the way home from work at 2:00 or 2:30 a.m. (R 775). She was pulled from her bicycle and dragged to a car, she didn't see the kidnapper, was blindfolded and told to keep her eyes shut (R 726). Inside the car she was told to strip and did so (R 777). She was taken to an apartment in a maroon car with a white interior and spoke wheels. The word "Magnum" was on the dashboard. Her hands were tied but not very tightly. Inside the apartment she was raped numerous times and saw a gun (R 780). She wanted to cooperate with her assailant thinking he wouldn't kill her. Her assailant let her go, dropping her off in a parking lot (R 781). She described the assailant as having a mustache but not a beard; he told her that if she called the police to describe him as ugly with a beard. He had a pock marked face, small ears and brown hair (R 783). Additionally, the witness testified the assailant said, "I've done this to other girls." (R 791). He threatened to blow her brains out if she didn't stop screaming and he pointed a gun at her and had a knife (R 800).

Polly Goethe was a detective investigating sex crimes and child abuse at the Tampa Police Department in November of 1984. She interviewed seventeen year old Lisa McVea on November 4, 1984 (R 803). She received a description of the assailant and the vehicle. The F.B.I. advised that there were fibers found on

Lisa's clothing (R 805). Goethe looked for an A.T.M. machine where two motels in Tampa, the Quality Inn and the Howard Johnson's were located (R 806). She found a transaction had been made there at 3:49 at Florida National Bank. Later it was found that the owner of the P.I.N. number was Robert Joe Long (R 807). Goethe also learned that he owned a Dodge Magnum and they got an arrest warrant for Long (R 808).

Detective Charles Wolfe of the Tampa Police Department saw a red Dodge Magnum driving north on Nebraska Avenue on November 15, 1984. He had a general description of the driver (R 813) and the driver fit that description. Wolfe pulled the car aver and told him, the driver, that they were looking into a hit and run and that they were stopping all the red Dodge Magnums (R 814 - 816). The driver gave consent to take his photo and then allowed him to leave. They drove to the site where the driver had given as his residence and they observed the same vehicle there (R 817). Wolfe identified the defendant Bobby Joe Long in court (R 818). Corporal Carson Helms was also involved in the stop of Long's vehicle on November 14 - 15, 1984 (R 823). The exterior of the residence generally matched the description obtained from Detective Goethe (R 827).

Randy Latimer a Lieutenant with the Hillsborough County Sheriff's Office contacted Robert Joe Long on November 16, 1984. At the Sheriff's Office he talked to Long about the McVea kidnapping and rape (R 837). The defendant was given Miranda rights; there were no threats, no promises and defendant talked

about the offenses (R 839). Appellant admitted the kidnapping, the rape, the threat with a gun and returning her to her house (R 840). Hillsborough Detective Harold Winset participated in the arrest of Bobby Joe Long pursuant to an arrest warrant on November 16, 1984. As the defendant emerged from the theater, he was put on the ground in a parking lot (R 843), was given Miranda warnings and told of a search warrant for his vehicle (R 844). Detective Tom Muck, a homicide detective with the Pasco County Sheriff's Office, testified that no one tampered with the vehicle from the point of impound to the booking area (R 848). Hillsborough County Sheriff's Office Detective Steve Moore vacuumed the Long vehicle for evidence (R 851) and gave items to Steve Cribb (R 854). Detective Cribb assisted Goethe in obtaining the search warrants for the vehicle and the apartment (R 857) and the arrest warrant for rape and abduction. Cribb also received vacuum sweepings from Moore (R 861) and sent them to the F.B.I. lab (R 862).

Seventeen year old Jason Westerman was with a friend, Gregg Adams, on May 13, 1984, and found a dead body in a cow pasture. It was a young woman (R 865 - 866). Gregg Adams testified that he was with Jason Westerman at the discovery of a body with no clothing (R 868 - 869).

F.B.I. hair and fiber expert, Mike Malone identified state exhibit "A" as a hair sample from Virginia Johnson in November of 1984 (R 886). He compared hair samples from Long's vehicle with hairs from Virginia Johnson's head (R 890) and was able to find

one blonde hair of Caucasian origin. Each of the head hair from the front and rear were both forcibly removed and completely indistinguishable with no dissimilarity to Virginia Johnson (R 891). Also in the hair mass of Virginia Johnson was a single lustrous trilobal nylon carpet fiber identified as interior carpet from the Long vehicle (R 896). They had exactly the same characteristics (R 900). Malone testified that it was almost certain that the victim was in contact with the rug (R 903).

Ronnie James, a camera man for C.B.S. News filmed an interview conducted by Victoria Corderi with Bobby Joe Long that was aired on television December 26, 1986 and it was introduced into evidence (R 957 - 959). Hillsborough County Sheriff's Crime Technician Daniel McGill went to the location of a dead female body at Eastbay Road on May 14, 1984 (R 960). He used a plaster of paris for tire impression (R 961). At the crime scene the body of Lana Long was found (R 962). Latent print examiner and crime scene technician, Judy Swann, introduced a photo she took displaying the bindings on the body (R 966). Deputy Sheriff Arthur Pickard, crime scene technician investigated the Lana Long case and attended the autopsy. The rope and cloth taken from the wrist and hand area were described (R 971). John Corcoran knew Lana Long who was his fiance' (R 993). He identified her documents taken from her residence (R 995). Lana had worked at the Sly Fox (R 1000). Herman Lamar Golden, former owner of the Sly Fox Lounge, a dance bar, knew Lana Lang as an employee/dancer (R 1003). Deputy Medical Examiner Dr. Charles Digg performed an

autopsy on May 14, 1984, on Lana Long (R 1007). At the crime scene he saw a ligature around the neck, binding of the right and left upper extremities and ligatures behind the back, there was a space between the wrist. No other evidence of injury or ongoing disease process in Lana Long (R 1009). The cause of death was strangulation (R 1010).

Louie Jordan was a construction worker who discovered a body on May 27, 1984, north of 1-4 off of Parker Road (R 1017). Crime scene investigator Donald Hunt observed on May 27, a body that was mostly nude cut around the neck and head area, the arms were tied together and wearing a white jumpsuit with white pantyhose, laying in the limb of a tree (R 1022). Arthur Pickard identified a fingerprint card when he did the postmortem prints on the body (Michelle Simms) (R 1062). The fingerprints on the body were the same of Michelle Simms (R 1069). Associate Medical Examiner Lee Miller performed an autopsy on Michelle Simms (R 1073). At the crime scene on May 27, 1984, he observed the body of a semi-nude young woman lying on her back in a wooded area. Her hands were tied to her waist, her hands were trussed and her throat was cut. The body was fresh and had been dead for about twelve hours (R 1074). His autopsy revealed that the body was trussed or tied up while still alive. There were three different sets of injuries: (a) the throat had been cut several times deep enough to sever a large blood vessel and cause death; (b) five impacts of scalp and bleeding of the underlying brain; (c) injuries to the muscle of the neck aver the voice box. The victim had been strangled at or

near the point of death before she died (R 1075 - 1076). There were no natural diseases (R 1077). The cause of death were exsanguination, asphyxiation and closed head injuries (R 1077).

Carl Nehring discovered a body along with James Singleton on October 14, 1984, in Hillsborough County at Lake Thanatassa (R 1082). He saw a naked lady tied up and the victim was ultimately identified as Karen Dinsfriend. Dr. Miller autopsied Karen Dinsfriend on October 15, 1984. He was at the crime scene and observed the victim had been dead at least twelve hours, maybe more (R 1112). The body was dressed in a yellow short sleeved sweatshirt pulled around the waist. The lower legs were tied with rust colored cloth and appeared to be a bedspread. There were ligatures around the legs at the ankle. The hands were tied in front by wrist by red bandana in a square granny knot. There was a long white shoelace or length of cord appearing to be a shoelace passed in a single loop around the neck and tied to the right wrist. Marks on her neck produced by ligatures indicated they were there during life (R 1112). The cause of death was strangulation.

Drake Reed discovered a body on November 12, 1984 while putting up a billboard (R 1121). Noah Swann, the father of Kimberly Swann, reported his daughter missing on November the 11th or 12th (R 1123). She had a drug problem and it was not uncommon for her to be gone overnight or for a couple of days at a time (R 1124). Howard Smith of the Tampa Police Department went to the area off Orient Road on November 12, 1984, and

described the driver's license of Kimberly Swann (R 1132). Dr. Miller autopsied Kimberly Swann on November 12, 1984. The victim had been dead twelve to twenty-four hours (R 1148). There were ligature marks across the front of the neck, two marks indicating two loops (R 1149), no other trauma that could have caused death. The cause of death was strangulation (R 1151). F.B.I. Agent David Attenburger, recognized as an expert in the field of shoe and tire comparisons (R 1187) looked at the tire cast in the Lana Long case and the tire case in the Michelle Simms case (R 1193). As to the Long case a Vogue tire and Uniroyal tire could have made the tire impressions found near the place where the body was found (R 1197). As to the Simms case, a very unique tire on Long's car could have made the tire impressions found at the homicide scene (R 1201).

