

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)
)
) 14 CR 16880
)
ROBERT SERRITELLA)

FILED
FEB 17 2015
CLERK OF COURT
JANICE L. HARRIS

MOTION TO ALLOW THE PEOPLE OF THE STATE OF ILLINOIS
TO INTRODUCE PROOF OF OTHER CRIMES EVIDENCE

NOW COME the People of the State of Illinois, by their Attorney, State's Attorney of Cook County, Anita Alvarez, through her Assistants, Ethan Holland, William Delaney and Thomas Biesty. Pursuant to 725 ILCS 5/115-7.3, the People respectfully request this Court to allow them to present evidence of other crimes committed by the Defendant for the purpose of showing the Defendant's propensity as a child sex offender. Additionally and alternatively, the People request this Court to allow them to present evidence of the Defendant's other crimes in order to establish a motive, to establish a continuing narrative of events, to rebut a likely defense and to establish the Defendant's identity and *modus operandi*. In support of this motion, the People state as follows:

Facts

On the evening of January 1, 1992, 15 year-old David Chereck met with several of his friends and spent time playing arcade games, bowling, and playing at Lorel Park in Skokie, IL.

At approximately 10:00 p.m., David left his friends at the 7-Eleven store at the intersection of Lincoln Ave. and Gross Point Rd. and told his friends that he was going to walk home. He left the store and was last seen walking northbound on Harms Rd. towards his house at 5350 Crain St. in Skokie. The walk home should have taken him less than ten minutes.

The following morning, Robert Wedel was walking his dog on a bike trail in a wooded area near 9136 McVicker St. in Morton Grove when he found the dead body of David Chereck, dumped in the woods approximately 20 feet west of a bike trail. His jacket was gone, his t-shirt was pulled up slightly above his waist, one of his tennis shoes was missing, and his black knit scarf was double-knotted and pulled tightly around his neck. The Medical Examiner would later note ligature marks on Chereck's neck and petechial hemorrhaging on his face and eyes. As a result, the Medical Examiner determined that Chereck died by ligature strangulation. The Cook County Forest Preserve and Sheriff's Police Departments commenced an investigation into the murder.

Paul Mehelic and Erin Christianson, friends who were with Chereck that night, told police that they believed they were being watched while they played in Lorel Park that evening. Mehelic told police that he observed a white four-door vehicle pull up with the lights off and the engine running several feet from where they sat on the swing set. He additionally said that he believed the vehicle to be American made, possibly a GMC or Chrysler, and that the vehicle had tinted windows so he could not see the identity of the driver. Erin Christianson also told police that the vehicle was an older white, four-door vehicle with a trunk that was shorter than its hood. At the time, the Defendant owned and drove a 1977 white, four-door Chrysler New Yorker with tinted windows.

On January 4, 1992, the police received a telephone call from a man who claimed to have

information relating to the death of David Chereck. The caller identified himself only as "Robert" and claimed that he saw David at several points throughout the night he was killed. Additionally, the caller claimed he observed David walking out of the 7-Eleven store on Harms Rd., and, after gesturing for a ride, got into a white Cadillac. "Robert" told police that the driver, after picking up David, stopped at a traffic light next to him before speeding past and turning into the forest preserve. "Robert" claimed that the driver of the Cadillac was a white male, approximately 50 years old, with bushy sideburns and smoking a cigar. The police later identified the caller as the Defendant, Robert Serritella.

Over the course of their investigation, police learned several facts that led them to suspect the Defendant was involved in Chereck's murder. First, the Defendant's Chrysler New Yorker was of a similar color, make, and model to the car that David's friends saw at Lorel Park and it is virtually identical to the vehicle that the Defendant claims he saw David Chereck get into on the night he was murdered. Second, the Defendant, abruptly left Illinois after he learned that the police were looking for him, leaving his belongings in his rented apartment with months left on the lease. Third, he gave numerous and conflicting versions of events in the weeks, months, and years following the incident to police, television reporters, and friends. Fourth, police discovered through a search of the Defendant's residence, a handwritten list entitled "Boy profile for exploitation". The list contained several character traits that would be more susceptible to sexual exploitation, specifically targeting similarly aged boys as the victim. Fifth, the Defendant was a registered child sex offender as a result of being convicted of Child Annoyance. That case involved the Defendant repeatedly stalking a male teen as the boy walked home from school just a few months before David Chereck was murdered. Finally, the investigation revealed that the Defendant had stalked, picked up, or attempted to sexually assault several teens and young boys.

In each of those cases, the victim described the Defendant's actions in virtually the same way; that he would drive up in his van or car around a school or park, offer to give them a ride to where they were going, and then would either make sexual advances towards them and/or request their phone number. The Defendant would offer his own "business card" and would later call the victim at his home. The Defendant admitted to these victims that he was interested in having sex with them.

Other Crimes Admissible as Propensity Evidence

The Defendant's other crimes are admissible to establish the Defendant's propensity as a child sex offender under 725 ILCS 5/115-7.3. This evidence is admissible because the facts of the instant case indicate that the Defendant stalked and abducted David Chereck before he strangled and killed him. Thus, the Defendant's sexual offenses, prior and subsequent to Chereck's murder, are admissible under 725 ILCS 5/115-7.3 to demonstrate his propensity to stalk and abduct male adolescents with the intent of sexually assaulting them.

The people respectfully request that this Court allow the People to present the following witnesses and evidence to demonstrate the Defendant's propensity as a child sex offender:

A. Paul Awluwalia- Paul Awluwalia lived with the Defendant at a residential facility in Los Angeles, California in 2014. Only one day before the Defendant's arrest in the instant case, Awluwalia accepted a ride home from church from the Defendant. During the drive, the Defendant pulled into a park area where, for about an hour, he watched adolescent males who were skateboarding in the park. The Defendant then left his van and approached a group of young boys playing basketball in the park and "gazed" at them for 20 minutes.

B. "Boy profile for exploitation" list ("the List") While executing a search warrant at the Defendant's apartment in 1991, police recovered a handwritten note entitled "Boy profile for

exploitation". A copy of the note is attached hereto as Exhibit One. The List includes various characteristics that would make a boy susceptible to sexual exploitation. The characteristics include: "between 8 & 17 years old; an underachiever in school or home; come from a home where parents were absent either physically or psychologically; usually want previous homosexual experience; has no strong moral or religious obligations; usually had no record of previous delinquency; suffered from poor sociological development".

C. The Palm Springs Juveniles - In March of 2004, Defendant was arrested in Palm Springs, CA after repeatedly following two male juveniles and attempting to pick them up outside of a high school. During a recorded interview with Palm Springs police while in custody, the Defendant admitted to desiring sexual contact with under-aged boys and to being sexually attracted to 14-15 year old boys.

