FILED
SID J. WHITE
JUL 8 1993
CLERK, SUPREME COURT
By ____ Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

AILEEN CAROL WUORNOS,)
)
Appellant,)
)
vs.) CASE NUMBER 79,484
)
STATE OF FLORIDA,)
)
Appellee.)
______________________)

APPEAL FROM THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0294632
CHIEF, CAPITAL APPEALS
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
(904) 252-3367

COUNSEL FOR APPELLANT

TABLE OF CONTENTS

	PAGE NO.
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
POINT I	1
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS DENIED HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE COUNSEL REPEATEDLY ALLEGED NUMEROUS DISCOVERY VIOLATIONS AND THE TRIAL COURT FAILED TO CONDUCT AN ADEQUATE RICHARDSON HEARING.	
POINT II	4
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS DENIED A FAIR TRIAL WHEN THE STATE INTRODUCED EXTENSIVE EVIDENCE OF SIX COLLATERAL MURDERS WHICH BECAME A FEATURE OF THE TRIAL.	
POINT III	7
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS APPELLANT'S CONFESSION WHERE IT WAS INVOLUNTARY AS A RESULT OF IMPROPER INDUCEMENT AND, ADDITIONALLY, WAS OBTAINED IN CONTRAVENTION OF APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL.	
POINT VIII	8
IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE FLORIDA CAPITAL SENTENCING STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.	
CONCLUSION	9
CERTIFICATE OF SERVICE	9

TABLE OF CITATIONS

CASES CITED:	PAGE NO.
Booth v. Maryland 482 U.S. 496 (1987)	5
Burns v. State 609 So.2d 600 (Fla. 1992)	5
Elledge v. State 613 So.2d 434 (Fla. 1993)	6
Justus v. State 438 So.2d 358 (Fla. 1983)	2
Matheson v. State 500 So.2d 1341 (Fla. 1987)	2
McNeil v. Wisconsin 111 S.Ct. 2204 (1991)	7
Richardson v. State 246 So. 2d 771 (Fla. 1971)	1
Williams v. State 110 So. 2d 654 (Fla. 1959)	3

OTHER AUTHORITIES CITED:

Amendment V, United States Constitution	7
Amendment VI, United States Constitution	7

IN THE SUPREME COURT OF FLORIDA

AILEEN CAROL WUORNOS,)
Appellant,)
vs.) CASE NO. 79,484
STATE OF FLORIDA,)
Appellee.)

REPLY BRIEF OF APPELLANT

POINT I

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS DENIED HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL WHERE COUNSEL REPEATEDLY ALLEGED NUMEROUS DISCOVERY VIOLATIONS AND THE TRIAL COURT FAILED TO CONDUCT AN ADEQUATE RICHARDSON HEARING.

Appellant emphasizes that she began the argument in the initial brief with a discussion of the taped interview by police of Jacqueline Davis, since that is the first incident where defense counsel alleged a discovery violation. Defense counsel subsequently decided not to present the testimony of Jacqueline Davis. Subsequent allegations against the State regarding failure to comply with the rules of discovery were resolved much less satisfactorily. Additionally, the trial court persisted in its denial of Appellant's request for a continuance that would have allowed further investigation of Richard Mallory's prior criminal history, which first surfaced through Jacqueline Davis'

statement. The State argues that Mallory's violent character may be shown only be his general reputation in the community. See Answer Brief, p. 16. That general reputation is precisely the area in which Appellant was precluded investigation as a result of the trial court's denial of the requested continuance.

The Assistant Attorney General's attempts to defend the trial court's action in this case illustrate the problem. The trial court's lack of action results in the unclear record which leaves in doubt whether or not a discovery violation occurred and even fails to clarify the evidence of which defense counsel complains. In the cases cited by the State in the answer brief, the State was tardy in supplying evidence to the defense prior to trial, see, e.g., Justus v. State, 438 So.2d 358 (Fla. 1983); or clearly provided all evidence in the State's possession, see, e.g., Matheson v. State, 500 So.2d 1341 (Fla. 1987). Such is not the case here. The defense raised numerous objections throughout the trial regarding certain physical evidence and documents used by witnesses in testifying. The State argues that summaries made by agents of the prosecution condensing a witness' testimony for use at trial is not ordinarily discoverable. See, Answer Brief, p. 17. The record on appeal is entirely unclear that the documents complained of by defense counsel are of this type. That is precisely the problem in this case. The trial court failed to conduct any semblance of a hearing, nor did it make specific findings of fact based upon evidence presented. Instead, the trial court simply listened to the bald assertions

from both sides and continued to push the trial along.

Finally, the State seems to suggest, as did the trial court below, that the State's notice of Williams Rule evidence satisfies discovery requirements as to all evidence relating to the collateral cases. See, Answer Brief, pp. 17-18. Appellant does not believe that such a procedure satisfies Florida law. The trial court's inaction and failure to clarify the record on appeal must result in a new trial.

POINT II

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT APPELLANT WAS DENIED A FAIR TRIAL WHEN THE STATE INTRODUCED EXTENSIVE EVIDENCE OF SIX COLLATERAL MURDERS WHICH BECAME A FEATURE OF THE TRIAL.