F.B.I. Agent Mike Malone testified that in addition to the evidence of the hair and fibers in the Virginia Johnson murder, he also received evidence in the case of Lana Long, Michelle Simms, Lisa McVea, Karen Dinsfriend and Kimberly Swann (R 1206 - 1207). The carpet fiber from the Lana Long scene was consistent with that from Bobby Joe Long's vehicle (R 1209 - 1211). On the carpeting interior of the defendant's vehicle was found one dark brown hair of mongoloid origin. Lana Long was originally Cambodian, a member of the mongoloid race (R 1212). This hair on the carpeting was forcibly removed and consistent with that of Lana Long (R 1213). The Virginia Johnson hair had also been forcibly removed (R 1215). Michelle Simms clothing was examined

and numerous fibers from the clothing of Michelle Simms were compared to those in the Bobby Joe Long vehicle (R 1220). Fiber from the thigh of the victim Michelle Simms matched perfectly the fibers of the defendant's vehicle (R 1221). He compared the Bobby Joe Long hair with the McVea clathing (R 1226). Fibers on the McVea clothing were the Same as fibers found in the Long murder case and the Simms murder case (R 1227). With respect to the Karen Dinsfriend case, Malone found fibers on the trunk molding and compared with fibers on the blanket wrapped around Dinsfriend's body (R 1228 - 1230). He found brown Caucasian pubic hair on Dinsfriend's blanket, but it was not hers. It had the same characteristics as Bobby Joe Long pubic hairs, "absolutely indistinguishable" (R 1231 - 1232). Fibers from the blue sweatsuit were a perfect match to two types of fibers found in Long's carpeting and to the fibers found in the Virginia Johnsons hair (R 1236) and the fibers from Michelle Simms, Lisa McVea, Lana Long and Virginia Johnson (R 1237). The forcibly removed head hair from trunk carpeting was consistent with the combings from Karen Dinsfriend (R 1237). With respect to Kimberly Swann, Malone examined her blue jeans and the red nylon carpet fibers matched the carpet of Long's vehicle. The same fibers on the Swann shirt and Swann body were the same as on other victims (R 1242). The fiber was made by the. same manufacture (R 1244). The witness testified that there were four independent events which led him to conclude that Virginia Johnson was almost certainly in the defendant Bobby Joe Long's

car (R **1245).** Lee Baker a Hillsborough County Sheriff's Officer was involved in the investigations of the Swann, Dinsfriend, Simms, Long, Virginia Johnson as well as the abduction of Lisa McVea (R 1253). A task force was formed between the Hillsborough County Tampa Police Department and Pasco County Sheriff's Office (R 1254). He noticed the similarity of the crime scene of Virginia Johnson to others, particularly that of Lana Long and Michelle Sims (R **1255).** These similarities included ligatures on the victims, similarity or location of open fields, isolated areas and female victims. His conclusion was that the killer was the same person **(R 1256 - 1257).** The Alamo Lounge was a place used for prostitution and his investigation revealed that Johnson, Swann, Dinsfriend and Long frequented the Nebraska Avenue area. Michelle Simms was involved in Kennedy Avenue, a twin sister to Nebraska Avenue (R **1258).** Lana Long was a semi-nude or nude dancer who operated on Nebraska out of the Sly Fox (like the Alamo Lounge) (R **1258).** Michelle Simms was new to the area and in the prostitution business for about twenty-four hours (R **1259).** **Karen** Dinsfriend was a well known prostitute and drug addict (R **1259).** Kimberly Swann was different. A girl who indulged in drinking and was very carefree, but not talking about being a prostitute. She was driving her vehicle before she disappeared and was last seen on Dale Mabry (R **1259, 1260).** Lisa McVea was a high school girl working at a doughnut shop and there was no indication of prostitution **(R 1260).** Officer **Baker** was aware of the red fibers found on some of the victims (R 1261 -

1262). The witness described the victims as nude, partially nude or partially clothed with their clothes thrown apart (Karen Dinsfriend, Kimberly Swann, Lana Long and Michelle Simms). Each were tied in one fashion or another and they were associated with strangulation (R **1263 - 1264).** On September **23, 1985,** the defendant admitted by a plea of guilty to the murder of Lana Long, Michelle Simms, Karen Dinsfriend, Kimberly Swann in Hillsborough County (R 1265 **- 1266).**

Defendant's motion for judgment of acquittal was denied (R **1277 - 1279).** The jury returned a guilty verdict (R 1425). At the penalty phase Corporal Lee Baker testified that the defendant entered pleas of guilty to four murders and four others for a total of eight (R **1499,** 1500). In addition there was the kidnapping and sexual battery conviction of victim Lisa McVea. The four murder victims in addition to those previously discussed in the guilt phase were Channel Williams, Kimberly Hopps, Ms. Loudenback and Vickie Elliott. Each were prostitutes killed in a like manner with cordage knots found in a similar area of Hillsborough County (R **1501).** The defendant plead guilty to kidnapping and five counts of sexual battery on Lisa McVea (R 1503).

Court bailiff Don Waugh in Pasco County testified that a judgment was entered on burglary, kidnapping, robbery and four counts of sexual battery on April **17, 1985** (R 1510). Detective Royce Wilson identified the judgment and conviction in Pinellas County for three sexual batteries, kidnapping and armed robbery

and armed burglary/assault (R **1519).** Raymond Palmer, **a** parole and probation officer for Bobby Joe Long testified that Long had been convicted for aggravated assault on Mary Hicks with firearm (R **1522).**

Louella Long, the mother of Bobby Joe Long, testified that she grew up in a small town in West Virginia and her dad died when she was two years of **age.** She married her husband Joe Long at age 16. The defendant is the only child of that union (R **1548 - 1551).** She separated from her husband when the defendant was eight months old, but she remarried her husband when the defendant was age seven (R **1552).** She described her life in which **she** said she was terrified by her stepfather and she had nervous problems that caused her to lose jobs (R **1557 - 1561). Mrs.** Long described the difficulties **she** had with her siblings and their husbands; they told her husband that she was a prostitute (R **1567 - 1569).** She described injuries to her son including falling down the stairs, falling from a swing on a tree, subsequently injuries received in a car accident **(R 1571 - 1572).** At age thirteen he had surgery because his breasts had started to enlarge (R **1574).** By **age** nineteen he sustained a **head** injury due to a motorcycle accident **(R 1575).** The witness described appellant's wife Cyndy **as** a very cold person (R **1577).** On cross examination the witness denied being a prostitute (R **1578)** and claimed she tried to be a good mother; she kept her job to make more money to support them. Her outfit made **her** feel like a tramp, but she took care of the defendant until he was eighteen years of age (R **1578 - 1580).**

Cindy Levy (Cynthia Jean Bartlett) met the defendant when she was thirteen or fourteen years old (R 1588). She noticed the scars from his breast surgery (R 1588). The witness had sex with appellant at age fifteen (R 1589). They married and had two children and she testified that appellant was involved in a motorcycle accident which resulted in a head injury. His sexual activity increased thereafter, sometimes three or four times a day (R 1593). She claimed that his temperament changed. He was always short tempered, but he started becoming physically violent with her and last patience with the children (R 1594). He complained of headaches and insomnia and got a big settlement for the 1974 accident (R 1595). The witness admitted she didn't get along well with appellant's mother Louella Long whom she described as a very pushy woman. Ms. Levy also testified that the defendant experimented with drugs during his teen years, including L.S.D., mescaline, T.H.C. and amphetamines when they were married (R 1597). Louella Long slept with a lot of people and appellant stated that he hated his mother (R 1599). The defendant also had a girlfriend named Barbara whom he wanted to marry (R 1600). On cross examination, the witness testified that appellant's breakup with Barbara apparently occurred at the time of the murders in March and April of 1984 (R 1602). She indicated that Long was always very active sexually (R 1607). He had a very good memory subsequent to the motorcycle accident and had an attitude that the world owed him. She acknowledged that even before the accident he had an attitude problem (R 1609). He

had a bad temper as a teenager and treated her badly. They finally divorced in 1980 (R 1611). After defendant's arrest appellant told her that he killed the girls in Tampa and "wish I were kidding but I'm not" (R 1613).

Psychiatrist Dr. Michael Maher was appointed to evaluate Bobby Joe Long in 1985 or 1986 by the court (R 1633). He got information about Long's childhood (R 1640), the mother had mental illness on her side of the family and he believed both mom and dad have mental illness (R 1643) and he opined that the relationship with appellant's mother did not develop in a positive healthy manner (R 1650). His conclusions were that the defendant has psychiatric illness from three sources (a) an inherited genetic risk factor present at birth; (b) an environmental developmental factors associated with life as a child and a young adult; and (3) brain injuries at age six and a motorcycle accident (R 1667). He opined that appellant has an affective disorder and also an organic brain impairment. Maher further opined that defendant was under the influence of extreme mental or emotional disturbance and capacity to conform to the requirements of law was massively diminished and his capacity to appreciate the criminality of his acts was diminished but he knew what he was doing was wrong (R 1670, 1671). Appellant is not insane legally, but is medically (R 1672).