D. Terry Crawford- In November of 1992, Terry Crawford, a 17 year-old male, was leaving Lane Tech High School when the Defendant motioned him to approach his white, four-door vehicle. When Crawford ignored him, the Defendant pulled up and offered to drive Crawford home. Crawford refused but the Defendant gave him a "business card" that had the name "Ricco Rocco" and three phone numbers printed on it. Subsequently, the Defendant and Crawford had several phone conversations. During those conversations, the Defendant requested that Crawford send him photos of a naked Crawford and of Crawford performing oral sex. The Defendant also encouraged Crawford to masturbate during their phone conversations. The Defendant offered to have both oral and anal sex with Crawford and discussed where they could go to have sex. The Defendant specifically mentioned that the forest preserve was rarely patrolled by the police. Additionally, the Defendant told Crawford that he liked to be aggressive during sexual encounters and told Crawford how strangling someone during sex could heighten

their orgasm. The Defendant advised Crawford that if Crawford refused to continue speaking with him on the phone that he would tell Crawford's parents that they had had sex.

E. Modesto Banuelos- In June of 1991, Modesto Banuelos was a 14 year-old boy whom the Defendant repeatedly followed outside of his high school in California. The Defendant followed the victim and repeatedly made lewd comments to the victim including, "I want to fuck you." At one point, the Defendant appeared angry with the victim and attempted to run him over with his vehicle. The Defendant was convicted of Child Annoyance in 1992 based on this incident.

F. Steven Tomasic- In September or October of 1991, the Defendant approached Steven Tomasic, a 21 year-old male, on several occasions as Tomasic walked down Higgins Rd. near Canfield Ave. in Chicago and offered to give him a ride in his white Chrysler. Tomasic initially refused but later accepted the ride. The Defendant and Tomasic exchanged phone numbers and met on a few occasions. The Defendant asked Tomasic if he would have sex with him and asked if he could take Tomasic's photograph but Tomasic refused. In early 1992, the Defendant called Tomasic from California and informed him that he had left Chicago because the police were looking for him. The Defendant asked Tomasic if he would could go to the Defendant's apartment in Park Ridge and pack his belongings to ship them to California. Tomasic refused the Defendant's request.

G. Thanh Truong- In November of 1991, the Defendant approached Thahn Truong, a 23 year-old male, who was standing at a bus stop near Lake St. and Austin Ave. in Chicago and offered him a ride. Truong accepted the ride and remained in contact with the Defendant for several weeks after that. The Defendant later admitted to Truong that he originally offered him a ride because he wanted to pick him up for the purpose of having a sexual relationship with him.

H. Boyd Deason- Boyd Deason was a neighbor of the Defendant while they both lived in California in the early 1990s. In 1992, Deason told police that the Defendant admitted to him that he liked having sex with young boys. Deason witnessed the Defendant cruise around parks, schools, and arcades looking for young boys. He specifically mentioned that the Defendant liked to park his vehicle and attempt to befriend young boys at parks. Deason advised that the Defendant used "smoke screens" to divert the attention of police away from the Defendant when they suspected him of committing a crime.

I. James Raspberry- In the late 1980's, the Defendant approached James Raspberry, then in his mid to late teens, in Los Angeles and tried to pick him up, claiming he needed help moving furniture. Some time after that, the Defendant approached Raspberry again and offered him a ride to the Boy's Club located about a block from where he was. The Defendant told Mr. Raspberry that he wanted to have sex with him but Raspberry refused.

J. Marine Ekimyan- In the summer of 1989, Ms. Marine Ekimyan, then a 16 year-old girl, was a member of the Boys and Girls Club of Hollywood in Los Angeles. Ekimyan knew the Defendant because he lived in an apartment across from the Club at the time. The Defendant would wear a priest uniform and come in the Club and attempt to befriend young boys. Ekimyan also observed the Defendant sit in his van outside of the Club staring at the children outside the Club.

These witnesses and this evidence are admissible because they demonstrate the Defendant's propensity to commit or attempt to commit sex offenses against children. The offered evidence is relevant and admissible to prove that the Defendant abducted, assaulted, and murdered David Chereck.

725 ILCS 5/115-.3 and *People v. Donoho*

The Defendant's other crimes are admissible as propensity evidence under 725 ILCS 5/115-7.3. Section 5/115-7.3 of the Criminal Code provides an exception to the common law rule against other crimes evidence for cases in which a defendant is accused of certain enumerated sexual crimes as well as certain violent crimes, including murder, that involve sexual penetration or sexual conduct. Id. Under this section, sexual conduct "means any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused." 720 ILCS 5/11-0.1.

Under this section, evidence of other crimes involving sexual conduct "may be admissible and may be considered for its bearing on any matter which is relevant" including a defendant's propensity to commit sex offenses. The statute provides three factors for the court to consider in weighing the probative value of the evidence against the danger of unfair prejudice.

Namely:

- i. The proximity in time to the charged or predicate offense
- ii. The degree of factual similarity to the charged or predicate offense
- iii. Other relevant facts and circumstances

Before this statute was enacted, Illinois Courts held that the standards governing admission of other crimes evidence were the same in sex cases as in other types of cases. *See, People v. Banks*, 641 N.E.2d 331 (1994). Traditionally, evidence of other crimes was admissible to prove motive, intent, identity, absence of mistake or accident, a common plan or design, or *modus operandi*. In many of these cases, the court specifically noted that the evidence must have other relevance apart from defendant's propensity to commit crimes in order to be relevant and admissible. Id.

However, on April 3, 2003, the Illinois Supreme Court recognized that the statute effected a dramatic change in the law of other crimes evidence as applied to sex offenses when it decided the case of People v. Shannon Donoho, 204 Ill.2d 159, 788 N.E.2d 707 (2003). In Donoho, the Supreme Court ruled that the statute did not merely codify established case law allowing other crimes evidence for the limited purposes listed above. Instead, the Donoho Court ruled, the statute goes beyond the restrictions of case law and allows the use of other crimes evidence to prove a Defendant's propensity to commit sex crimes. Id. at 176.

People v. Donoho

In Donoho, the Defendant was charged with criminal sexual assault and aggravated criminal sexual abuse involving two of his stepchildren. During his trial, the People presented evidence of an incident of sexual abuse from 1983, involving a 7 year-old girl and an 11 year-old boy. Despite a number of differences between the charged incidents and the 1983 other crimes evidence, the trial judge allowed the jury to hear the other crimes evidence, citing the statute. The Defendant was convicted on all charges and sentenced to a total of 14 years imprisonment. Donoho, at 163. On appeal, the Defendant challenged the admission of this evidence under the statute as well as its constitutionality. He argued that the other crimes evidence was used only to establish his propensity to commit sex crimes and was, therefore, improper. The People responded that, under the statute, such use of the other crimes evidence was allowed. The Appellate Court reversed, siding with the Defendant. The People appealed and in a unanimous opinion the Supreme Court reversed the Appellate Court and affirmed the Trial Court's decision to allow this evidence.

