IN THE SUPREME COURT OF FLORIDA

BOBBY L. STEVERSON,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

Case No. 86,590

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

REPLY BRIEF OF APPELLANT

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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ISSUE I

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL WHERE HIS CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY WERE VIOLATED.

In addition to relying on all arguments and authorities presented in his initial brief, Mr. Steverson replies to the state's brief as follows:

The right to a trial by an impartial jury is a fundamental right and is guaranteed most notably by the sixth amendment to the United States Constitution and article I, section 16 of the Florida Constitution. Duncan v. Louisiana, 20 L. Ed. 2d 491 (1968); Livingston v. State, 458 So. 2d 235, 238 (Fla. 1984). *See* also, § 918.0157, Fla. Stat. (1993); Fla. R. Crim. P. 3.251.

". . . [A]nything less than an impartial jury is the functional equivalent of no jury at all." City of Miami v. Cornett, 463 So. 2d 399, 402 (Fla. 3d DCA), cause dismissed, 469 So. 2d 748 (1985) (emphasis added). In Florida, the principle that parties have a right to an impartial jury applies with equal force to a civil jury trial and to "the state, no less than a defendant." 463 So. 2d at 400, 402 n. 5, citing, State v. Neil, 457 So. 2d 481 (Fla. 1984).

At stake in this case, where Mr. Steverson was denied the right to an impartial jury, is the very integrity of the judicial process. Here, a juror concealed material information to the court

and to both counsel. It is the juror's failure to disclose the information saught by the court and counsel that is at issue, and not defense counsel's efforts alone to seek the truth as the state urges in its brief. (Brief of Appellee, p. 8-9); see, Zequeira v. De La Rosa, 627 So. 2d 531, 533 (Fla. 3d DCA 1993) (Baskin, J., dissenting), (that the juror in question was not honestly performing his civic duty is the issue, not counsel's efforts to seek the truth), approved and adopted, De La Rosa v. Zequeira, 659 So. 2d 239 (Fla. 1995).

The state's brief in the instant case fails to address the fact that in the juror questionnaire and voir dire Mr. Mathis omitted crucial information about his background, and his beliefs about a life versus death sentence, that would have given the trial court and counsel reason to further question the juror, or reason for defense counsel to challenge the juror peremptorily or for cause. The state also fails to adequately distinguish the cases cited by Appellant in his initial brief.

The issue in this case is that the entire integrity of the judicial process and Mr. Steverson's constitutional right to an impartial jury were violated because an impartial jury was not impanelled. The facts and the case law cited in Appellant's initial brief show structural error.

Structural error is a structural defect in the constitution of the trial mechanism which defies analysis by harmless error standards. Arizona v. Fulminante, 113 L. Ed. 2d 302, 331 (1991) (Rehnquist, C.J., concurring for the court). The inquiry is not

whether in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered -- no matter how inescapable the findings to support that verdict might be -- would violate the jury-trial guarantee. Sullivan v. Louisiana, 124 L. Ed. 2d 182, 189 (1993), citing, Rose v. Clark, 92 L. Ed. 2d 460 (1986). When the wrong entity, a jury whose membership should not have heard the case, judges the case, structural error occurs. See Tumey v. Ohio, 71 L. Ed. 749 (1927) (trial by biased judge); Marshall v. State, 593 So. 2d 1161, 1163 (Fla. 2d DCA 1992) (trial potentially lacking race-neutral jury).'

The question in the instant case, as in the cases cited above and in Appellant's initial brief, is "not whether an improperly established tribunal acted fairly, but it is whether a proper tribunal was established . . ."

* * *

. . . "when the fact appears that false information was given, and that it was relied upon, the right to a new trial follows as a matter of law." Skiles v. Ryder Truck Lines, Inc., 267 So. 2d 379, 382 (Fla. 2d DCA 1972), cert. denied, 275 So. 2d 253 (1973).

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[1] The original Marshall court reversed for a Neil inquiry. 593 So. 2d 1162-1165. Subsequently it was held that this posttrial Neil inquiry was not the appropriate remedy, and remand for a new trial was required. Marshall v. State, 640 So. 2d 84 (Fla. 2d DCA 1994).