On crass examination the witness stated that he was appointed to do a competency examination on the defendant and found Long competent to stand trial and able to assist his

counsel (R 1690 - 1691). Long knew right from wrong. Dr. Maher reviewed the police records and confessions and appellant acknowledged committing eight or nine murders and rapes in those cases plus at least a half a dozen others (R 1692). He had the V.A. Hospital records from 1974 to 1984 (R 1696) including the motorcycle accident claim. There were prolific correspondence by the defendant in those files (R 1697). The letters showed that the defendant's reasoning as to why he thinks his claim for money was justified (R 1699). Maher's nates also reflect Long's history including Los Angeles rapes in 1982 (R 1704). Long referred to himself as a classified ad rapist (R 1705). Long reported that many times a victim willingly submitted and enjoyed it. These victims were aged twelve to forty (R 1706). Defendant was attracted to very young girls in a way that was pathologically sick (R 1707) and Maher was sure that Long lied to him during his discussions (R 1707). There was no question that Long lies. Appellant lied regularly and consistently and had far his entire life. He doesn't have the capacity generally to determine what the truth is (R 1708). The witness added that he didn't think Long had a great deal of regard for the truth when he can determine what it is. Dr. Maher was absolutely sure that Long has committed murder and many rapes. Long described how he killed various girls (R 1710). The witness added that it was not a coincidence that most of his victims were prostitutes. Some victims he would rape, but not kill. Lisa McVea was not a prostitute and he let her go. A conscious decision was made not

to kill her (R 1713). Long tormented animals as a child R 1714). His view was consistent with Cynthia Barrett s observation that defendant had an attitude that everybody owes him (R 1714). The defendant said that a part of his pattern of behavior was that he thought about ways in which he hurt these people and injured them psychologically and emotionally. The witness believed that Long derived sick pleasure from knowledge he was hurting people while some others were simple fantasies and the two were mixed together in Long's report to him (R 1716). Long was the first serial killer that his witnesses had spoken to (R 1717). The witness acknowledged that other people have bad childhoods, motorcycle accidents and head injuries and don't become serial killers (R 1717 - 1720). An abnormal EEG does not prevent you from becoming a lawyer or a scientist or a judge (R 1722). Appellant's I.Q. was in the average/normal range (R 1723). The defendant's perception of himself are very distorted and self-centered (R 1724). The statement "that it doesn't bother me a bit to kill someone" sounds like that of Bobby Joe Long (R 1725). Appellant also mentioned in a letter about having the arresting officers killed and having hit men do them in (R 1727). The defendant wanted to delay judicial proceedings (R 1729). Appellant was aware the psychiatric testimony might be useful in his defense (R 1732). The witness did not believe that one of the motivations in killing the women was not to leave witnesses (R 1733). Dr. Maher described appellant's character disorder (R 1737, 1738).

Forensic psychologist Dr. Robert Berland also testified. His psychological testimony indicated that Long was psychotic (R 1800). There was no evidence of malingering or faking (R 1802). Initially Berland thought that appellant had a psychotic disturbance as a result of brain damage, then a year later it looked more like a bipolar disorder (R 1827). His psychosis seems to be a real antisocial personality disorder (R 1829). Berland opined that the two statutory mental mitigating factors were present (R 1829, 1830). On cross examination the witness admitted the defendant has a background of a sexual offender and his background influences predated his motorcycle accident (R 1837). Appellant said he hated women (sluts) (R 1838). He derived pleasure from their pain (R 1839). He loved to destroy people (R 1840). The defendant had a plan (R 1841). Berland found him to be a manipulator (R 1843), he has a character disorder (R 1844), he is dangerous (R 1846). His I.Q. of 118 is above the average (R 1849) and defendant appreciates the criminality of his acts (R 1850).

Dr. John Money was a specialist in psychoendochronology and sexology, dealing with hormones in sexology (R 1869). Dr. Money contacted appellant Long in August of 1987 and used the letters that they wrote to each other as diagnostic tools (R 1880). He also had a telephone call with defendant's mother and an the morning of his testimony he had an interview with the defendant. He gave an opinion that appellant was a paraphiliac (R 1883) and was in a Jeckle and Hyde fugue state (R 1894 - 1896). Dr. Money

believed that society should do research on Mr. Long (R 1916) and appellant has written to him interested in finding out what is wrong **(R 1918).**

On cross examination Dr. Money stated that he does not believe that Bobby Joe Long is a con artist (R 1919) and the witness was quite sure he is not being manipulated (R 1920). He has not observed any evidence of his being a manipulator with him. Dr. Money disagreed with Dr. Berland when he said the defendant is a liar (R 1921). The witness was paid travel expenses by Mr. Long's father (R 1925). Dr. Money had only talked to one other sexual murderer (R 1926). He did not review Long's V.A. file (R **1927).** He did not read the Raiford Prison files (R **1928).** He did not talk to Dr. Gonzalez or Dr. Sprehe, and spent only one and a quarter hours with Dr. Berland (R 1928). He spent one hour and forty-five minutes with Mr. Long (R 1928). The witness did not **read** the Long letter in which he said that he had done some cold blooded things that it didn't bother him to kill (R 1929). The witness didn't read, but heard that, Long also wrote letters planning to murder the police in this case (R **1929)** and added that the appellant might be boasting (R 1930). Dr. Maher **did** not believe.that we should kill **people** who are **sick.**

The state rebuttal witness/psychiatrist Dr. Daniel **Sprehe** interviewed the defendant, looked at his prison records and examined his V.A. file (R **1957** - 1961). He examined the defendant for three hours in 1985; gave a clinical psychiatric

exam, a clinical psychological interview and found no problems. The defendant was clear, very bright and had a high I.Q. (R 1966). Appellant discussed the murders of Johnson, Long, Simms, Swan, Elliott, Hopps, Dinsfriend, Loudenback and Williams and also said he committed other rapes (R **1967 - 1968).** Appellant has a long standing severe antisocial personality disorder and is competent. Long knew exactly what he was doing and was clearly able to control himself at those times. There is no extrinsic evidence whatsoever that he was psychotic (R **1968, 1969).** Appellant was not under the influence of extreme mental or emotional disturbance (R **1973);** his capacity to appreciate the criminality of his conduct was not substantially impaired (R 1974). Appellant displayed anger at women, is a very good manipulator and proud of his talent as a con artist. Sprehe also opined that appellant was a real escape risk (R 1975). Long is a dangerous serial killer and he did not classify him as sadistic (R **1978).** Appellant told Sprehe that a reason for killing these women was to remove witnesses (R **1978).**

Dr. Arturo Gonzalez was a psychiatrist that examined appellant **(R 2015, 2016).** Appellant mentioned many rapes in many cases (R **2019).** Gonzalez diagnosed him as an antisocial personality, not psychotic (R **2020).** This is not a mental illness (R 2021). Long was not under the influence of an extreme mental or emotional disturbance and his capacity to appreciate the criminality of his acts was not substantially impaired. He described Long as a manipulator and said it was apparent all over

the records and letters he had written. Long is a very dangerous individual (R 2022). Dr. Gonzalez found the videotape very significant, Long is not a sadist type (R 2024). Appellant had the ability to make choices and act upon them.

Clinical psychologist and neuropsychologist, Dr. Sidney Merin was asked to evaluate the Bobby Joe Long record (R 2061). Long preferred not to take his test after talking to an attorney. Dr. Merin had the letters of the defendant regarding escape and murdering investigating officers (R 2065). The witness gave appellant a neuropsychologist test (R 2066); his verbal I.Q. was 120 and composite I.Q. was 118 (R 2067). He was not able to discuss the murders with him. Merin diagnosed Long as an antisocial personality free of significant impairment of the brain (R 2068). Not only is Mr. Long bright, but he has an obsessive type of personality and he thinks a great deal (R 2068). He is not psychotic (R 2069). No evidence of such internal or emotional turmoil to justify a neurosis diagnosis (R 2069). Dr. Merin repeated that appellant was an antisocial personality (R 2070), was not under the influence of extreme mental or emotional disturbance; his capacity to appreciate the criminality of his conduct was not substantially impaired (R 2073). He described appellant's anger, bitterness and revenge (R 2075). Long had no compulsions; his primary motive was to get rid of witness (R 2076). Appellant is a manipulator and a very dangerous serial killer (R 2077 - 2080).

Following closing arguments by the state and the defense and the giving of penalty phase instructions, the jury returned with a recommendation of death by a vote of 9 - 3 (R 2187).

On March 2, 1989, the trial court announced its agreement with the jury recommendation and imposed a sentence of death and filed its findings in support of a death sentence (R 3799 - 3809). In terms of the aggravating factors outlined in F.S. 921.141, the trial court found that Mr. Long was previously convicted of several other capital felonies and the felonies involving the use or threat of violence to a person. F.S. 921.141(5)(b). Secondly, the trial court found that the murder was committed when Mr. Long was engaged in the crime of kidnapping. Florida Statute 921.141(5)(d). The victim Virginia Johnson's body was found in a wooded area in another county many miles north of the Tampa street from which she was picked up and she was bound and half naked. The trial court considered and rejected the state's contention that the murder was also committed while Long was engaged in the crime of sexual battery. Third, the trial court found that the homicide was especially heinous, atrocious and cruel. Florida Statute 921.141(5)(h). The medical examiner testified that Ms. Johnson was killed by strangulation which involved the victim's knowledge of impending death, extreme anxiety and pain. Fourth, the trial court,found that the murder was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. Florida Statute 921.141(5)(i). Long knew that

killing Virginia Johnson was wrong and he apparently did not even pretend that his motive was anything other than to satisfy his perverted desires. The trial court also found that there had been heightened premeditation in this case as Ms. Johnson was not the only victim of Mr. Long's activities. The court rejected the state's offer that the homicide of Ms. Johnson was for the purpose of avoiding or preventing a lawful arrest or eliminating a witness.