The Supreme Court first examined the text of the statute and noted that in subsection (a),

it limited itself only to a narrow class of crimes, specifically crimes involving sexual acts. The Court further noted that Subsection (b) sets forth the standard to be used by courts in considering whether such evidence should be admitted. It states that other crimes evidence “may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant.” 725 ILCS 5/115-7.3(b). Finally, the Court stated that subsection (c) provides three factors for the court to consider in weighing the probative value of the evidence against the danger of unfair prejudice: (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; and (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(b).

The Supreme Court then proceeded to use the rules of statutory interpretation and the legislative history of section 115-7.3 to guide its inquiry. In doing so, the Court answered its question of whether the statute was meant to codify established case law or to create a new and broader rule concerning the use of other crimes evidence in sex offense cases. The Court held that the statute “implemented a change to the common law rule specifically in sex offense cases” that allows the use of other crimes to prove a defendant’s propensity to commit sex offenses. Donoho, at 173-174. The Donoho court relied on the legislative history and took note of the recidivism of sex offenders and the legislature’s desire to recognize different rules pertaining to sex offenders:

This legislation, which is unique to sex offenders, recognizes the propensity of sex offenders to repeat their crimes, and it allows the court to use this evidence in order to help protect society. 90th Ill. Gen. Assem., Senate Proceedings, March 19, 1997, at 56–57 (statements of Senator Radogno).

Donoho, at 174

The Donoho court further noted that Illinois was not breaking new ground by passing the statute and allowing the use of other crimes evidence to prove a defendant's propensity. Since 1995, the Federal Rules of Evidence (rules 413 and 414) have allowed the use of other crimes evidence to prove a defendant's propensity to commit sex crimes. Moreover, the Court stated, "at least 25 other states allow such use of other crimes evidence in one form or another." Donoho, at 175.

The Donoho Court concluded: "In light of its legislative history, we find the legislature enacted section 115-7.3 to enable courts to admit evidence of other crimes to show defendant's propensity to commit sex offenses if the requirements of section 115-7.3 are met." Donoho, at 176. The Donoho Court went on to reject a constitutional challenge to the statute and held that the trial court acted appropriately in allowing the other crimes evidence to prove the Defendant's propensity to commit sex offenses.

Thus, in the wake of Donoho, the People may use other crimes evidence to prove a defendant's propensity to commit sex offenses, or for any of the other previously allowed purposes, such as to prove motive, intent, identity, absence of mistake or accident, the existence of a common plan or design, or *modus operandi*. The practical effect of Donoho was to vastly expand the use of other crimes evidence in crimes involving sexual conduct to include virtually any case in which the defendant has committed other sex crimes.

Donoho's Progeny

In the first Illinois Appellate Court case to be decided on this issue following Donoho, the Appellate Court reversed a trial judge's decision to exclude other crimes evidence in a sex offense case. People v. Childress, 338 Ill. App. 3d 540, 789 N.E.2d 330 (1st Dist. 2003). There,

the defendant was charged with aggravated criminal sexual assault, aggravated kidnapping and related offenses. The People sought to introduce evidence of other crimes under the statute. The other crimes evidence consisted of two sexual assaults committed by the defendant: one from 1986 and one from 1993. Without specifically discussing the facts of each case, the Childress Court noted that the 1986 incident bore few similarities to the case at bar, whereas the 1993 incident was, relatively speaking, more similar to the charged offense.

In particular, Childress noted that both the charged offense and the 1993 incident involved forced oral sex and vaginal penetration; both attacks occurred in an abandoned building; the buildings were less than a quarter of a mile apart; excluding time the Defendant spent in prison for the 1993 offense, the two attacks occurred within a year of each other, and both attacks took place during the summertime. Childress, at 335.

Notwithstanding the similarities noted between the charged case and the 1993 case, the Trial Court denied the People's motion to allow other crimes evidence. The People took an interlocutory appeal. The Appellate Court held that the trial judge's decision to exclude the 1986 incident was within his discretion due to the lack of similarities between that incident and the charged case. However, the Appellate Court also held that his decision to exclude the 1993 incident was a clear abuse of discretion because of the similarities involved. In so doing, the Childress Court followed Donoho and ruled that the statute changed the law of other crimes evidence with respect to sex offenses by allowing the People to present other crimes evidence to prove a defendant's propensity to commit sex crimes. The Court stated:

"our review of the legislative history of section 115-7.3, particularly the reference, during legislative debate, to the federal rule after which this statute was modeled, has led us to the indisputable conclusion that the legislature intended to single out sex offenders with this law in recognition of the propensity of sex offenders to repeat their crimes." Childress, at 338.

Following the Donoho decision, in 2008, the Illinois legislature amended 725 ILCS 5/115-7.3 to include other offenses including the offense of First Degree Murder. The amendment expanded the statute's applicability to "first degree murder, or second degree murder when the commission of the offense involves sexual penetration or conduct" as defined in Section 12-12 of the Criminal Code of 1961 [720 ILCS 5/12-12]. 725 ILCS 5/115-7.3(a)(2). By amending this statute, the legislature clearly intended to expand the crimes to which the statute, as interpreted by the Donoho Court, applies. Based upon this amendment, it is clear that the type of analysis described in 725 ILCS 5/115-7.3 applies to the case at bar.

Analysis

The instant case falls within the type of cases where propensity evidence is admissible under 725 ILCS 5/115-7.3. In enacting the statute, the legislature sought to allow the use of other crime evidence for propensity purposes in cases involving sex offenders because it recognized the high potential for recidivism in that class of people. The Donoho court, as well as over a decade of subsequent decisions that upheld Donoho, embraced this reasoning and applied it to a wide variety of circumstances.

Child Abduction is among the list of specifically enumerated offenses covered under the statute. The statute pertaining to Child Abduction, 720 ILCS 5/10-5 provides that the offense of child abduction is committed when a person "[i]ntentionally lures or attempts to lure a child under the age of 16 into a motor vehicle... without the consent of the parent or lawful custodian of the child for other than a lawful purpose." The statute further provides that the luring or attempted luring of a child under the age of 16 into a motor vehicle shall be prime facie evidence of an unlawful purpose. Id. In adding Child Abduction to the list of offenses covered under the

statute, the legislature recognized that the potential for recidivism was as high in Child Abductors as it would be in any other sex offenders listed in the statute. In the time before and after the murder of David Chereck, Defendant has demonstrated a propensity to abduct or to attempt to abduct teenage boys as they walk down the street.