First, as to the inquiry here, it is argued in Mr. Steverson's initial brief that an inquiry should have been held only on the overt acts of misconduct and the number of jurors exposed to the misconduct.[2] Despite the trial court's refusal to inquire here as to overt acts, which was error, the misconduct is established by the juror questionnaire, voir dire, and the statements of Juror Davis, potentially corroborated by Juror Brown. Further, juror misconduct should have been rebuttably presumed. (Appellant's brief, p. 32-44)

Second, the state apparently suggests that the concealed information was not material. (Appellee's brief, p. 7). The state, however, fails to say how the concealment or nondisclosure is not material, or to rebut Appellant's showing of materiality under the requirements of De La Rosa and Skiles v. Ryder Truck Lines, Inc., 267 So. 2d 379 (Fla. 2d DCA 1972), cert. denied, 275 So. 2d 253 (1973). (Appellant's brief, p. 27-35)

Third, the state says that defense counsel alone brought this error because he failed to ask a specific question or follow up with additional questions. (Appellee's brief, p. 7-9). By this argument the state apparently believes a trial court and counsel are to be clairvoyant when a juror such as Mathis fails to disclose material information on a juror questionnaire, and then fails to reveal this material information and his true experiences and

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[2] The state's brief mischaracterizes Appellant's argument in his initial brief. (Appellee's brief, p. 9-10) Appellant's position has never been that the jurors' thought processes could be the subject of inquiry. (Appellant's brief, p. 30, 43)

feelings about a life versus death penalty, despite the context of this full voir dire. (Appellant's brief, p. 29-34; Appendix D)

Further, the state's attempt to distinguish Mitchell v. State, 458 So. 2d 819 (Fla. 1st DCA 1984), Marshall v. State, 664 So. 2d 302 (Fla. 3d DCA 1995), and Mobil Chemical Co. v. Hawkins, 440 So. 2d 378 (Fla. 1st DCA 1983), is unavailing. (Appellee's brief, p. 7-8) In all of these cases a new trial was required because the jurors were asked questions by the court, and the jurors then failed to disclose information, concealed information, or responded untruthfully. Skiles involved a mute response to defense counsel's questions, plus a false or misleading response to another question, which was not the subject of further inquiry, and required a new trial. What occurred in these cases is exactly what occurred here -- concealment or nondisclosure of material information that was not the fault of counsel.

Finally, Appellee's brief focuses on two main points only: (1) that no inquiry by the trial court was required concerning Mathis's misconduct (Appellee's brief, p. 9-10); and (2) that if any error occurred, there was no abuse of discretion by the court and any error would be harmless. (Appellee's brief, p. 3-5, 11) This focus fails to clarify the issue presented to this court. A strict abuse of discretion standard should be inapplicable to this case. (Appellee's brief, p. 3-4) The cases cited by the state as to the standard of review do not involve, as is evident here, an affront to the integrity of the judicial process and the constitu-

tional right of an accused that an impartial jury must be impaneled. The cases are factually and legally inapposite.

Files v. State, 613 So. 2d 1301, 1304 (Fla. 1992), (Appellee's brief, p. 3) merely holds that a peremptory challenge based on a prospective juror's lack of employment does not, on its face, indicate racial bias. An abuse of discretion standard applies to a trial court's determination that the exercise of a peremptory challenge is race-neutral so long as the determination does not result from an incorrect application of a strict rule of law. Under the facts of Files, the state's reason for challenge was found not to be invalid as a matter of law; thus, the standard of review was whether the trial judge abused his discretion in accepting the state's reason.

Files is completely distinguishable fromthe instant case, not only because the issue involved is remote from the issue involved here, but also because it is the wrong standard to apply in this case. In the instant case, no inquiry was made by the trial court and no presumption of prejudice was applied by the trial court as is required by law. Although defense counsel could not have known of the juror's deception, the trial court merely concluded that any problem with a "candid" juror on ancillary matters, who nonetheless lied or at the very least concealed or failed to disclose material information in the questionnaire and voir dire, was the fault of counsel for failing to further inquire.

Baptist Memorial Hospital, Inc. v. Bell, 384 So. 2d 145 (Fla. 1980), (Appellee's brief, p. 3), is simply a case where one of the

allegations on appeal was that the jury considered matters outside of the record (taxes, attorney's fees, and other costs and expenses) concerning damages only. The trial court entered an order directing a new trial, in part because of the jury's improper consideration of these matters which were outside of the record. The appellate court said that the jury's consideration of these matters was harmless. In reversing the appellate court, this court said the trial court did not abuse its discretion in ordering a new trial.