With respect to mitigating factors, the trial court's order recites that defense counsel argued that two mitigating circumstances apply to-wit: the murder was committed while under the influence of extreme mental or emotional disturbance. Florida Statute 921.141(6)(b) and that the capacity of Mr. Long to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired. Florida Statute 921.141(6)(f). The court noted that the nature of such mitigating circumstances, that expert psychological or psychiatric testimony could be of great help to the court and that there was a plethora of such expert testimony in the instant case. The trial court declared that after listening to the live testimony of Dr. Money and subsequently studying a transcript of that same testimony, the court considered the testimony of Dr. Money to have "no value whatsoever" (R 3804). The court found the opinion of Dr. Money to be a "obvious and abject example of psychological prostitution", however all of the other experts were very professional in their position. The court then

proceeded to review, analyze and summarize the testimony of the various expert witnesses. The trial court concluded and found that Mr. Long was not under the influence of extreme mental or emotional disturbance at the time he killed Virginia Johnson, nor was his capacity to appreciate the criminality of his conduct nor to conform his conduct to the requirements of law substantially impaired. The court was convinced beyond any reasonable doubt that Mr. Long killed Ms. Johnson because killing gave him some perverted pleasure (R 3808). Having found the presence of four aggravating circumstances to exist and no mitigating circumstances to exist, the court imposed a sentence of death.

The appeal follows.

ISSUE I

WHETHER APPELLANT WAS DENIED A FAIR TRIAL WHEN THE STATE WAS ALLOWED TO INTRODUCE A PORTION OF LONG'S VIDEOTAPED INTERVIEW WITH CBS.

The record reflects that trial began in the instant case with the voir dire examination commencing on October 31, 1988. After the first day of testimony on November 1, counsel for CBS, Inc. appeared to file a motion to quash two subpoenas, one by the state for news reporter Victoria Corderi (whom CBS sought to substitute a cameraman for -- the state did not oppose this substitution) and one by the defense for outtakes of the CBS interview with appellant Long. (R 597 - 598) The trial court denied the motion to quash subpoena. (R 613) The court opined that it would be important for the defense to look to the tapes to see if they were lifted out of context. (R 615) The court stated that it was ordering to be produced the statement the state intended to use and the surrounding statements -- not all the outtakes. (R 619 - 620)

Counsel for CBS informed the court it would seek review in the Second District Court of Appeal. (R 619)

On November 2, the court informed the parties that the Second District was requesting a response to the certiorari petition by the state and the defense on November 4. (R 763) The court repeated that the only grounds the defense would have to view the tapes was to see if they were lifted out of context so that other parts of the interview should be presented to make

clear the meaning of Mr. Long when he made his interview and that it would permit the state to put on the excerpts and if there were a problem it could be corrected later. The court declined to stay the proceedings unless ordered by the Second District. (R 767 - 68)

On November 3, the defense reviewed its request to reconsider its motion and not let the state put on tapes until the Second District ruled. (R 934) The defense also complained that the state was not going to show the entire CBS show that aired but only Long's statements. The state responded that the remainder of the program was not relevant -- dealing with medical testimony that might be appropriate in the penalty phase not guilt phase and contained hearsay statements of other people. (R 939)

The court ruled that the state was seeking to introduce Long's statements against interest and the court wondered how the context in which they were broadcast was relevant (as opposed to the context in which the statements were made). (R 941)

A discussion ensued as to what should be allowed and what disallowed in the tape viewed by the jury. (R 943 - 953) The videotape was published to the court (R 944) and the court agreed with the defense that Long's statement about probably destroying a hundred people was too prejudicial (R 945, 949) and Long's statement, "I don't know why I did it." would be admissible as the defense desired. (R 951) The tape of the portion of the interview was introduced as Exhibit 24 and played to the jury. (R 959)

The state rested its case on November 4, 1988, prior to any ruling by the Second District Court of Appeal. (R 1273 - 74)

On November 7, CBS informed the court that they had been advised orally on the previous Friday by the Clerk of the Second District that the order requiring production of the outtakes would be issued today and that now the Clerk had advised that no opinion or decision was yet rendered and that counsel for CBS desired not to produce the tapes without an opinion on his petition. (R 1322 - 23) CBS announced it had the tapes available and the court ordered the tapes shown to both the state and the defense (R 1324) and the thirteen minute tape was published to the court and the parties. (R 1329)[1]

The defense objected and moved to strike the portion of the tape previously admitted and announced that it did not desire the court to present any additional tape material to the jury. The court responded that the only reason it ordered the tapes produced was to see if other parts of Long's statement should have been admitted under *F.S. 90.108* and that the defense gat enough of the tape to determine its context. (R 1331 - 1332) Closing arguments in the case were then given and the jury returned its guilty verdict. (R 1425)

---

[1] The trial court also stated that it would accept the tape as a state exhibit not in evidence. (R 1329)

On November 7, 1988, the Second District Court of Appeal issued its opinion in CBS, Inc. v. Cobb, 536 So.2d 1067 (Fla. 1988).

On November 8 -- during the penalty phase -- the state introduced the additional tape recording of the defendant into evidence as Exhibit P-7. (R 1526 - 28)[2]

Appellant complains that the defense was thwarted in its attempt to obtain the entire videotape (pretrial, trial and penalty phase). Long filed a pretrial motion in limine to prohibit the state from introducing into evidence the televised portion of the Corderi interview with appellant Long. (R 3527 - 28) At a hearing on pretrial motions October 24, 1988, the defense argued that it had been provided what the state attorney had and there was a one and one-half hour interview taken out of context. (R 2247) The prosecutor responded that what the state had was an admission by Long concerning the deaths of women in Hillsborough County and declined to accept Long's representation that the interview lasted an hour and a half. (R 2248) The court granted appellant's motion for subpoena decues tecum and ruled that the motion to preclude admission was premature. (R 2248)

---

[2] Appellant has supplemented the record with a transcript of the Exhibit P-7 tape. (R 4053 - 4064)

Thereafter, prior to the issuance of the Second District's opinion on the certiorari petition and prior to closing argument, counsel for CBS informed the trial court:

> " . . . we would make the tapes available to them in light that you were not inclined to wait for the Second District Court of Appeal to rule on the petition."
>
> **(R 1323)**

When the trial court announced that it was not inclined to wait, CBS' counsel interjected:

> "We'll make the tapes available immediately, Your Honor."
>
> **(R 1323)**

He acknowledged there were approximately an hour and a half of them. (R 1324) Defense counsel then argued the tapes were work product until the defense chose to put them on. The court denied that they were work product, saw no reason to delay the trial and suggested that all use the prosecutor's equipment to view the tape. Defense counsel then complained that CBS had made an agreement with prior counsel Ellis Rubin and CBS denied there was any such agreement. (R 1325) Counsel for CBS inquired whether the court desired only the context outtakes or the entire outtakes and the court responded either one and CBS announced it would produce the context tapes (Defense counsel at this point did not urge that the entire out takes were required). The court announced it would recess the jury until 11:00 everyone should review the tapes and then be ready to go. (R 1326 - 27) When the tape was ready, the court reviewed with the parties the

thirteen minute context tape and the defense observed that the entire tape was not produced. (R 1328 - 29)

When the defense objected thereafter, the trial court commented that it had previously ruled that the tapes be produced to determine if other portions needed to be admitted under F.S. 90.108 and that enough of the tape had been played to determine the context of appellant's admission and denied the motion to strike. (R 1331 - 32) Appellant did not want this tape played to the jury. (R 1331)

Appellant relies at length on CBS, Inc. v. Cobb, 536 So.2d 1067 (Fla. 2d DCA 1988), which in essence sustained the trial court's determination that CBS should turn over the outtakes, And although apparently either the Second District ruling did not emanate before the conclusion of the guilt phase -- at least no one, it seems, called the trial court's attention to the ruling -- appellee does not regard it as requiring reversal in the case sub judice.

Appellant, after having reviewed the 'context outtakes" prior to the closing arguments informed the court that he did not want any of it presented to the jury thus satisfying the concern of the trial court -- and presumably appellant -- that the excerpt provided in the state's case was not taken out of context. And quite apart from the sound and fury presented below that the material was provided too late or not in a manner desired by Long, the simple fact is that the brief material on the tape presented by the state in the videotape playing of

Exhibit 24 was essentially innocuous and cumulative to the other evidence presented. The statements on the tape:

> "It was just like A, B, C, D
>
> * * *
>
> I'd pull over, they'd get in. I'd drive a little ways, stop, pull a knife, a gun, whatever, tie them up, take them out. And that would be it. And the worst thing is I don't Understand why, I don't understand why."

(R 950)

cannot be deemed unduly prejudicial since the jury was about to hear anyway that appellant Long had entered a guilty plea to the similar slayings of Lana Long, Michelle Simms, Karen Dinsfriend and Kimberly Swann (R 1265 - 1266) as well as testimony from medical examiners and investigating officers as to the discovery of such victims and their cause of death.