Moreover, the statute specifically pertains to murder cases involving sexual conduct or sexual penetration. Initially, it should be noted that the Medical Examiner did not find any physical evidence of sexual penetration committed upon David Chereck. However, the legislature specifically included "sexual conduct" and "child abduction" among the list of offenses covered under the section because it did not want to limit the use of the statute to only cases involving sexual penetration. Rather, the legislature expanded the scope of the statute to cover a wide range of offenses committed by sex offenders. The Illinois Supreme Court recognized that "sexual conduct" is a specific type of conduct different from "sexual penetration" which requires contact between one person's sex organ and another person's sex organ, mouth, or anus. People v. Delgado, 876 N.E.2d 189, 199 (Ill. App. 1st Dist. 2007); *citing* People v. Novak, 643 N.E.2d 762 (Ill. 1994) (abrogated on other grounds).

On the other hand, sexual conduct is defined to include the knowing touching, or fondling of the sex organs of the victim or the accused, either directly or through clothing, for the purposes of sexual arousal or gratification. 720 ILCS 5/11-0.1. By its definition, this is conduct that would not be discoverable during an autopsy. If David Chereck was forced to touch or fondle the Defendant, or vice a versa, this evidence would not necessarily be discovered during the postmortem examination. *See generally* People v. Hansen, 313 Ill. App. 3d 491, 729 N.E.2d 934 (Ill. App. Ct. 1st Dist. 2000) (holding that the circumstances surrounding the discovery of a body could lead to an inference of sexual conduct absent direct physical evidence

discovered through an autopsy).

The facts and circumstances surrounding the case support the inference that sexual conduct was involved in the murder. First, the circumstances surrounding the victim's disappearance share striking similarities to the numerous examples of the Defendant's distinctive pattern of abducting teenage boys with the intent of having sex with them. The List recovered from the Defendant's apartment entitled "Boy profile for exploitation" points to his generalized intent to sexually exploit teenage boys and the investigation has revealed numerous incidents where the Defendant has abducted or attempted to abduct a child for that purpose. Specifically, the Defendant attempted to pick up Terry Crawford as he was leaving his high school, tried to solicit him for sex knowing he was underage, repeatedly called him, and threatened him with exposure when he refused his sexual advances.

During that same period, the Defendant approached two other young men, Steven Tomasic and Thanh Truong, on the street in Chicago and admitted that he did so hoping to have sex with them. The Defendant was convicted of Child Annoyance in California in 1992 due to a June 1991 event where the Defendant repeatedly followed a young teen outside of a high school and he attempted to run him over with his car when he spurned his advances. Events in 2004 and as recently as 2014 further highlight Defendant's pattern of abducting of teenage boys with the intent of having sex with them.

Second, the Defendant's own statements place him at the location where David Chereck was last seen. The Defendant personally called police and claimed that he had seen Chereck walking along the street at several times during the night he was murdered, and had seen him leave the 7-Eleven - the last place anyone other than Defendant had seen him alive. Further, the Defendant claimed that after the victim left the 7-Eleven, he saw another man, in a virtually

identical white four-door sedan, pick up the victim and then drive into the forest preserve. During the weeks and years after the murder, details of the Defendant's story changed and acquaintances of the Defendant told police that the Defendant liked to use "smoke screens" to divert the suspicion of police attention away from him.

Third, the Defendant demonstrated a knowledge and familiarity with the crime scene and, more generally, the forest preserve as a location not well patrolled by police. In conversations with Terry Crawford, the Defendant specifically mentioned the forest preserve as an area to discreetly meet up to have sex because the police rarely patrolled it. In conversations with friends and in "tips" he personally provided to police, the Defendant demonstrated an intricate knowledge of the crime scene, the exact location of the body, and the circumstances surrounding the death. Moreover, the Defendant, in a conversation while discussing the murder of David Chereck, theorized that the victim was probably strangled with his scarf after the killer became angry that Chereck had rebuffed the killer's sexual advances. In that conversation, the Defendant alternated between first and the third person references to the killer when discussing the murder. This "theory" advanced by the Defendant is corroborated by the evidence at the scene. Absent direct knowledge of the circumstances surrounding the murder, a person outside of the investigation would not be able to obtain that information.

In sum, propensity evidence is admissible in the instant case because it meets the criteria of a homicide involving sexual conduct under 725 ILCS 5/115-7.3. The definition of sexual conduct relied upon by the legislature in enacting the statute includes the type of conduct that would not be discoverable absent testimony by witnesses. Moreover, the legislative history and subsequent judicial review indicate that the statute was enacted in response to the high recidivism among sex offenders and the desire to allow propensity in those certain types of cases. The

Defendant is a child sex offender with a history of Child Abduction and the facts and circumstances of the case indicate that sexual conduct was involved in the homicide.

Factors Under 115-7.3

As noted above, the statute lists three factors for the court to consider in weighing the probative value of other crimes evidence against the danger of unfair prejudice: (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; (3) other relevant facts in circumstances. The factors enumerated in the statute, as well as relevant case law supports the inference that this was a homicide involving sexual conduct, admissible under the statute.

Turning to the first factor, proximity in time, the evidence and testimony offered is sufficiently similar in time to support its admissibility. In addressing the evidence individually, the incidents involving Terry Crawford, Steven Tomasic, and Thanh Truong all occurred in a between November and January of 1992 - the 2 month period surrounding the murder of David Chereck. Thus, these incidents are in a very close proximity in time to support admissibility. Similarly, the incident involving Modesto Banuelos, occurred in June of 1991, only seven months before the murder of David Chereck while the incident involving James Raspberry and the incidents referenced by Boyd Deason and Marine Ekimyan occurred in 1989 and 1991 respectively. The List entitled "Boy profile for exploitation" was recovered during a search of the Defendant's apartment in April of 1992, just 4 months after the murder. Reviewing courts have routinely held that offenses that occurred within several weeks or months, or even a few years are in sufficiently close proximity to satisfy this factor. Donoho, 204 Ill.2d at 183; People v. Raymond, 404 Ill. App. 3d 1028, 1046 (Ill. App. Ct. 1st Dist. 2010). Thus, there can be no serious dispute that the other crimes testimony of Crawford, Tomasic, Truong, Banuelos,

Raspberry, Deason, and Ekimyan as well as the evidence of the List are in a sufficiently close proximity of time to warrant admissibility.