Appellant is astounded at the State's assertion that this issue was somehow waived. The State contends that Appellant opened the door through her cross-examination of Tyria Moore, where the defense elicited the fact that Appellant and Moore were suspects in another crime and also brought out the fact of movie deals based on Wuornos' life. See Answer Brief, p. 19. The general fact that there were other murders was not a secret to be kept from the jury. As discussed in Point IV of the initial brief, this case generated a massive amount of pretrial publicity and most of the jurors were well aware that Appellant was suspected of several murders. The cross-examination of Moore was the only time that the subject came up at trial (other than jury selection), before the trial court ruled that the collateral crimes were admissible. Certainly the State cannot contend that Appellant's cross-examination of State witnesses regarding the collateral crimes waives this issue. The trial court had ruled the evidence admissible and defense counsel must attack the evidence and cross-examine the witnesses after the evidence and testimony is admitted. Defense counsel was simply playing the cards they were dealt and fishing with the bait provided. Similarly, defense counsel's argument to the jury was based on

the evidence admitted. The prosecutor suggested that defense counsel argued that evidence of the collateral crimes was inadmissible (which he did). Defense counsel simply countered that argument by pointing out to the jury that if the evidence was inadmissible, the evidence would not be before them (which it would not be). (R2194) Again, defense counsel was merely playing the cards in his hand.

The State goes on to contend that, even if the issue is preserved, the evidence was properly admitted. The State contends that the prosecution went to great pains not to make the collateral evidence a feature of the trial. See, Answer Brief, p. 22. The State's argument overlooks the fact that the State's case against Wuornos for the murder and robbery of Richard Mallory took only two days. (R671-1130) Over the next four days, the jury heard testimony and documentary evidence concerning the six collateral murders. (R1131-1900) Appellant testified on the seventh day, and a lengthy cross-examination dwelt on the collateral murders. (R1913-2063) Furthermore, although victim evidence may be admissible if it is directly related to the circumstances of the crime, see, e.g., Booth v. Maryland, 482 U.S. 496 (1987), the inflammatory evidence concerning the victims' characters [e.g., "charity churchwork" (R1524)], went far beyond the permissible bounds. Burns v. State, 609 So.2d 600 (Fla. 1992).

The State submits that the prosecutor's cross-examination was "hardly geared towards eliciting evidence of collateral

crimes." See, Answer Brief, p. 23. The State submits that such matters were interjected into the proceeding by Wuornos herself. Appellant invites this Court to scrutinize the State's cross-examination of Wuornos. The prosecutor's examination was clearly geared toward eliciting evidence of the collateral crimes. The transcript reveals a skilled prosecutor baiting Wuornos into discussing the collateral murders and then pouncing on her answers in an effective crucifixion of the witness.

In the Answer Brief, the State goes through each collateral murder and summarizes the evidence introduced pertaining to it. When considered separately, the evidence may not appear to be so prejudicial. However, when considered together, it is abundantly clear that the collateral murders became a feature of Appellant's trial. This contention is further supported by the amount of time expended during the trial (four days compared to two days) spent on the collateral murders. The State never does address Appellant's argument that any probative value of the evidence is outweighed by the extreme prejudice. See, e.g., Elledge v. State, 613 So.2d 434 (Fla. 1993). The State points out that the number of victims was within Appellant's control. While that might be so, the admissibility of such evidence is within the control of the trial court and ultimately this Court.

POINT III

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS APPELLANT'S CONFESSION WHERE IT WAS INVOLUNTARY AS A RESULT OF IMPROPER INDUCEMENT AND, ADDITIONALLY, WAS OBTAINED IN CONTRAVENTION OF APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL.

Appellee correctly points out that, unlike the Fifth Amendment right to counsel, the Sixth Amendment right is "offense specific." McNeil v. Wisconsin, 111 S.Ct. 2204, 2207 (1991). Appellant's argument is grounded on the State's deliberate circumvention of her right to counsel. The State's arrest of Appellant on a 1986 warrant and the deliberate act in refraining from informing Appellant that she was a prime suspect in the murders, accomplished an "end run" around the Sixth Amendment.

POINT VIII

IN REPLY TO THE STATE AND IN SUPPORT OF THE CONTENTION THAT THE FLORIDA CAPITAL SENTENCING STATUTE IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED.

The State contends that Appellant's constitutional attacks are, inter alia, not properly briefed and thus waived. The State's argument correctly points out the problem with this Court's new, extremely restrictive policy of a 100 page limit on initial briefs. In fact, the first initial brief filed in this cause exceeded the 100 page limit and this Court rejected it. See, January 21, 1993 order of this Court. This Court has made it clear that motions to file enlarged briefs will not be entertained. Id. This policy restricts Ms. Wuornos' appellate rights and violates her constitutional right regarding access to courts. This Court's restriction is extremely important in this age of procedural bar, as evidenced by the State's argument in the answer brief.

CONCLUSION

Based upon the foregoing cases, authorities, policies, and argument, as well as those set forth in the initial brief, Appellant requests the following relief:

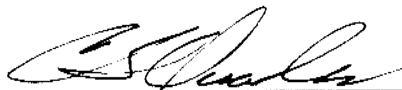
As to Points I through IV, a new trial;

As to Point VII, reverse and remand for discharge;

As to Points V, VI, and VIII, vacate the death sentence and remand for imposition of a life sentence.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0294632
112 Orange Avenue, Suite A
Daytona Beach, FL 32114
(904) 252-3367

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Ms. Aileen Carol Wuornos, #150924, P.O. Box 8540, Pembroke Pines, FL 33024, this 6th day of July, 1993.

CHRISTOPHER S. QUARLES
ASSISTANT PUBLIC DEFENDER