Finally, it should be apparent that even if the court deems the introduction of the videotape interview between Long and CBS, correspondent Victoria Corderi at the penalty phase to have been error, it is clearly harmless error A review of the transcript of that interview -- Exhibit P 7 (R 4053 - 4064) -- reveals nothing more damaging to the appellant than the previously-admitted evidence at the guilt phase regarding appellant's admitted killings, via guilty plea, of victims Lana Long. Michelle Simms, Karen Dinsfriend and Kimberly Swann (R 265 - 66) and the additional evidence disclosed at penalty phase that appellant also had plead guilty to the murders of Channel

Williams, Kimberly Hopps, Ms. Loudenback and Vickie Elliott as well as multiple counts of sexual battery on Lisa McVey. (R 1501 - 1503) Before being exposed to this taped interview the jury had become aware that Long was a rapist and killed eight women. He certainly was not damaged by his admission to Ms. Corderi that:

> "I figured it was so obvious there's something wrong with me, that when they did catch me, that they would fix me. But I learned real quick nobody gives a damn.''
>
> (4054)

Or:

> Q. What do you think about the victims?
>
> A. I think that it's really just -- it's sad what happened to them and that I could do something like that to somebody. All the victims, all of them -- you know, and you're talking about a lot of them -- a lot. A lot of lives have just gone right down the tubes because of me, you know, in one way or another. And it's not a good feeling. It's not a pleasant feeling. I'm not proud of anything I've done.
>
> And the worst thing is, I don't understand why, I don't understand why. When the rapes started I was married to a very cute little girl. We had no problems with sex or anything like that.
>
> Why? I don't know why.
>
> (R 4055)

Or:

> " . . . I know that's probably real hard to believe, but believe it or not, I was not enjoying any of this stuff -- any of it.''
>
> (R 4058)

If anything they are self-serving statements designed to elicit sympathy.

Appellant next contends that his constitutional rights were denied when the state was allowed to introduce excerpts of the CBS videotape while the defense was denied access to the complete unedited interview. It is not entirely accurate to say that appellant was denied access to the complete unedited interview.

Appellant had certainly what the state had, i.e., the portion of the interview Long had given to CBS which was aired to the public in December, 1986 -- a short excerpt with which he picked up his victim and killed them and didn't now why he did it. (R 950 - 951) At the risk of repetition, appellee reasserts that this videotaped admission against interest adds little -- certainly nothing of any substantial prejudice to the defendant -- to the remaining evidence adduced including the testimony of law enforcement officers and medical personnel regarding the circumstances of the crimes and cause of death to victims Lana Long, Simms, Dinsfriend and Swann to which appellant had entered guilty pleas.

While it may be true that CBS did not provide the outtakes until a later point in the litigation, choosing instead to urge review of its position in the Second District Court of Appeal and that the Second District did not issue its opinion until November 7, 1988 -- the state had rested its case on Friday, November 4, 1988 (R 1273) -- it is also true that appellant's trial counsel indicated even before viewing the outtakes (R 1322) and certainly

after reviewing the context outtakes (R 1331) that it was not desirable to present to the jury any additional tape materials. The trial court determined that fairness had been accorded the accused, that enough of the tape had been reviewed to determine the context of Long's statements to CBS. (R 1332).

Error if any is harmless. ***See***, Hayes v. State, 581 So.2d **121 (Fla. 1991)**; Reichman v. State, 581 So.2d **133** (Fla. 1991); Burns v. State, ___ So.2d ___, 16 **F.L.W. S389** (Fla. **1991)**; Capehart v. State, 583 So.2d 1009, 16 **F.L.W. S447** (Fla. **1991)**; Omelus v. State, **584** So.2d 563 (Fla. 1991); Craig v. State, 585 So.2d 278 (Fla. 1991).

Appellant's final claim on this point is that **CBS** had no privilege to withhold the outtakes, citing such cases as CBS, Inc. v. Cobb, 536 So.2d 1067 (Fla. 2d DCA **1988**), **CBS, Inc. v.** Jackson, 578 So.2d 698 (Fla. 1991) and Miami Herald Publishing Co. v. Morejon, 561 So.2d 577 (Fla. 1990). In Cobb, supra, the Second District Court of Appeal recognized a limited or qualified privilege for journalists, assumed that some privilege attached to the **CBS** outtakes but that the trial court had correctly ruled that such material should be made available to the defense under the circumstances presented. In Morejon, supra, this Court held:

> " . that there is no privilege, qualified, limited, or otherwise, which protects journalists from testifying as to their eyewitness observations of a relevant event in a subsequent court proceeding."
>
> (561 So.2d at 580)

In Jackson, supra, this Court again rejected the assertion of the presence of a qualified press privilege where the defense sought via discovery untelevised CBS videotapes depicting the arrest of the defendant.

Appellee notes that both Jackson and Morejon were decided years after the Long trial and even the Cobb decision ruling apparently was issued after the state had rested its case in the Long prosecution. We need not be long detained, however, by any lengthy discussion on the arcane topic of the rights and responsibilities of the news media in the courts. The fact remains that the trial court ruled that CBS was required to furnish the material surrounding the admissions of Long to determine whether the state's excerpts were being taken out of context, the trial court's ruling was sustained by the Second District Court of Appeal in Cobb, supra, and when CBS did provide the outtakes to the parties below thereafter, appellant made the choice that it did not desire to present additional tape material to the jury. (R 1331)

ISSUE II

WHETHER APPELLANT WAS DENIED A FAIR TRIAL BECAUSE THE PROSECUTOR ALLEGEDLY MADE EVIDENCE OF OTHER CRIMES THE FEATURE OF THE TRIAL.

Appellant contends that the prosecution made evidence of Long's other crimes the overwhelming feature of the trial, dwarfing the evidence of the offense charged -- the murder of Virginia Johnson. He argues that there is no direct evidence that appellant killed Virginia Johnson and that the only circumstantial evidence -- apart from collateral crimes -- consisted of a single fiber and two head hairs and complains of the volume of testimony relating to the collateral offenses.

While it is true that a number of witnesses testified regarding Bobby Joe Long's involvement in four other murders (victims Lana Long, Michelle Simms, Karen Dinsfriend and Kimberly Swann) and the kidnapping-sexual battery of Lisa McVey Copeland, it is also true that the evidence presented in such matters appropriately demonstrated Long's culpability in the Virginia Johnson murder and the evidence did not descend to a mere character assault on the appellant.

The record reflects in Volumes IV and V that all the witnesses who testified pertained to the Virginia Johnson homicide. Sharon Martinez and Alvin Terry Dugan were friends of victim Virginia Johnson -- R 533 - 546; Bernandene Hermann a nurse who once treated her, Linda Phethean and Candy Linville discovered the remains -- R 549 - 567; law enforcement personnel

Chris White, Barbara Vihlken, Sergeant Hagin, Karen Collins, deputy sheriff Tom Maston, Janice Baker, John Jerkins, Barry Arnew all testified to their participation in the investigation -- R 571 - 576. Dr. Joan Wood, the Chief Medical Examiner in Pasco County, and forensic experts Dr. Curtis Wienker, Dr. Jack Ginn and Dr. Kenneth Martin utilized their expertise in the identification of victim Virginia Johnson. (R 682 - 730)

Testimony was adduced from Lisa McVey Capeland, Detective Polly Goeth, Detective Charles Wolfe, Corporal Helms, Officer Latimer, Detective Winset, detectives Muck, Moore and Cribb pertaining to the investigation, arrest and subsequent searches of Long's property. (R 774 - 802)

F.B.I. hair and fiber expert Mike Malone testified concerning the hair samples of Virginia Johnson and the carpet fiber in Long's vehicle. (R 877 - **915)**

Thereafter the state introduced brief testimony relating to the discovery of the body investigation and autopsy result in the Lana Long **case** (R 960 - 1015), the discovery of Michelle Simms and the evidence in her case (**R** 1017 - 1077) the discovery of the body and autopsy results in the Karen Dinsfriend **case** (R 1082 - **1113)** and the evidence relating to the Kimberly Swann homicide. (R 1120 - 1151) F.B.I. Agent Attenberger made tire comparisons of the Long vehicle with tire marks made at the Long and Simms' sites and Agent Malone was recalled to describe his conclusions of the hair and fiber samples in Long's vehicle with those on the victims. (R **1185 - 1201**; 1206 - 45)

Detective Baker testified that appellant Long had entered guilty pleas to the murders of Lana Long, Michelle Simms, Karen Dinsfriend and Kimberly Swann. (R 1265 - 1266)

Appellant's complaint that too much volume of testimony was adduced relating to Long's collateral offenses must fail. In Wilson v. State, 330 So.2d 457 (Fla. 1976), this Court approved the introduction of six hundred pages of transcript pointing to separate crimes by the defendant. See also Headrick v. State, 240 So.2d 203 (Fla. 2d DCA 1990) (nine witnesses called to establish six other burglaries); Stano v. State, 473 So.2d 1282 (Fla. 1985) (evidence detailing eight other homicides in sentencing proceedings); Burr v. State, 466 So.2d 1051 (Fla. 1985) (evidence of three other incidents); Snowden v. State, 573 So.2d 1383 (Fla. 3d DCA 1989) (more is required for reversal than showing that evidence is voluminous); see also, Townsend v. State, 420 So.2d 615 (Fla. 1982) (collateral evidence was not an impermissible feature although twice as many pages of testimony related to other crimes). In the instant case, although there was evidence introduced perta ning to collateral offenses for five other victims, the evidence did not become an impermissible feature transcending the bounds of relevance to the charge being tried. The evidence presented was not unduly prolonged, the jury was repeatedly instructed as to the limited nature and purpose of such evidence, and, significantly, the testimony of the pattern of appellant Long in seeking out and killing prostitutes or ladies of the evening and the testimony of hair and fiber

specialist Malone establishes not merely that Long had a bad character but that it was he who murdered Virginia Johnson (as well as the other victims about whom he had previously pled). See Malone testimony describing the blonde head hair found in appellant's vehicle indistinguishable from that of Virginal Johnson, the trilobal nylon carpet fiber in Virginia Johnson's hair mass identified as exactly the same characteristics as the interior carpet from Long's vehicle (R 886 - 9010 and his testimony that the hair fibers of Lana Long, Michelle Simms and Virginia Johnson were all forcibly removed in appellant's vehicle. (R 1206 - 1245)