Castlewood International Corp. v. La Fleur, 322 So. 2d 520 (Fla. 1976), (Appellee's brief, p. 3), involved punitive damages. There, the trial judge, on his own, interjected two gross negligence instructions to the jury that were not appropriate or applicable. Realizing the error was harmful, the trial court ordered a new trial. On appeal, the Third District said they did not believe the jury was confused by the instructions and reversed the order. This court held the district court erred because there was no abuse of discretion by the trial court. 322 So. 2d at 521-522.

Justice Overton explained the role of judicial discretion in his concurring opinion in Castlewood, as follows:

> . . . Judicial discretion has been defined as: "The power exercised by courts to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court." 1 Bouvier's Law Dictionary and Concise Encyclopedia (8th Edition).

> The trial judge is given this discretionary power because it is impossible to have a strict rule of law for every conceivable situation that might occur in the course of a judicial proceeding. A trial judge, in carrying out this discretionary authority, has the responsibility to see that justice prevails. The application of this discretionary power involves certain standards and guidelines. It must be logically applied. This discretionary power was never intended to be exercised in accordance with the whim or caprice of a judge. Nor should the judicial action be inconsistent. In dealing with cases essentially alike, as in all law, when the facts are the same, the result must be the same. As to the standards by which a judge must exercise this discretionary power, the following quotation from Justice Cardozo is appropriate:
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> "The judge, even when he is free, is still not wholly free. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.' Wide enough in all conscience is the field of discretion that remains."

322 So. 2d at 522-523 (Overton, J., concurring).

In the instant case, there are applicable strict rules of law which show that the rulings by the trial court are erroneous as a matter of law, as a miscarriage of justice, or as an abuse of discretion. These rules of law are the constitution of the United States, the constitution of the State of Florida, the Florida statutes, and the Florida rules of criminal and civil procedure, as well as the case law of this state cited by the Appellant. An

impartial jury was not impanelled under the law, and the rulings and findings by the trial court here are legally erroneous.[3]

The state's argument that a harmless error analysis should apply to this issue is without merit. The state cites State v. Hamilton, 574 So. 2d 124, 131 (Fa. 1991) (Appellee's brief, p. 4, 11), far this proposition ("Steverson's murder of Lucas was of such a nature that there is no reasonable possibility that Mathis' uncle's murder contributed to the verdict in the instant case.") Hamilton is plainly a penalty phase case where an unauthorized yet irrelevant publication made its way to the jury room via a juror who may never have served as a fact finder.

Under Hamilton, the state again obscures the issue. It is not the uncle's murder that is at issue in this case. It is that Juror Mathis failed to disclose his background about his uncle's murder, and his belief that no life sentence meant life, to the court and counsel, so that he could be further questioned on those matters and a reasoned decision on challenge could be made. If the

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[3] An appellate court has the power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, *ox* a finding of fact that is predicated on a misunderstanding of the governing rule of law. Bose Corp. v. Consumers Union of U.S., Inc., 80 L. Ed. 2d 502, 517 (1984).

A finding of fact in some cases is inseparable from the principles through which it was deduced. At some point, the reasoning by which a fact is "found" crosses the line between application of those ordinary principles of logic and common experience which are ordinarily entrusted to the finder of fact into the realm of a legal rule upon which the reviewing court must exercise its own independent judgment. Where the line is drawn varies according to the nature of the substantive law at issue. Regarding certain largely factual questions in some areas of the law, the stakes -- in terms of impact on future cases and future conduct -- are too great to entrust them finally to the judgment of the trier of fact. 80 L. Ed. 2d at 517 n. 17.

Hamilton standard were applied to cases of juror concealment or nondisclosure of material information in voir dire under facts such as those present here, then the jury system would be rendered meaningless.

A defendant in every case is . . . "entitled to have the evidence adduced before the jury weighed and considered by a jury, each member of which stands fair and impartial and not subjected to any outside influence. It would be unreasonable to expect the courts to determine that in one case a juror will be required to answer truthfully proper questions propounded to him on his voir dire, while in another case he might with impunity answer them falsely." White v. State, 176 So. 842, 844-845 (Fla. 1937).

Mr. Mathis answered his juror questionnaire falsely. He then incomprehensibly did not come forward in the context of this extensive voix dire to reveal facts material to his civic duty to sit as an impartial juror in a death penalty case. The right to a fair and impartial jury is a paramount right. The errors in this case vitiated that right, A new trial is mandated.