Next, the incident involving the Palm Springs juveniles, occurring within 12 years of the murder, is in close enough time proximity and should be admissible. Additionally, the 22 year gap in time between the Chereck murder and the incident described in the testimony of Paul Awluwalia does not render it inadmissible. The court, in Donoho, refused to adopt a bright line rule as to when prior convictions or offenses are too old to be admissible under the statute. Donoho, 204 Ill. 2d at 184. Rather, the court chose to treat it as a factor to be used in evaluating the probative value. Id. In Donoho itself, the other crimes evidence used occurred between 12-15 years prior to the charged offense. Id. The testimony of the Palm Springs juveniles would be at the short end of the evidence that was admitted in Donoho, therefore, it is similarly admissible. Illinois courts have previously allowed for the admission of other crimes evidence when the time lapse is as much as 20 years. *See People v. Davis*, 260 Ill.App. 3d 176, 192, 631 N.E.2d 392 (1994). While the time difference concerning this testimony is undoubtedly at the high end of what has been allowed, this alone should not render it inadmissible. The other factors, relevance, similarities to the charged crime as well as the continuity of events over a 20 plus year time period weigh in favor of admissibility.

As to the second factor, the degree of factual similarity to the charged offense, the Defendant's actions in the offered other crimes evidence share many similarities. The List is factually similar because it shows sexual attraction to boys of the victim's age and demonstrates a generalized intent to sexually exploit young boys. The testimony of Marine Ekimyan also establishes intent to befriend and attempt to abduct young boys. There is a high degree of similarity between the cases of Chereck, Crawford, Raspberry, Banuelos, and the Palm Springs

juveniles. In all of those circumstances, the Defendant stalked the victim in his vehicle, pulled over and attempted to engage them in conversation by offering them a ride, and then tried to solicit them for sex either while they were in the vehicle or at a later time.

The victims in these cases, as well as in the instant case, are teen-aged boys who the Defendant approached as they were walked on the street near a high school, park, or boys clubs where young men and boys frequently can be found. The Banuelos case shares additional similarities to the instant case in that the Defendant reacted violently to the victim and tried to run him over with his car when the victim spurned his sexual advances. This would be reinforced by the testimony of Boyd Deason to whom the Defendant admitted he liked to have sex with young boys and that he cruised parks and schools searching for young male victims. The incidents involving Truong and Tomasic, which occurred within weeks of Chereck's murder, are extremely similar except for the fact that Tomasic and Truong were slightly older than Chereck and that the Defendant approached and solicited them while they waited at a bus stop.

Moreover, the Defendant, through the statements he has made to police and friends, seems to believe that his potential victims had initiated contact with him. The Defendant apparently believed the same thing in the instant case as he claimed that he believed that was a homosexual who was gesturing for the Defendant to pick him up.

The testimony of Paul Awluwalia would show that the Defendant was accustomed to stalking and staring at young boys as they played or walked on the street. This is relevant because Paul Mehelic and Erin Christianson, Chereck's friends, would testify that they saw a car identical to the Defendant's vehicle, parked at Lorel Park as they congregated there. All of the references to the other crimes evidence discussed above share enough similarities to the instant

case to render them admissible under the statute.

Finally, the third factor, other facts and circumstances, weighs heavily in favor of admitting this evidence. All of the other crimes evidence offered is a piece of the puzzle that is critical for the jury to understand both the murder itself and the circumstances surrounding the murder. When looked at broadly, the evidence shows that the Defendant is a child sex offender with the generalized intent to stalk young boys, pick them up and try to solicit them for sex. This generalized intent is evidenced by the List found in the Defendant's possession entitled "Boy profile for exploitation" as well as the testimony of Ms. Ekimyan. The statement of Paul Awluwalia shows that the Defendant specifically loitered in parks, looked for boys to pick up and provides viable evidence that the Defendant was in Lorel Park watching Chereck and his friends minutes before Chereck was last seen alive. The testimony of Crawford, Banuelos, and Raspberry would show the Defendant's method of stalking and abducting young boys as they walked down the street, and would provide context for the jury to understand the series of events leading up to Chereck's murder. The testimony of Tomasic and Truong, similarly, shows that the Defendant was actively trying to solicit boys near the time of the murder and in the same vicinity of the murder. The testimony of Boyd Deason shows how the Defendant had previously used smoke screens as an attempt to divert police attention, providing an explanation for why the Defendant would call the police and provide a "tip" for the murder that he committed.

Thus, the offered other crimes evidence is admissible pursuant to 725 ILCS 5/115-7.3 to show the Defendant's propensity as a child abductor and sex offender. As demonstrated above, the instant case is a murder involving sexual conduct that is covered under the statute. Additionally, when balancing the factors enumerated in the statute, it is clear that the other crimes evidence offered occurred within a close proximity of time, shared similarities with the

instant case, and other relevant facts and circumstances support its admissibility. The evidence is highly probative in establishing the Defendant's identity as the killer and is not substantially more prejudicial than it is probative.

Other Crimes Admissible To Establish Motive, A Continuing Narrative of Events, To

Rebut a Defense, To Establish Identity and *Modus Operandi*

Even if this Court deems the evidence not admissible under 725 ILCS 115-7.3 as propensity evidence, other crimes evidence is relevant and admissible using a traditional admissibility analysis. Specifically, other crimes evidence discussed below is admissible in a variety of other contexts including establishing a motive, establishing a continuing narrative of events, rebutting a defense and establishing a defendant's identity and *modus operandi*. It should be noted, that much of the same evidence being discussed in this section was discussed relating to 725 ILCS 5/115-7.3 above. In these situations this is an alternative and additional argument. In regards to this section, the evidence is not being offered for propensity purposes, but is being offered under a traditional other crimes analysis, discussed in greater detail below.

Generally, evidence of a crime for which a defendant is not on trial is inadmissible if relevant merely to establish the defendant's propensity to commit crime. People v. Placek, 704 N.E.2d 393, 400 (Ill. 1998). However, other crimes evidence may be admissible when it is relevant to establish any material question other than the Defendant's propensity to commit a crime. Placek, 704 N.E.2d at 400 (Ill. 1998) (emphasis added). Other crimes evidence is relevant if it places the defendant in proximity to the time and place of the offense, proves a fact in issue, rebuts an alibi defense, demonstrates a consciousness of guilt, or establishes motive, intent, absence of mistake, identity, or a common design or scheme. People v. Ingram, 907 N.E.2d 110, 116 (Ill. App. 2d Dist. 2009).

When other crimes evidence is offered for such a relevant purpose, it is admissible when the other crime has a threshold similarity to the charged crime. People v. Cruz, 643 N.E.2d 636 (1994). The threshold requirement increases the relevancy of the evidence and ensures that it is not used solely to establish the defendant's criminal propensities. Id. When such is not being offered under the *modus operandi* exception, mere general areas of similarity will suffice to support admissibility. People v. Sundling, 965 N.E.2d 563, 582 (2d Dis. 2012); *See also* People v. Walker, 973 N.E.2d 939 (1st dist. 2012) (the requirement that other-crimes evidence bear some threshold similarity to the charged offense comes into play only if the other-crimes evidence is used to show *modus operandi* or common design; if it is offered for some other purpose, mere general areas of similarity will suffice).

