

**FILED**

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APR 20 1992

CLERK, SUPREME COURT.

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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

ROBERT JOSEPH LONG,  
Appellant,

v.

Case No. 74,017

STATE OF FLORIDA,  
Appellee.

SUPPLEMENTAL BRIEF OF THE APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellee will continue to rely on the Statement of the Case and Facts previously submitted in its original brief filed in December of 1991. As a brief summary, appellee notes that the record contains evidence of disappearance in October of 1984 of victim Virginia Johnson. Her remains were discovered by Linda Phethean and Candy Linville and her identity was confirmed forensically by Drs. Wienker Gish and Martin.

Additionally, kidnap victim Lisa McVey Copeland testified to her abduction at gunpoint on her way home from work in the early morning hours, her rape by the assailant and her subsequent release in a parking lot, the description of her assailant and details of her episode ultimately **led** to the arrest of Long. Appellant admitted the offenses against Copeland . F.B.I. hair and fiber expert Mike Malone testified regarding hair and carpet fibers from Long's vehicle in **the** Virginia Johnson investigations of Lana Long Michelle Simms, Karen Dinsfriend, Kimberly Swann. Appellant had entered guilty pleas on the latter four homicides.

At the penalty phase, the defense offered the testimony of appellant's mother Louella Long and exwife Cindy Levy (Cynthia Jean Bartlett) (R 1548 - 1613), psychiatrist Michael Maher (R 1633 - 1738), psychologist Robert Berland (R 1800 - 1850) and Dr. John Money (R 1869 - 1930). The state introduced the testimony of rebuttal witness Dr. Daniel Sprehe (R 1957 - 1978), psychiatrist Dr. Arturo Gonzales (R 2015 -2025) and psychologist Dr. Sidney **Merin** (R 1061 - 2088).

The jury recommended a sentence of death by a 9 - 3 vote (R 2187). The trial court agreed and imposed a **sentence** of death, finding in aggravation:

(1) prior convictions of other capital felonies involving the use or threat of violence to a person;

(2) capital murder was committed while engaged in the commission of a kidnapping;

(3) the homicide was especially heinous, atrocious or cruel;

(4) the murder was committed in a cold, calculate and premeditated manner without any pretense or moral or legal justification.

The court found no mitigating circumstances (R 3799 - 3809).

On March 27, 1992, this Honorable Court entered its order permitting the **parties** to file supplemental briefs on or before April 16, 1992, limited to State's Exhibit 7-A, State's Exhibit 7-B2 and **the CBS unedited tape.** '

Appellee will continue to rely on the Statement of the Facts and case as stated in its original brief previously submitted to this Honorable Court. The record reflects that the brief portion of the tape introduced by the state into evidence as Exhibit 24 in the guilt phase is **reported** at R 950. Exhibit 24 is Exhibit 7-A. The portion that was viewed to the jury contains a brief statement, "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."

In the penalty phase of the trial, the state introduced the tape Exhibit P-7 (State Exhibit 7-B2), the transcript of which appears at R 4053 - 4064.

The Court has now furnished to the parties the remainder of the CBS unedited tape wherein Bobby Joe Long in general terms has discussed his situation with CBS Interviewer Victoria Corderi. In this tape, Mr. Long describes the injuries he received in a motorcycle wreck in 1974 and the personality change he felt thereafter, but he admits that he always had a violent nature and attitude. He admitted that he had talked to seven or eight doctors and six or seven different attorneys and they all tried to make him look very intelligent, that he cooperated and is honest to a fault. He also complained that the media distorted him and tried to make him look like some kind of a bug. He admitted that he began his classified ads rapist activity in Miami in 1977 and 1978, but didn't like to talk about it that it was a matter of public record. He said he couldn't explain how or why he started. Long explained that he would call a classified ad in the newspaper where there was a sale of furniture, etc., make an appointment, go over there and see the person who ran the ad and would rape them, but would not hurt them. He further stated in his interview with Ms. Corderi that he destroyed about a hundred people in all one way or the other. Ms. Corderi at one point had asked him why the rapes eventually turned into murder and Long responded that he was leery to talk about it, his appeals were pending, that the state was trying to

electrocute him. He further explained that it was obvious that his behavior had changed after the motorcycle accident. He stated that the attorneys wanted to go to his childhood, but that he didn't buy it, that it started with the head injury an the motorcycle. Long reiterated that it was important to him that he let the girl Lisa McVey go, that she was different and at that point it was clear to him that he was losing control. Long again mentioned that he didn't want to talk specifics about his offenses. He added that he thought that it **was** so obvious that there was something wrong with him that when he was caught that people would fix him. He further complained that in Florida a murder trial is a joke **and** that there was no fair trial here. Long further explained that without making excuses, he asserted, a lot had to do with the relationship he had in Tampa with a nurse who would upset him by arguing with him about their differences concerning religion, his divorce status and his kids from a prior marriage. Long reiterated that Lisa McVey was not the same as the other victims that she was not street walker; she was going home on **a** bicycle and the others fit a pretty common type and it is probably the reason that McVey is alive today that **she** did not fit that type. He acknowledged that it was pretty scary when he heard the similarities between himself and other serial killers. Long again reiterated that he did not want to talk about personal matters that went into the decision to kill but mentioned that if his intent had been to kill to eliminate witnesses then it would be stupid to let someone like Lisa McVey

go. Long stated that he felt remorse despite portrayal in the media, but inquired whether he was supposed to cry here. He stated that someone should ask his lawyer and doctors about his remorse rather than the prosecutor. He further commented that only two of the victims had families who **cared** about them, the rests were sluts on the street. Long added that he felt that people wouldn't believe what he said **or** cared, that no one believes psychological stuff and mused that while there were about 250 people on death row there were other murderers in the prison who were not.