ISSUE II

APPELLANT WAS DENIED A FAIR TRIAL AND DUE PROCESS BECAUSE THE PROSECUTION WAS ALLOWED TO MAKE EVIDENCE OF OTHER CRIMES A MAIN FEATURE OF THE TRIAL.

In addition to relying on all arguments and authorities presented in his initial brief on this issue, Mr. Steverson responds as follows to the state's brief:

Initially, two points must be clarified for this court because of the state's erroneous argument on appeal. First, the state misstates Appellant's argument. The state's brief says: ". . . the record does not support the appellant's assertion that this evidence became a feature of the trial, The state strongly takes issue with the appellant's description as to both the quality and quantity of this evidence. Appellant's claim that the only evidence presented in support of the Lucas murder was 'only disputed evidence that Mr. Steverson, in his blue car, was at Mr. Lucas's trailer the night of the Lucae murder. [sic]' (Brief of Appellant, pg. 50). . . ." (Appellee's brief, p. 19)

Contrary to the state's assertion, Appellant's brief, p. 50-51, actually states:

> In this case, there was no similarity of offenses or weapons as was apparent in Williams. There was only undisputed evidence that Mr. Steverson, in his blue car, was at Mr. Lucas's trailer the night of the Lucas murder. Four days later Steverson was in his blue car at the drug house of George and Debbie Lumbis. There the police thought they might find someone in a blue car who might possess a receipt or credit card bearing

> Lucas's name, a fact that never materialized. (T2249, 2622)

Appellant's above position is correct and was the position of the state and defense at trial. All other evidence was in dispute, including the credibility of numerous witnesses. (See, e.g., R239, Appellant's brief, p. 47, p.4, p.11)

Second, the state's reliance on a severance case and "Williams Rule" cases is erroneous. (Appellee's brief, p. 17-18) As was recognized below by the state and defense, and in Appellant's initial brief, the evidence in this case is not "Williams Rule" evidence. (Appellant's brief, p. 45-46; R66, 125, 140-146) The characterization of all prior crimes or bad acts of an accused as Williams rule evidence is erroneous. The Williams rule, on its face, is limited to "similar fact evidence." Griffin v. State, 639 So. 2d 966, 968 (Fla. 1994), cert. denied, 131 L. Ed. 2d 198 (1995).

The severance and Williams Rule cases relied upon by the state in its brief are not applicable to the facts here. For example, Fotopoulos v. State, 608 So. 2d 784 (Fla. 1992), cert. denied, 124 L. Ed. 2d (1993), involved various motions to sever two connected charges, and the court held the motions were properly denied. Denials were proper because the defendant was involved in two different murders which occurred two days apart. The defendant recruited the murderers, used physical intimidation, threatened to expose the first murder through use of a videotape he made relating to coercion for the second murder, and used a common scheme and motive and plot. 608 So. 2d at 789-790. Severance was not at issue

in Mr. Steverson's case and could not be, because the cases could not be tried together. In fact, the state took Mr. Steverson's case on the charge of shooting at detective Rall to trial before the murder case went to trial. This was because the cases were not similar and because the state wanted to use the Rall case to aggravate the murder case.

Heiney v. State, 447 So. 2d 210 (Fla.), cert. denied, 83 L. Ed. 2d 237 (1984), involved a series of extraordinary events that were all interconnected as "Williams Rule" evidence to show motive for the murder. Heiney committed one shooting in Texas. He fled and committed another murder in Florida. He was traced across the nation via eye-witnesses, the vehicle he drove and vehicle registrations and tag numbers, use of credit cards, the presence of personal property in his possession, and evidence of forgery and bloodstains. The evidence was admitted to show he desired to avoid apprehension for the shooting in Texas, which motivated him to commit robbery and murder in Florida so that he could obtain money and a car in order to continue his flight from Texas. 447 So. 2d at 213-214.

There were no eyewitnesses, tracings, credit cards, receipts found, or other evidence found to be involved in Mr. Steverson's case. These was no "Williams Rule" evidence involved. The only potentially relevant evidence involved in this case is that Steverson was in a blue car at the Lumbis's four days after the Lucas murder. He ran and shot t a detective who shot at him and hit him twice.