Moreover, evidence of uncharged criminal conduct and conduct that falls short of a crime can be applied using the same reasoning that applies to other crimes evidence. Illinois courts have applied the other-crimes analysis to permit evidence that falls short of a completed criminal act, i.e. that a defendant previously attempted to engage in a criminal activity. Id.; *See also* People v. Williams, 274 Ill.App.3d 598, 607–08 (1995) (proof of wrongful conduct that does not rise to the level of a completed offense can be admitted); People v. Kimbrough, 138 Ill.App.3d at 484 n. 1 (using the term “other crimes” to refer to both other crimes and wrongful conduct). As with all other crimes evidence there must be a “showing that the other crime actually occurred and that the defendant committed it. Hansen, 729 N.E.2d 934 at 943. These facts need not be established beyond a reasonable doubt but must be by more than a mere suspicion. Id.

Additionally, other crimes evidence can be offered for more than one permissible purpose. In fact, “other crimes evidence that is admissible for one reason is not affected by inadmissibility for another reason.” People v. Spryes, 835, N.E.2d 974, 978 (4th Dist. 2005).

When jurors receive a limiting instruction that permits them to consider evidence for a number of reasons, and one of the reasons is determined on appeal to be improper, judgment of conviction must be affirmed despite the overly broad instruction. Id. Even incidents that are remote in time can become relevant if the party presenting the evidence can present evidence of other incidents in the interim.

The people respectfully request that this court allow the People to present the following witnesses and evidence to establish a motive, to establish a continuing narrative of events, to rebut a likely defense and to establish the Defendant's identity and *modus operandi*:

A. Terry Crawford- In November of 1992, Terry Crawford was walking out of Lane Tech high school after school when the Defendant motioned him to approach his white, four-door car. After he was ignored, the Defendant pulled up next to him and told him that he dropped a piece of paper out of his backpack and then offered to drive him home. Mr. Crawford refused a ride, and the Defendant gave him a business card with the name "Ricco Rocco" and three phone numbers printed on it. Subsequently, the two spoke on the phone on several occasions, and during those conversations the Defendant attempted to solicit Mr. Crawford to send him naked pictures and pictures of him performing oral sex. The Defendant also encouraged Mr. Crawford to masturbate while the two were on the phone, and offered to have both oral and anal sex with him. The Defendant specifically suggested the forest preserve as a place they could have sex because it was rarely patrolled by the police. Additionally, the Defendant told Mr. Crawford that he likes to be aggressive during sexual encounters, and told him how strangling someone could heighten their orgasm. The Defendant threatened to tell Mr. Crawford's parents that they had sex with each other, if Mr. Crawford refused to continue to speak with him.

B. Modesto Banuelos- Mr. Banuelos was a 14 year old who was repeatedly followed by

the Defendant for approximately one year around his high school in California. The Defendant followed the victim and repeatedly made lewd comments to the victim including "I want to fuck you." At one point, the Defendant appeared angry with the victim and attempted to run him over with his vehicle. The Defendant was convicted of child annoyance relating to the incident in early 1992.

C. Steven Tomasic- In September or October of 1991, the Defendant approached Mr. Tomasic on several occasions as he was walking down the street and offered to give him a ride. Mr. Tomasic initially refused, but later accepted the ride. The Defendant later asked Mr. Tomasic if he would sleep with him and asked him if he could take his picture. In early 1992, the Defendant called Mr. Tomasic from California, and informed him that he had to get out of Chicago in a hurry and asked if Tomasic could go to his apartment in Park Ridge and pack his belongings to ship them to California.

D. Boyd Deason- Deason was a friend of the Defendant's who was interviewed by police in 1992. Deason related that he knows that the Defendant likes to have sex with young boys and knows that he would cruise around parks, schools, and arcades looking for boys to pick up. He specifically mentioned that the Defendant liked to park his vehicle and attempt to befriend young boys at the park and told investigators that the Defendant liked to use "smoke screens" to attempt and divert police attention away from him when he knew he was suspected in a crime.

E. Thanh Truong- The Defendant approached Mr. Truong by a bus stop as he was waiting for a ride. The ride was accepted and the two remained in contact for several weeks after that. The Defendant confided in him about some details of the circumstances surrounding the murder and later admitted that he originally offered him a ride because he wanted to pick him up.

F. James Raspberry- The Defendant first approached a very young Mr. Raspberry in

California and tried to pick him up, claiming he needed help moving furniture. Several years after that, the Defendant approached him again and offered him a ride to the Boy's Club when the club was only one-half of a block away. Defendant told Mr. Raspberry that he would like to have sex with him; Mr. Raspberry was approximately 14 years-old at the time.

Motive and Continuing Narrative

Evidence of the "Boy profile for exploitation list" recovered from the Defendant's apartment and the testimony of Modesto Banuelos, Terry Crawford, the Palm Springs juveniles, and James Raspberry is admissible to establish the Defendant's motive to abduct and kill David Chereck. Specifically, this evidence is admissible as a continuing narrative of events and to establish that the Defendant killed David Chereck in order to destroy any evidence of the Defendant's abduction and sexual assault.

Although the State is not required to prove motive, "it is certainly entitled to do so when evidence of motive exists." People v. Hale, 762 N.E.2d 59, 68 (2001). Evidence of motive may tend to identify the defendant as a perpetrator in showing that he had a strong reason to commit the charged crime. *See generally* People v. Tolliver, 807 N.E.2d 524, 540 (Ill. App. 1st Dist. 2004). This evidence is generally relevant because it allows the jury to fully understand the surrounding circumstances and may "provide a motive for an otherwise inexplicable act." People v. Smith, 141 Ill.2d 40, 58, 152 Ill.Dec. 218, 565 N.E.2d 900 (1990).

Additionally, other crimes evidence is admissible to establish a continuing narrative of events leading up to the charged crime. In Illinois, other acts are admissible if they are "part of the continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged." People v. Abernathy, 402 Ill. App. 3d 736, 751, 931 N.E.2d 345, 357 (Ill. App. Ct. 4th Dist. 2010). Courts have routinely held that "acts which are closely and

inextricably mixed up with the history of the guilty act itself as to form part of one chain of relevant circumstances is admissible.” People v. Abernathy, 402 Ill. App. 3d 736, 751, 931 N.E.2d 345, 357 (Ill. App. Ct. 4th Dist. 2010). *See also* People v. Morales, 2012 IL App (1st) 101911, ¶ 24, 966 N.E.2d 481, 488 (Ill. App. Ct. 1st Dist. 2012).