Appellant cites Scott v. State, ___ So.2d ___, 16 F.L.W. S416 (Fla. 1991) and Cox v. State, 555 So.2d 352 (Fla. 1989). The instant case does not suffer from the time delay problems mentioned in the Scott case. Quite apart from what the difficulties experienced by the expert in Scott -- including the fact that the results from sweepings fro the car to textile fibers that came form the victim's clothing and these results were negative -- 16 F.L.W. S418, the testimony of Agent Malone is startlingly different. He testified that he compared the known hair samples from Virginia Johnson with sweepings taken from the front and rear area of appellant Long's vehicle and was able to match them "in all microscopic characteristics." They, were completely indistinguishable with no dissimilarity. (R 890 - 91) Also in the hair mass from Virginia Johnson he found a single trilobal nylon carpet fiber (R 896) which had exactly the same

characteristics as the lustrous fiber found in the carpet of appellant's vehicle. (R 900) The absorption curve on the microspectro photometer was exactly the same. (R 900) It was the same dye made by the same manufacturer. (R 901)

He concluded that almost certainly Virginia Johnson was in contact with that rug. (R 903) Malone returned to the stand and explained his review of the evidence in the McVey, Simms, Dinsfriend, Lana Long and Kim Swann cases. (R 11207) The same two independent events described in the Virginia Johnson matter were also applicable in the Lana Long case (R 1213), in the Michelle Simms case. (R 1222) The fibers on Lisa McVey's clothing were the same as the fibers found in the Long and Simms cases. (R 1227) The public hair from Karen Dinsfriend's blanket had exactly the same characteristics as appellant's pubic hairs. (R 1232) The carpet fibers that came from appellant's vehicle were the same as that found from McVey, Long, Simms, Dinsfriend and Virginia Johnson and Swann. (R 1242 - 43) With the six cases discussed, Malone had a total of fourteen separate hair and fiber transfers, independent events; he concluded appellant and Virginia Johnson were in the same maroon car. (R 1246 - 47)

ISSUE III

WHETHER **THE TRIAL COURT ERRED REVERSIBLY IN ALLOWING THE STATE TO INTRODUCE WILLIAMS RULE EVIDENCE REGARDING THE KIDNAPPING AND SEXUAL BATTERY OF LISA McVEY.**

Appellant next complains that the trial court at a pretrial hearing in August, 1988, indicated that it would exclude the McVey evidence on lack of similarity (R 2633 - 34), but that subsequently on October 24, 1988, the trial court denied a defense motion in limine when the prosecutor represented that he intended to introduce the McVey criminal episode to show how appellant was arrested **(R** 2216 **- 2236)** and thereafter permitted McVey and others to describe the circumstances and details of her encounter with appellant Long.

The record reflects that when initially considering the admissibility of evidence of the Lisa McVey crime on defendant's motion to exclude evidence of "similar fact" crimes, the trial court indicated that McVey was dissimilar because no homicide was involved, but added the testimony might be admissible for another purpose. (R 2633 - 2638) At the hearing on October 24, 1988, defense counsel represented that the state had previously announced it was not ready to argue the motion and that the defense was now urging that evidence of the kidnapping and sexual battery of Lisa McVey be excluded. (R 2213 - 16) The prosecutor responded that they didn't intend to use **the** McVey case as "pure Williams-rule" but that the facts af the McVey incident were useful to demonstrate how Long was arrested; he claimed that it

was relevant to demonstrate how he picked up his victim, his identity, and the retrieval of the hair and fiber evidence that followed the McVey incident. (R 2216 - 18)

The trial court ruled adversely to appellant, noting that Williams-rule evidence was broader than "similar fact evidence". (R 2235) In Bryan v. State, 533 So.2d 744 (Fla. 1988), this Court found no reversible error in the introduction of the two dissimilar crimes where relevancy to an issue at trial was established. The Court stated:

> During its case-in-chief, the state introduced evidence which revealed that appellant had committed a bank robbery in late May 1983, approximately three months prior to the crimes here, and had stolen a boat in Gulf Breeze, approximately one week prior to the instant crimes. Appellant argues that the evidence of bank robbery and boat theft did not contain facts significantly similar to the crimes charged, and, thus, in appellant's view, was inadmissible. The state argues that the evidence of these crimes was part of the res gestae and was thus admissible. Neither argument is particularly useful because neither focuses on the controlling question of relevancy. Res gestae has no clear meaning and has been criticized as a convenient ambiguity which is not only useless but harmful. *Green v. State*, 93 Fla. 1076, 113 So. 121 (1927); *Williams v. State*, 188 So.2d 320 (Fla. 2d DCA 1966), *cert. discharged*, *198* So.2d 21 (Fla. 1967); C. Ehrhardt, *Florida Euidence* §803 (2d ed. 1984). The evidence here was direct testimony, the admissibility of which turned on its relevancy to some point at issue. Section 90.404(2) is entitled "Other Crimes, Wrongs, or Acts," as is Federal Rule of Evidence 404(b) on which our rule is based. Evidence of "other crimes" is not limited to other crimes with similar facts. So-called similar fact crimes are merely a special application of the

general rule that all relevant evidence is admissible unless specifically excluded by a rule of evidence. The requirement that similar fact crimes contain similar facts to the charged crime is based on the requirement to show relevancy. This does not bar the introduction of evidence of other crimes which are factually dissimilar to the charged crime if the evidence of other crimes is relevant.

(text at 745 - 46)

* * *

The only limitations to the rule of relevancy are that the state should not be permitted to make the evidence of other crimes the feature of the trial or to introduce the evidence ***solely*** for the purpose of showing bad character or propensity, in which event it would not be relevant, and such evidence, even if relevant, should not be admitted if its probative value is substantially outweighed by undue prejudice. Our later case law reiterates the controlling importance of relevancy.

(text at 746)

* * *

The evidence that appellant taok the boat from gulf Breeze to Pascagoula, coupled with his prints on the boat, served to place appellant in Pascagoula in contact with the victim. Had the state not shown that appellant brought the boat to Pascagoula, the jury could have believed that the prints were innocently left on the boat, perhaps in Gulf Breeze, and that the boat had been brought to Pascagoula by some unknown person. The trial judge ruled that the evidence was relevant because it was close enough in time to the crimes to give the jury a full and accurate picture of how appellant came into contact with the victim and the full context of the crimes. See *Jackson v.* ***State, 522*** **So.2d** ***802,*** 805 (Fla. 1988) (quoting *Smith v.* ***State,*** 365 So.2d 704, 707 (Fla. 1978), ***csrt. denied,*** 444 U.S. 885, 100 S.Ct. 177, 62 L.Ed.2d 115

(1979)): "'Among the other purpose for which a collateral crime may be admitted under *Williams* is establishment of the entire context out of which the criminal conduct arose.'" We see no error.

(text at 747 - 48)

See also Swafford v. State, 533 So.2d 270, 278 (Fla. 1988).

At the defendant's request the trial court instructed the jury, prior to the testimony of Lisa McVey Copeland that they should consider evidence about other crimes for the limited purpose of proving motive, plan and identity and that Long was not in trial for other offenses. (R 773 - 774) McVey testified that she was kidnapped and dragged to a car from her bike on her way home from her work at a donut shop at 2:00 or 2:30 a.m.. She described the vehicle driven by her assailant (maroon car with white interior, spoked wheels -- "Magnum" on the dashboard) (R 774 - 778). The man raped her and after a period of time he let her go, driving her to a parking lot. She described her assailant as having a moustache, a pockmarked face, small ears and brown hair. (R 781 - 83) She also testified that the man stopped at a bank -- an automatic teller machine is open at 3:30 am. (R 782) She described the events and gave her clothing to Detective Goethe (R 748 - 785). The totality of the testimony of this witness covered some twenty-eight pages. (R 774 - 801)

Detective Goethe then testified, mentioning the description of the assailant and vehicle and the fact that the F.B.I. informed her that red fibers were found on Lisa's clothing and her discovery that a bank transaction had occurred at 3:49, the

owner of the P.I.N. number was appellant Long who owned a Dodge Magnum. An arrest warrant for long was obtained. (R 805 - 808)

Lieutenant Latimer testified to appellant's having admitted the abduction and rape of Lisa McVey. (R 840)

Appellant relies on State v. Baird, 572 So.2d 904 (Fla. 1990); there the Court condemned the state's use of hearsay testimony by an officer that an informant related that the defendant operated a major gambling operation. The court rejected the state's explanation that the testimony was offered to prove the agent's motive for investigating the accused since that had not been made an issue in the case. Additionally, the court rejected the view urged by the state that the hearsay was admissible to present a logical sequence of event leading up to the defendant's arrest. The court reasoned the better practice is to allow the officer to state simply that he acted upon a tip without going into the details. 472 So.2d at 908.

Baird, supra which was decided two years after the trial sub judice, is distinguishable. Lisa McVey's testimony concerning what happened to her was not hearsay but rather an eyewitness, first person, direct account. Appellant's complaint below regarding Latimer's testimony did not relate at all to hearsay but rather a Williams-rule type objection. (R 838) Thus, the contention now made has not been preserved for review. Steinhorst v. State, 412 So.2d 332 (Fla. 1982); Occhicone v. State, 570 So.2d 902 (Fla. 1990). And Long's statements to Latimer admitting the crimes would not be deemed inadmissible

hearsay as they constitute admissions against interest. See *F.S. 90.804(2)(c).*

Nor is appellant aided by Henry v. State, 574 So.2d 73 (Fla. 1991). In Henry, this Court held that in the trial for the murder of Suzanne Henry it was improper to introduce evidence concerning the killing of Eugene Christian subsequently.