Wournos v. State, 644 So. 2d 1000, 1006-1007 (Fla. 1994), cert. denied, 131 L. Ed. 2d 566 (1995), involved "Williams Rule" evidence which was used to rebut the defendant's own testimony regarding her level of intent and whether she acted in self-defense. The court held this was a proper purpose under Williams. "Williams Rule" similar fact evidence is not involved in the instant case, and the facts of this case are inapposite to the facts in Wournos. (R66, 125, 140-146) Buenoano v. State, 527 So. 2d 194, 197 (Fla. 1988), involved a case of poisoning. It holds that "Williams Rule" evidence of other crimes of poisoning by the defendant was admissible because poisoning is a particularly unusual modus operandi and details of each offense in that case were strikingly similar. "Similar fact evidence" is not involved in the instant case.

Smith v. State, 365 So. 2d 704, 707 (Fla. 1978), cert. denied, 62 L. Ed. 2d 115 (1979), is another "Williams Rule" case. It held that there was one prolonged criminal episode where evidence of a second murder was relevant to illustrating criminal context to the first murder occurring on the same night. This was because the context showed the first murder occurred earlier that evening, and the evidence placed the defendant at the scene of the first murder. The evidence also showed the defendant was with the people involved with the initial homicide an hour after it took place, he was with them at the time of the second murder very shortly thereafter, and he was involved with the car connected to both crimes. In Steverson's case, these "Williams Rule" facts are not present.

The state then urges that the evidence of the Rall shooting was properly admitted as "inextricably intertwined evidence," or as evidence of "consciousness of guilt," or as evidence that would "cast light" upon the character of the act under investigation, or form part of a "web of truth." The state principally relies on Bryant v. State, 235 So. 2d 721 (Fla. 1970), for this proposition. (Appellees brief, p. 12-13) Bryant, however, is a modus operandi and pattern case under Williams again. It involved crimes occurring in the same general area, with similar kinds of threats, similar profane language, the same type of shooting (ordering victims to lie on the floor and shooting or hitting the top of their heads), and the use of similar types of useless and sadistic acts. 235 So. 2d at 722. These facts are inapplicable to the facts af the instant case. Here, the state at trial acknowledged that the evidence was not admissible as Williams Rule evidence. (R140-146)

The state then uses flight cases to support its argument. (Appellee's brief, p. 13-14). In the instant case, the prosecutor at trial recognized that a flight instruction would be improper. (R140-146) See, Fenelon v. State, 594 So. 2d 292, 294-295 (Fla. 1992), which holds that for prospective cases a flight instruction should not be given. ". . . we can think of no valid policy reason why a trial judge should be permitted to comment on evidence of flight as opposed to any other evidence adduced at trial. Indeed, the instruction has long been eliminated from the Florida Standard Jury Instructions in Criminal Cases, apparently in an effort to

eliminate '[l]anguage which might be construed as a comment on the evidence.' . . ." 594 So. 2d 294.

Cited by the state are Sireci v. State, 399 So. 2d 964, 968 (Fla. 1981), cert. denied, 72 L. Ed. 2d 862 (1982), Bundy v. State, 471 So. 2d 9 (Fla. 1985), cert. denied, 93 L. Ed. 2d 269 (1986), Pietri v. State, 644 So. 2d 1347 (Fla. 1994), cert. denied, 132 L. Ed. 2d 836 (1995), Green v. State, 641 So. 2d 391 (Fla. 1994), cert. denied, 130 L. Ed. 2d 1083 (1995), and Taylor v. State, 630 So. 2d 1038 (Fla. 1993). These cases found flight instructions not to be error because they were pre-Fenelon cases, which is not the issue here.

The cases also hold that some evidence of flight may be relevant. That some evidence of flight may be relevant in a given case is not contested by Mr. Steverson. However, the cases relied upon by the state are inapposite to the facts in Steverson's case, and the cases did not involve inflammatory details which went far beyond any purported relevancy in his case. Sireci involved a defendant's attempt to have a state witness killed which would discredit another state witness and went to the defendant's desire to evade prosecution. 399 So. 2d at 968. In Bundy, the evidence of flight was limited. The defendant there fled twice from two different officers in two different cities. He had a stolen van and a tag, which had been traced, and he had been identified by two people near the scene of the original crime. 471 so. 2d at 12, 20. Pietri involved penalty phase testimony only. There, the defendant himself had testified he fled to avoid prosecution. He then

disposed of a stolen truck, escaped after threatening another officer who was not in uniform, stole another car, and led police on a chase. 644 So. 2d at 1354. Green involved a defendant who disappeared for months before he was apprehended. He had told others immediately after the murder that he was going to disappear. 641 So. 2d at 395. Taylor involved a defendant who had a specific jail escape plan which he told to another. 630 So. 2d at 1042.