In the instant case, the evidence offered provides critical context for the jury to understand how the Defendant came into contact with and why he killed David Chereck. Without the offered evidence the narrative is incomplete and the fact-finder could not understand the full nature and extent of what motivated the murder; that the Defendant abducted Chereck with the intent of sexually assaulting him and eventually killed him to destroy the evidence of an abduction and sexual assault. The evidence indicates that the victim and his group of friends noticed that they were being watched by a man in a white car of a similar make, color, and model to that of a car driven by the Defendant.

Further, the evidence shows that the Defendant was in the area on the night of the murder, and saw the victim when he was last seen alive. He admitted to seeing David Chereck at several points through the evening, and called the police with a fabricated trip in order to deflect suspicion away from himself. The offered other crimes evidence is probative and necessary to connect how and why the Defendant came into contact and to explain the motive for an “otherwise inexplicable act.” People v. Johnson, 208 Ill. 2d 53, 102, 803 N.E.2d 405, 433 (2003). In this situation, the relevance and necessity of this evidence is akin to the need to explain gang affiliation in an otherwise inexplicable homicide. *Id.*; *See also* People v. Campbell, 2012 IL App (1st) 101249, 978 N.E.2d 257, 264 (Ill. App. Ct. 1st Dist. 2012). In both situations, the motivation for the defendant killing the victim cannot be explained in the absence of the other acts evidence because the motive is shown through the relationship of the defendant

to the victim. Id.

Here, the evidence of the List is probative because it establishes the Defendant's sexual attraction to boys like David Chereck and demonstrates his intent to sexually exploit them. This provides an explanation for why the Defendant approached David Chereck and explains a motive for why he was murdered; to silence a victim and destroy any evidence of abduction and assault. Moreover, the testimony of Crawford, Banuelos, Tomasic, the Palm Springs juveniles, Truong and Raspberry is relevant to motive because it demonstrates that the Defendant was sexually attracted to young boys of a similar age to David Chereck, and provides context for the Defendant's method of approach. When looked at in its totality, this evidence is part and parcel to the charged crime and forms a link in the chain of relevant circumstances giving rise to the offense. Abernathy, 402 Ill. App. 3d 736 at 75.

It is important to note that, as pertaining to this section, this evidence and testimony is not being introduced to demonstrate the Defendant's propensity. Rather, it is relevant and admissible because it shows the motive and explains "an aspect of the crime charged which would otherwise be implausible." People v. Carter, 362 Ill. App. 3d 1180, 1190, 841 N.E.2d 1052, 1060 (Ill. App. Ct. 4th Dist. 2005). The People are entitled to present evidence of motive when it exists, and the introduction of a profile listing characteristics to look for in a young boy to sexually exploit provides that motive as does the testimony of other young boys he abducted. The absence of this evidence will deprive the trier of fact a fair opportunity to understand the circumstances surrounding the murder. Thus, the evidence of the List and the testimony of Crawford, Banuelos, Tomasic, the Palm Springs juveniles, Truong and Raspberry is admissible as evidence establishing motive and showing the continuing narrative of events leading up the charged crime.

Rebut a defense

The Defendant's other crimes are admissible to rebut the Defendant's assertion to police and likely defense that he saw the victim get into the vehicle of a third person. Generally, evidence that contradicts a defendant's denial or disproves an alibi defense is admissible as other crimes evidence. People v. Millighan, 265 Ill. App. 3d 967, 973, 638 N.E.2d 1150, 1155 (Ill. App. Ct. 1st Dist. 1994). Illinois courts have held that evidence related to other crimes is admissible to describe the accuracy and reliability of a defendant's confession. People v. Cruz, 162 Ill. 2d 314, 352, 643 N.E.2d 636, 654 (1994). When a suspect tells the police things that only the actual offender could have known, or he admits to things about which the police were previously unaware, these factors corroborate a confession. People v. Williams, 285 Ill.App.3d 394, 396-97, 220 Ill.Dec. 748, 673 N.E.2d 1169 (1996). *See also* People v. Kissinger, 116 Ill. App. 3d 826, 831, 452 N.E.2d 615, 619 (Ill. App. Ct. 1st Dist. 1983) (holding that State's introduction of other crimes to rebut defendant's claim that he was not anti-semitic was admissible because it "is relevant with regard to the probability of defendant's participation in the crimes charged").

In People v. Hale the court allowed the State's use of other crimes evidence to corroborate the defendant's confession during their case in chief. 2012 IL App (1st) 103537, ¶ 27, 977 N.E.2d 1140, 1149 (Ill. App. Ct. 1st Dist. 2012). In Hale, the Trial Court refused to allow the State to introduce evidence of collateral crimes to establish the reliability of the Defendant's confession. Id. In overturning the Trial Court's decision, the appellate court held that since the police did not know who was responsible for the shooting until defendant confessed, this lent "substantial credibility to the confession." Id.

The same reasoning applies here where other crimes evidence is being offered to

establish the inaccuracy of the Defendant's tip to police, proving that the tip was intended to divert investigator's attention away from the Defendant as a suspect. The Defendant placed the identity of the person who picked David Chereck up that night into issue when he phoned in a tip to the police claiming he saw another man driving a similar white car pick up the victim. The identity of the person who picked up David Chereck is a crucial issue in the case, and a note found in the Defendant's apartment indicating a profile for sexual exploitation listing characteristics the victim possesses is highly probative in determining the identity of his killer.

Additionally, evidence of the Defendant's past instances of abduction are probative because the conduct he attributed to an unknown third person driving a virtually identical vehicle to his own is the same method that he used to abduct children in the past. Similar to Hale, the police did not have a suspect before the Defendant contacted police and the introduction of other crimes evidence rebuts his defense that the crime was committed by another person. The Defendant's use of this fabricated tip aligns with what Boyd Deason told investigators of the Defendant's use of "smoke screens" to try and steer police attention away from him as a suspect. The offered evidence is relevant with regard to the probability that the Defendant, rather than a third person, committed the crime charged.

In Illinois, any evidence that tends to prove or disprove a fact at issue is relevant. People v. Kimbrough, 138 Ill. App. 3d 481, 488, 485 N.E.2d 1292, 1298 (Ill. App. Ct. 1st Dist. 1985). The Defendant placed the identity of the person who picked the victim up into issue when he told police that he saw another driver pick up the victim. Evidence that the defendant was actively trying abduct boys and had a history of engaging in the very conduct he claimed he witnessed a third person employ is highly probative in rebutting his likely defense and assertions to police. Thus, the evidence of the List, as well as the testimony of Banuelos, Tomasic, Truong, Crawford,

Raspberry, and Deason are admissible to disprove the Defendant's statements to police and rebut his likely defense.