This Court determined that the Christian murder was irrelevant to explain or illuminate the murder of Suzanne Henry; it did not prove motive, intent, knowledge, lack of mistake or identity. The Court added that while the Christian killing may have been necessary to place the events in context, to describe adequately the investigation leading up to Henry's arrest and subsequent statements and to account for the boy's absence as a witness, but it was totally unnecessary to admit abundant testimony regarding the search for the boy's body, the details of the confession as to how he was killed and the medical examiner's photo of the body.[3]

In contrast in the instant case, there were not any gory photos of the McVey crime, nor were there any detailed remarks about the McVey incident unrelated to any issue in the case being tried. Rather, Lisa McVey Copeland briefly testified that she was abducted and raped and as a result of her release, was able

---

[3] At footnote 4 of the Henry opinion the Court explained why it was appropriate to introduce evidence of the Suzanne Henry killing -- to show motive -- in the trial for the Christian murder.

to provide details about her assailant (physical description, description of the automobile, facts regarding his band transaction) that led to his arrest and inexorably led to the charges against Long for the murder of Virginia Johnson (hair fibers from her clothing, fibers from the carpet in Long's vehicle and hair fibers matching the victims).

Without the investigation of an information received from the Lisa McVey incident the jury would not have been able to understand the connection between Virginia Johnson **and** Bobby Joe Long. More than a mere character assault was involved. ***See*** Hall v. State, **403** So.2d **1321, 1324** (Fla. **1981);** Ruffin v. State, 397 So.2d 277 (Fla. **1980);** Smith v. State, **365** So.2d **704 (Fla.** 1978) (evidence of collateral crime helps to establish context of crime charged). In Amoros v. State, **531** So.2d **1256, 1259 - 60** (Fla. 1988), this Court opined:

> "In the instant case, the use of a gun in the prior incident was the only evidence the state had to link Amoros to the killing of Rivero . . . .
>
> It was essential for the state to demonstrate Amoros' possession of the gun on a prior occasion, but as important was the necessity of showing this gun fired the bullet that killed Walter Loney. Without showing where the bullet in Coney **came** from, there is no basis to link the gun to the shooting of Rivero . . . .
>
> The possession of the weapon, the firing of the weapon, the retrieval of the bullet fired from the weapon from Loney's body, and the comparison of the two bullets are all essential factors in liking the murder **weapon** to Amoros."

Appellant's claim must be rejected.

ISSUE IV

WHETHER THE LOWER COURT ERRED IN ALLOWING THE STATE TO INTRODUCE AS WILLIAMS RULE EVIDENCE THE HILLSBOROUGH COUNTY MURDERS OF LANA LONG, MICHELLE SIMMS, KAREN DINSFRIEND AND KIM SWA'', AS THOSE CRIMES WERE ALLEGEDLY NOT SHOWN TO BE UNIQUELY SIMILAR TO THE MURDER OF VIRGINIA JOHNSON.

The state had filed prior to trial a Notice of Intent to Use Evidence of Other Crimes committed by the defendant which included the murder of Lana Long between May 10, and May 13, 1984, the murder of Michelle Simms between May 25, and May 27, 1984, the murder of Elizabeth Loudenback between June 8, and June 24, 1984, the murder of Chanel Williams between October 1, and 7, 1984, the murder of Karen Dinsfriend between October 13, and 14, 1984, the murder of Kimberly Hopps between September 31, and October 31, 1984, the murder of Kim Swann between November 9 and 12, 1984, the murder of Vicky Elliott between September 7 and November 16, 1984, and the murder of Artis Wicks between March 28, and November 22, 1984. (R 3274 - 3276)

Additionally, the state filed a Notice of Intent to Use Evidence in the kidnapping -- sexual battery of Lisa McVey in November, 1984, and the kidnapping-sexual battery of Eva Marie Marten in August of 1984. (R 3396 - 3397)

After hearing argument on August 19, 1988, (R 2538 - 2638), the court granted the motion to exclude evidence pertaining to murder victims Vicky Elliott, Chanel Williams, Artis Wick, Kimberly Hopps, and Elizabeth Loudenback. The court permitted evidence relating to Lana Long, Swann, Dinsfriend and Simms

because they involved similarity, strangulation or ligatures. (R 2633 - 35)[4]

Testimony at trial revealed that victim Lana Long was a dancer at the Sly Fox Lounge. (R 1000) Rope and cloth were taken from the wrists and hand area. (R 971) Ligature marks were found around the neck and behind the back. The cause of death was strangulation. (R 1007 - 1010) Michelle Simms was found mostly nude, cut around the neck, arms were tied together . (R 1021) The autopsy revealed she had been found while alive, her throat cut, there were impacts of the scalp causing laceration and bleeding of the underlying brain. She had been strangled at or near the point of death before she died. (R 1075 - 1076) An autopsy on Victim Karen Dinsfriend and a viewing at the crime scene revealed her lower legs tied with rust-colored cloth, ligatures around the legs at the ankle and hands were tied in front by wrists with red bandanna. Marks on the neck produced by ligature and the cause of death was strangulation. (R 1112 - 13) Kimberly Swann also displayed ligature marks across the neck; cause of death was strangulation. (R 1151)

F.B.I. Agent Malone was able to describe hair samples and carpet fiber from appellant's vehicle linking all the victims including Virginia Johnson to appellant.

---

[4] The prosecutor had earlier announced that he would not attempt to introduce evidence of the Wick crime. (R 2554)

As the prosecutor argued to the jury in closing argument, the record reflects that the body of Lana Long was found in a remote area of Hillsborough County. She was a lady of the evening, an exotic dancer, a topless dancer. Her body was found with the top off. Similarly Virginia Johnson was a prostitute and her body was found in an isolated area. Lana Long died as a result of strangulation-Virginia Johnson died of strangulation. When Lana Long's body was found, she was partially nude; Virginia Johnson was partially nude. When Lana Long's body was found there were ligatures about the wrists; Virginia Johnson was tied. Both Lana Long and Virginia Johnson were easily accessible persons of the night. When Lana Long's clothing, body, ligatures were examined, they found red lustrous nylon trilobal fibers that matched those from appellant Long's car, like the red lustrous nylon trilobal fibers from Virginia Johnson that came from Long's car and matched those on Long's body. (R 1376 - 1377)

Michelle Simms' body was found partially nude, like that of Lana Long and that of Virginia Johnson. Contributing to the cause of death was strangulation like the deaths of Lana Long and Virginia Johnson. When Michelle Simms was found, there were ligatures about her throat and tying her hands together, like Lana Long and Virginia Johnson. Michelle Simms, like Long and Johnson, was a prostitute, people of the evening. When her clothing was swept, they found red lustrous nylon trilobal fibers, like those found from Long and Johnson. That from appellant Long's car matched not only those but also the ones

from Long and Johnson. From the appellant's vehicle carpeting they found Michelle Simms' hair like they did from Lana Long and like they did with Virginia Johnson. (R 1376 - 1377)

Karen Dinsfriend was a prostitute, like Michelle Simms, like Lana Long and like Virginia Johnson. She too was semi-nude, bound by ligatures and found in an isolated area, easily accessible to whoever wanted her. And when they swept her body, the clothing, they found red lustrous and delustered nylon trilobal fibers, like the ones from Michelle Simms and Lana Long and Virginia Johnson, which matched appellant Long's carpeting and which matched the fibers in each of the three other cases. And they found a hair, like they found Michelle Simms' hair, Lana Long's hair, and Virginia Johnson's hair in Bobby Joe Long's car. (R 1377)

The cause of death of victim Kim Swann was strangulation, like Simms, Dinsfriend, Long and Johnson; she was nude as Dinsfriend, Simms, Long and Virginia Johnson who was semi-nude; another easily accessible prostitute. They found no ligatures on her but there were ligature marks on both wrists, on one arm, across her body and around her throat- like the ligatures on Dinsfriend, Simms, Long and Johnson. (R 1378)

Long pled guilty to the Swann killing in September, 1985 and at that time also admitted by his guilty plea to the killings of Simms, Long and Dinsfriend (R 1378). The prosecutor correctly noted that Long was not on trial for killing Long, Simms, Dinsfriend or Swann but only look at such evidence for the

purpose of establishing the plan of appellant Long, the motive or the intent of Long and the identity of Long as the person who in Virginia Johnson's case committed that first degree murder (R 1379). The common plan in all of these cases, the common scheme was to kill a prostitute or a person who was in a position to have been believed to be a prostitute by Long (R 1380). Further supporting that pattern was the fact that Lisa McVey (a seventeen-year-old non-prostitute) was kidnapped and raped but not killed. This evidence supported the expert testimony of F.B.I. agent Malone who demonstrated that Virginia Johnson and Long were together in that car. (R 1380)

Relying on cases such as Drake v. State, 400 So.2d 1217 (Fla. 1981) and Peek v. State, 488 So.2d 52 (Fla. 1986), appellant complains that the trial court improperly permitted the state to introduce evidence of four Hillsborough County murders ostensibly to show motive, plan and identity but in actuality only to show his bad character and criminal propensity. Appellant is mistaken.