The state also relies on the concept of inextricably intertwined evidence and cites Consalvo v. State, 21 Fla. L. Weekly S423 (Fla. Oct. 3, 1996). The facts of Consalvo show that evidence of a subsequent crime of a burglary of victim Walker was admissible as inseparable from the crime charged of the murder of victim Pezza. This was because of numerous factors, including: Consalvo was seen with victim Pezza and Pezza reported to the police that money had been stolen from her, later telling the police she suspected Consalvo and wanted to press charges; Consalvo was documented using Pezza's ATM card on three occasions, and was seen driving a car similar to Pezza's; Consalvo was seen by a witness entering victim Walker's apartment and was apprehended by the police in the apartment; on Consalvo the police found checkbooks belonging to Pezza and Walker; after Consalvo's arrest for the Walker burglary, Pezza's body was discovered and Consalvo told his mother that he was involved in a murder, which she immediately related to the police. 21 Fla. L. Weekly at S424.

The court noted that the Walker burglary was closely connected to the murder of Pezza and was part of the entire context of the

crime. When the police caught appellant burglarizing the Walker residence, they found Pezza's checkbook on his person. It was also as a result of the Walker burglary that police placed appellant in custody. Furthermore, appellant was in jail for this burglary when he placed the incriminating call to his mother and stated that the police were going to implicate him in a murder. 21 Fla. L. Weekly at S425. The court held that these details were properly admitted. 21 Fla. L. Weekly at S425. Notably, the court also held that further details argued in closing by the prosecutor were improper. The state's use of the facts from the Walker burglary exceeded the scope for which they were admitted -- i.e., to establish the entire context out of which the criminal action occurred. The court held this error to be harmless under the facts of Consalvo. 21 Fla. L. Weekly at S425.

The state here seeks to misapply Consalvo. The holding in Consalvo is merely that relevant facts showing a close connection to the crime charged are admissible. What occurred in Consalvo, proper restriction of details of the collateral crime, is exactly what did not occur here. In the instant case, some facts of the Rall incident may have been relevant to show the context of Mr. Steverson's apprehension -- that he was in his blue car and when approached ran and shot at officer Rall and was taken into custody. However, the numerous details of the Rall shooting were irrelevant to the crime charged. The only possible effect of the numerous details of the officer down call, the injuries, the photographs, the hospital trip and stay, the emotional reaction of the officers,

and the extensive details of the inflammatory evidence was to misdirect the jury's attention from a proper determination on the crime charged.

The details of the shooting of detective Rall did not provide inseparable crime evidence. The details were not inextricably intertwined with or necessary to adequately describe the Lucas crime. Exclusion of the featured inflammatory and prejudicial details would not have left the jury with an incomplete account of the events at issue. For these reasons, the reasons and authorities argued in Appellant's initial brief, and because the error here is not harmless, reversal for a new trial is required. The trial court should be directed that any evidence of the collateral crime that is admissible must be limited and may not become a feature of the new trial and penalty phase.

ISSUE III

THE DEATH PENALTY IS NOT WARRANTED AND IS DISPROPORTIONATE IN THIS CASE.

As to Issue 111, the Appellant relies on all arguments and authorities presented in his initial brief.

ISSUE IV

APPELLANT IS ENTITLED TO A NEW PENALTY PHASE BECAUSE THE TRIAL COURT PRECLUDED ANY MEANINGFUL INQUIRY OF JURORS EXPOSED TO EXTRANEOUS, PREJUDICIAL NEWS MATERIAL.

As to this issue, Mr. Steverson relies on all arguments and authorities presented in his initial brief.

ISSUE V

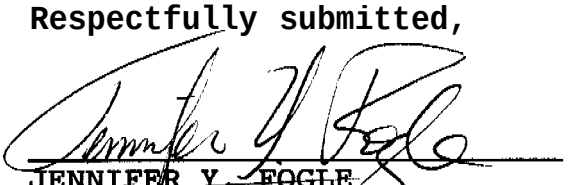
A NEW PENALTY PHASE IS REQUIRED BECAUSE FLORIDA'S FELONY MURDER AGGRAVATOR AND CORRESPONDING JURY INSTRUCTION CREATED AN UNCONSTITUTIONAL PRESUMPTION IN FAVOR OF IMPOSING THE DEATH PENALTY HERE.

On Issue V, Steverson relies on all arguments and authorities cited in his initial brief.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Candance Sabella, Suite 700 002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 19 day of February, 1997.

Respectfully submitted,



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