Identity and *Modus Operandi*

The testimony of Terry Crawford, Modesto Banuelos, Steven Tomasic, Thanh Truong, the Palm Springs juveniles, and James Raspberry is admissible to establish the Defendant's *modus operandi*. *Modus operandi* or "method of working," refers to a pattern of criminal behavior so distinct that separate crimes are recognized as the work of the same person. People v. Kimbrough, 485 N.E.2d 1292 (1985). If evidence of other crimes is offered to prove *modus operandi*, there must be some clear connection which creates a logical inference that if the defendant committed the former crime, he may have committed the crime charged. Kimbrough, 485 N.E.2d 1292. Accordingly, there must be some distinctive features that are not common to most offenses of that type. People v. Dickerson, 456 N.E.2d 920 (1983).

Although there must be a "strong and persuasive showing" of similarity between the crimes, "it is not necessary that the crimes be identical" for the other crime to be admitted into evidence to prove *modus operandi*. " People v. Williams, 541 N.E.2d 1175 (1989). Where common features may be insufficient to raise the inference of *modus operandi* on an individual basis, the combination of such features may reveal a distinctive combination so as to suggest the work of the same person. People v. Smith, 602 N.E.2d 1388 (1992). The test is not one of exact, rigorous identity, as some dissimilarity will always exist between independent crimes (People v. Phillips, 538 N.E.2d 500 (1989)); rather, it is the similarity of the conduct as a whole, not the uniqueness of any single factor, which is the key to establishing *modus operandi*. Smith, 602 N.E.2d at 1388.

The use of other crimes evidence to show *modus operandi* and identity are related in that

they both serve to identify the Defendant as the perpetrator of the offense at issue, but they work in different ways. People v. Quintero, 915 N.E.2d 461, 469-72 (Ill. App. 3d Dist. 2009). “The *modus operandi* exception has been described as circumstantial evidence of identity on the basis that crimes committed in a similar manner suggest a common author and strengthens the identification of the Defendant.” People v. Shief, N.E.2d 638, 645 (2000).

In the instant case, the Defendant’s *modus operandi* is to cruise for young boys in his car in areas where there are young men, and to pick them up with the intent of sexually assaulting them. The Defendant used this approach in six other situations involving Crawford, Tomasic, Truong, Banuelos, the Palm Springs juveniles, and Raspberry. In each of the situations, the approach is virtually the same; the Defendant is cruising or is parked in the area of a school, or park and approaches a boy between the ages of 14-23 who is walking alone on the street. Then, the Defendant either gestures towards them to approach his vehicle or he drives up and offers them a ride. After he approaches, he either solicits them for sex while in the vehicle or he exchanges phone numbers with them and tries to solicit them for sex during a subsequent phone call. The evidence indicates that the Defendant used this method to stalk and approach the victim as he walked home before sexually assaulting and murdering him. This conclusion is supported by the series of events in the hours before as well as the days after the murder. The victim’s friends indicated to police that on the night of the murder, they believed they were being watched by an unknown person in a white four-door car as they played around Lorel Park at approximately 9:30 p.m. After leaving the park, the boys walked to the 7-Eleven store at the corner of Lincoln Ave. and Gross Point Rd. When the victim was last seen alive, at approximately 10:00 p.m., he was leaving the 7-Eleven, walking home along a route that should have gotten him home in approximately ten minutes. The Defendant, who had been following

the victim and his friends, seized his opportunity when the victim split with his group and began walking alone along Harms Rd. Then, the Defendant approached the victim in his white four-door vehicle, abducted him, assaulted him, and murdered him to destroy any evidence of the assault.

In the days following the murder, the Defendant contacted police with a tip that he saw the victim gesturing towards his vehicle and as he was pulling over to speak with him, another driver in a similar four-door white vehicle pulled over and the victim got into his car which drove to the forest preserve. It is the People's position that the Defendant was describing his own approach, while attempting to provide an explanation for any witnesses who saw the Defendant's vehicle pull over to pick up the victim. At the same time, the Defendant was acquiring information on the investigation while steering police attention towards another suspect. The Defendant's own statements, combined with the timeline of events on the night of the murder, and the statements of the victim's friends indicate that the Defendant stalked and abducted the victim.

Moreover, the combination of these facts supports the conclusion that the Defendant did, in fact, approach the victim in a similar manner as he had with Terry Crawford, Thanh Truong, Steven Tomasic, Modesto Banuelos, the Palm Springs juveniles, and James Raspberry. *Modus Operandi* is described as circumstantial evidence of identity on the basis that the crimes sharing similar features that suggest a common author and strengthen the identity of the Defendant. When viewed in the context of the events surrounding the murder, it is clear that this evidence demonstrates a "distinctive criminal pattern" that indicates the work of the Defendant. People v. Haley, 960 N.E.2d 670, 683 (Ill. App. 1st Dist. 2011). Thus, the testimony of Terry Crawford, Thanh Truong, Steven Tomasic, Modesto Banuelos, the Palm Springs juveniles and James

Raspberry is admissible to establish the Defendant's *Modus Operandi* that was used to abduct, assault and murder the victim in this case.

Conclusion

The offered evidence is admissible under both 115-7.3 as propensity evidence and through a variety of traditional other crimes avenues. The longstanding prohibition against the use of other crimes evidence is intended to prevent unrelated evidence of criminal conduct from prejudicing the jury against a defendant. That concern is overcome, in situations such as this one, where the introduction of the evidence is relevant to the case and is probative to determining the guilt or innocence of the Defendant on trial. Proving this related criminal conduct is critical for a jury's understanding of the entirety of the case.

WHEREFORE, the People respectfully request that this court allow the people to present evidence and testimony relating to other crimes and acts committed by the Defendant to establish the Defendant's propensity as a child sex offender. Additionally, the People request that this court allow the people to present evidence establishing a motive, establishing a continuing narrative of events, rebutting a likely defense and establishing the Defendant's identity and *modus operandi*.

Respectfully submitted,

ANITA ALVAREZ
Cook County State's Attorney

A handwritten signature in dark ink, appearing to read "Ethan Holland", written over a horizontal line.

Ethan Holland
Assistant State's Attorney

A handwritten signature in dark ink, appearing to read "William Delaney", written over a horizontal line.

William Delaney
Assistant State's Attorney

A handwritten signature in dark ink, appearing to read "Thomas Biesty", written over a horizontal line.

Thomas Biesty
Assistant State's Attorney

Recovered during execution of search warrant
April 1, 1992

Written by Robert Serritella

Boy profile for exploitation

- Between 8 & 17 years old
- An underachiever in school or home
- Came from a home where parents were absent either physically or psychologically
- Usually with previous homosexual experience
- Has no strong moral or religious obligations
- Usually had no record of previous delinquency
- Suffered from poor sociological development