In Duckett v. State, 568 So.2d 891 (Fla. 1990), this Court approved the use of Williams-rule evidence where the record established the defendant's tendency to pick up young, petite women and make passes at them while he was in his patrol car at night on duty in his uniform; all of the incidents occurred within a matter of months. This Court said, "We find the evidence of the first two incidents to be relevant to establish Duckett's mode of operation, his identity, and a common plan, and

we find sufficient points of similarity to conclude that no Williams rule violation occurred as to these two incidents." 568 So.2d at 895.[5]

See also Buenoano v. State, 527 So.2d 194 (Fla. 1988) (defendant charged with murder by use of poison, collateral evidence of poisoning two other men with whom she had a romantic relationship established unusual modus operandi, admissible to prove intent and identity); Holsworth v. State, 522 So.2d 348 (Fla. 1988) (permissible in murder prosecution to show defendant entered trailer of woman three years earlier both crimes occurred in the early morning hours, involved surreptitious entry into house trailers assailant covered mouths of victims, battered and threatened them and fled); Oats v. State, 446 So.2d 90 (Fla. 1984) (permissible to introduce evidence of separate crime to rebut contention that murder was an accident). Accord, Justus v. State, 438 So.2d 358 (Fla. 1983); Traylor v. State, 498 So.2d 1297 (Fla. 1st DCA 1986) (evidence of similar Alabama murder admissible to prove in issue was premeditated and not a crime of passion).

In the instant case, appellant had entered a general not guilty plea, keeping all options open as to whether to maintain he had nothing whatever to do with it or assert that as a lesser

---

[5] The court noted that a third, consensual encounter was not sufficiently similar but constituted harmless error.

degree of homicide things went awry in a kinky sex escapade. Cf. Holton v. State, 573 So.2d 284 (Fla. 1990).

The challenged evidence was important to demonstrate Long's prearranged plan and modus operandi in selecting as available target prostitutes who could be easily enticed into his vehicle to be strangled. See Townsend v. State, 420 So.2d 615 (Fla. 4th DCA 1982) (victims Gamble and Brown both strangled while Bell was stabbed; their lower torsos were naked and they were generally lying with their legs in spread eagle fashion; victims aged thirteen to thirty were either known prostitutes or had been seen walking the streets leading Townsend to believe they were prostitutes; all found nude or partially nude; in all but two of the homicides the cause of death was strangulation). The Townsend court found the collateral crime evidence relevant to prove identity and similar mode of operation as well as motive.[6] See also Kight v. State, 512 So.2d 922 (Fla. 1987).

In Chandler v. State, 442 So.2d 171 (Fla. 1983), this Court found Drake v. State, 400 So.2d 1217 (Fla. 1991) to be distinguishable; in Drake the only similarity of the two offenses was tying the victims' hands behind their backs and that they left a bar with the defendant; but there were significant

[6] In this regard, even the Lisa McVey episode helps demonstrate the pattern of appellant -- as a non-prostitute and merely a teenager bicycling home from work in the morning hours she wsa merely raped, then released, serendipitously providing sufficient information to lead to his arrest search and discovery of evidence linking Long to the homicides.

dissimilarities between the collateral and the crimes charged including the fact that the previous crime involved only sexual assault while the later crime charged was murder with little, if any, evidence of sexual abuse. In Chandler, the Court opined that the dissimilarities urged by the defense suggested differences in opportunities with which Chandler was faced rather than significant differences in modus operandi. Considered in their totality rather than individually, the points of similarity established a common modus operandi -- a sufficiently unique pattern of criminal activity to justify admissibility on the issue of identity. See also Rivera v. State, 561 So.2d 536 (Fla. 1990). Appellee respectfully submits that the evidence introduced sub judice adequately demonstrated Long's pattern, his intent and his identity; the evidence was not introduced merely to show appellant's bad character.

ISSUE V

WHETHER THE LOWER COURT ERRED IN ALLOWING THE STATE TO INTRODUCE THE TELEVISED PORTION OF THE CBS VIDEOTAPE SINCE IT ALLEGEDLY SHOWED ONLY CRIMINAL PROPENSITY AND SINCE THE HILLSBOROUGH COUNTY HOMICIDES TO WHICH IT REFERRED WERE ALLEGEDLY IMPROPERLY INTRODUCED AS WILLIAMS RULE EVIDENCE.

The state argued below they wanted to introduce Long's admissions that related to his criminal conduct (R 939) and the court acknowledged that the statements were statements against interest. (R 940) The prosecutor agreed. (R 941 - 943) The defense complained that the state was leaving out the statement, "And the worst thing is I don't know why I did it". The defense wanted the court to see the entire broadcast. (R 943) The prosecutor agreed to that procedure and the court viewed the videotape. (R 944)

The state represented they intended to offer the statements:

> TAPE: "I don't know, you know, all in all, I guess I probably destroyed about a hundred people."
>
> * * *
>
> TAPE: "I was like A, B, C, D. I'd pull over, they'd get in. I'd drive a little ways, stop, pull a knife, a gun, whatever, tie them up, take them out. And that would be it."

(R 945)

The defense complained that the first remark .about destroying a hundred lives was improper under the Williams-rule and that the prosecutor was leaving out Long's statement to the effect that he didn't know why he did it. (R 945 - 46) The

court agreed with the prosecutor it was an admission against interest issue not a Williams-rule issue. (R 947 - 48) The defense requested that the first statement not be allowed in and the second one not allowed in without the other remarks of Long. The court ruled that the first statement about a hundred people was too inflammatory and was excluded and the rest was admissible except the self-serving statement (about he thought they would fix Long's problem). (R 950 - 951) The court allowed the following:

> TAPE: "I'd pull over, they'd get in. I'd drive a little ways, stop, pull a knife, a gun, whatever, tie them up, take them out. And that would be it. And the worst thing is, I don't understand why, I don't understand why."

(R *950*)

The jury then viewed this portion of Long's interview (Exhibit 7-A was introduced as Exhibit 24). (R 959)

In Swafford v. State, 533 So.2d 270 (Fla. 1988), the defendant argued that the trial court had erred in admitting appellant's statements made two months after the murder regarding picking up women and shooting them; that it was improper evidence of a collateral crime contrary to Williams v. State, 110 So.2d 654 (Fla. 1959). The Court rejected the claim holding that the state had primarily offered the testimony to inform the jury of defendant's particular statement. His admission about getting used to abducting, raping and murdering a victim was evidence tending to prove that he had committed such a crime two months earlier. 533 So.2d at 273 - 274. Moreover,

> "While Johnson's testimony certainly had the effect of casting Swafford in a bad light, it cannot be said that its sole relevancy was on the matter of character or propensity."
>
> (text at 275)

This Court acknowledged in Swafford that the proposal and solicitation were not similar enough to support a "similar facts" presentation under the modus operandi theory of Drake and Peek but there was enough similarity to give probative value to Swafford's statement and the court was unable to see how the statement was unfairly prejudicial. 533 So.2d at 275. So too is the brief statement contained in the taped interview similarly relevant, not unfairly prejudicial and basically cumulative to the other evidence presented (with the additional beneficial self-serving comment put before the jury without being subject to cross-examination that, "I don't understand why.").

The Remaining Matters:

Appellant has also asked this Court to consider -- without providing argument -- the following issues:

> (VI) Incompetent Opinion Testimony of FBI Agent Malone.
> (VII) Irrelevant and Inflammatory Photographs.
> (VIII) Denial of Motion for Mistrial when Kim Swann's Father Told Jury that she was the Mother of a Young Child.
> (IX) Insufficient Evidence (Absent Improper Williams Rule.
> (X) Invalidity of Hillsborough Guilty Pleas.
> (XI) Improper Testimony of Detective Hagin (re Venue Issue.
> (XII) Irrelevant and Inflammatory Penalty Phase Evidence.
> (XIII) Various Penalty Phase Errors, Including Refusal to Exclude Testimony of Drs. Sprehe and Gonzalez.
> (XIV) Improper Findings of Aggravating Factors, and Failure to Evaluate and Find Non-Statutory Mitigating Factors.

On June 12, 1991, this Honorable Court denied appellant's motion to file enlarged brief and ordered that appellant shall serve an initial brief not exceeding 100 pages.

Appellant chose to comply with the Court's order by devoting pages one through ninety-eight to issues I through V. His failure to provide a written argument in support of Claims VI through XIV constitute a procedural default. In Duest v. Duqqer, 555 So.2d 849, 851 (Fla. 1991), this Court declared:

> "The purpose of an appellate brief is to present arguments in support of the points on appeal. Merely making reference to arguments below without further elucidation does not suffice to preserve issues, and these claims are deemed to be waived."

Accord, Kight v. Dugger, 574 So.2d 1066, 1073 (Fla. 1990); Roberts v. State, 568 So.2d 1255 (Pla. 1990); see also Rodriguez v. State, 502 So.2d 18 (Fla. 1987); Polyglycoat Corp. v. Hirsch Distributors, Inc., 442 So.2d 958 (Fla. 4th DCA 1983) (when points, positions, facts and supporting authorities are omitted fram the brief, a court is entitled to believe that such are waived, abandoned, or deemed by counsel to be unworthy . . . it is not the function *of* the court to rebrief an appeal).

CONCLUSION

For the foregiong reasons the judgments and sentences should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. LANDRY
Assistant Attorney General
Florida Bar ID#: 0134101
2002 North Lois Avenue, Suite 700
Westwood Center
Tampa, Florida 33607
(813) 873-4739

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Steven L. Bolotin, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000, Drawer PD, Bartow, Florida 33830, this 17th day of December, 1991.

OF COUNSEL FOR APPELLEE.