ARGUMENT

ISSUE I

APPELLANT LONG **WAS** NOT DENIED A FAIR TRIAL BY  
CBS' FAILURE TO PROVIDE THE ENTIRE VIDEOTAPE  
INTERVIEW.

This Court's order of March 27, 1992, does not specify precisely which issues the Court wants discussed. Moreover, since the Court has requested that briefs be simultaneously filed on or before April 16, 1992, appellee is somewhat disadvantaged in responding to that which Long may assert. Appellee will presume, however, that Long's complaint will deal with the argument as presented previously in his initial brief and will discuss that **herein**. To the extent that appellee has been incorrect in his assumption on the scope of the Court's order, appellee will continue to urge the arguments presented in the brief previously submitted by the state. With respect to the guilt phase of the trial, consideration of the unedited CBS videotape adds nothing which might alter the jury's determination that he was guilty of the murder of Virginia Johnson. The prolonged interview with Mr. Long **and** Victoria Corderi contains nothing suggesting appellant's innocence; indeed, Long repeatedly became reticent when the questions pertained to the specifics about the crimes which he had committed in his career. What Long was adamant about in that interview was that Lisa McVey was different from the other victims, that she was not a prostitute or street walker, merely a teenager returning home from work at night and that is why she probably survived when the others did not.



With respect to the penalty phase, again the CBS unedited tape adds nothing to call into question the correctness of the jury's recommendation of death and the trial judge's imposition of a sentence of death. First of all the appellee would respectfully submit that Long's taped interview with Ms. Corderi would have been inadmissible because it constitutes a self-serving one-sided recitation of purported sympathetic factors without the state being afforded an opportunity to cross examine the declarant under oath, The fact of the matter is that Mr. Long had the opportunity to get on the stand and provide his own testimony at the penalty phase and explain to the jury any reason that he had that the imposition of death not be entered. He did not do so. The defense decided instead to rely on the testimony of Louella Long, appellant's mother, Cindy Levy, appellant's ex-wife, psychiatrist Dr. Michael Maher, forensic psychologist Dr. Robert Berland, and Dr. John Money, a specialist in psychoendochronology and psychology. Assuming, arguendo, that the taped interview between Ms. Corderi and Mr. Long had been introduced into evidence, that would have created severe difficulties for the defense, undercutting a substantial portion of the presentation of mitigating evidence and the tape clearly would not have helped Long because it emphasized the self-serving nature and would have emphasized the calculating nature of Mr. Long's personality. Far example, the testimony of appellant's mother Louella Long went into great detail about her difficulties with her stepfather, siblings and the various problems appellant

Long had endured as a child, including falling down stairs and his breast surgery. Much of that testimony along with the testimony of the supporting witnesses in the mental health field would certainly have been undermined by Long's cavalier admission on the videotaped interview that judges and juries are not impressed by psychological stuff and that the true cause of Mr. Long's problems began with his motorcycle accident when he was a young man. In essence, the favorable testimony pertaining to the change in personality which allegedly occurred after Mr. Long's motorcycle accident was provided by appellant's ex-wife, Cindy Levy (Cynthia Jean Bartlett). **She** testified that following that accident his sexual activity increased and that his temperament changed (R 1593, 1594). Unfortunately, she also had to acknowledge that even before the accident, Mr. Long had an attitude problem (R 1609) and that he had a **bad** temper as a teenager. In any event, the defense team was able to get before the jury's consideration favorable testimony concerning the effect that the motorcycle accident allegedly had on Mr. Long, testimony which came from a more sympathetic witness than Mr. Long would have been and avoiding the disadvantage of exposing the appellant to rigorous cross examination by the state prosecutor. Again as stated above, the taped interview with CBS adds nothing to and in essence undercut the mental health testimony of defense witness Dr. Michael Maher who opined that Long had in effect a disorder and an organic brain impairment and that Long's relationship with his mother did not develop in a

positive and healthy manner. Similarly the view of defense witness Dr. Robert Berland concerning the adverse background influences that predated Long's motorcycle accident would have been undermined by appellant's attitude on the taped interview that the motorcycle accident was the cause of his problems. Finally, the testimony of the rebuttal witnesses Dr. Sprehe and Dr. Gonzalez and Dr. Merin that Long was a non-psychotic manipulator and con-artist (R 1975, 2022, **2069**, 2077 - 2080) would have been confirmed by playing the entire unedited CBS tape to the jury wherein Long refuses to answer any questions by the interviewer Ms. Corderi which relate to the specific facts of his homicides as he is well aware of the pendency of his appeals. In summary there was much to be gained by utilizing the **defense** testimony that was actually submitted to the jury and much to lose with little gain if the defense had obtained and used the CBS tape in conjunction with that defense testimony (assuming arguendo, that the tape could have been introduced by the defense).

Appellee respectfully submits that appellant's failure to obtain the **entire CBS** unedited tape at the time of the trial did not constitute error; if it was error, it was clearly harmless at both the guilt and penalty phases. Accordingly, this Honorable Court should affirm **the** judgment and **sentence**.

CONCLUSION

This Honorable Court should affirm the judgment and sentence.

Respectfully submitted,

**ROBERT A. BUTTERWORTH**  
ATTORNEY GENERAL

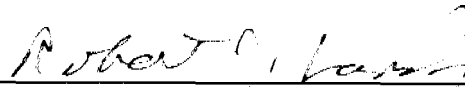


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Steven L. Bolotin, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000, Drawer PD, Bartow, Florida 33830, this 15<sup>th</sup> day of April, 1992.



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OF COUNSEL FOR APPELLEE.