

1 be here to argue that particular motion. The Court indicated  
2 that I would have plenty of time to have witnesses subpoenaed  
3 into court for that motion. I was here just to argue the  
4 similar acts and to weed out and determine whether any of  
5 the alleged similar acts that the prosecutor has raised or,  
6 are going to be admitted. I'm not prepared at all to argue  
7 the motion I just filed today in writing. I could argue  
8 it, but I'm not ready to call witnesses other than to allege  
9 that everything I stated in there is true. And I've got  
10 witnesses that will come in and make such statements. People  
11 that are right here in this community.

12 THE COURT: Well, the purpose of not having the  
13 jury in the first thing this morning was to hear the motions.

14 MR. WILLIAMS: Well, I certainly misunderstood that.  
15 I couldn't have gotten my witnesses down here and subpoenaed  
16 in that short a span of time anyway, I don't believe. Between  
17 three-thirty on Friday afternoon and nine o'clock this morning.

18 I apologize to the Court for that misunderstanding, but  
19 I was under the impression we were going to come in and  
20 only argue the similar acts.

21 Is that your understanding, Mr. Day?

22 MR. DAY: It was.

23 MR. WILLIAMS: Mr. Day agrees that that's what our  
24 understanding was and I'm --I don't know what to say.

25 THE COURT: Which of the similar acts --I think the

1 better terminology is the "other" acts since there's no reference  
2 to the word "similar" in the, in the rule. Which of the  
3 other acts do you object to?

4 MR. WILLIAMS: Every one of them, Your Honor.

5 None of them are other acts under the statute. And I believe  
6 the law is that the burden is upon the State of Ohio to show  
7 that they are admissible under the rule. And I will, wish  
8 the Court would give the prosecutor an opportunity to prove  
9 that they are; and I will argue against their being admitted  
10 for that purpose.

11 THE COURT: What about the oral motions that you  
12 made prior to the beginning of the trial here? Have you  
13 reduced them to writing?

14 MR. WILLIAMS: Well, they weren't made prior to the  
15 beginning of the trial. They were made during the trial  
16 after the jury had been seated, so they weren't pretrial  
17 motions. They were motions made during the trial --

18 THE COURT: Well, have you reduced those to  
19 writing as the Court instructed?

20 MR. WILLIAMS: I haven't reduced one of the others  
21 I had made. I could try to get those reduced to writing and  
22 in today. I asked for a specialmaster to be appointed, as I  
23 recall. The motion to dismiss for prosecutorial misconduct,  
24 as the Court would note, I did file this morning in writing.  
25 During the trial it's difficult to get to a typewriter and

1 especially --we got to one over the weekend. Dennis and I  
2 worked all weekend. Dennis typed up that motion himself.

3 THE COURT: As I recall, your motion, oral motions  
4 on the morning of the 22d were, were to r enew the motion  
5 in limine regarding the other acts. And a renewal of the  
6 motion to dismiss for prosecutorial misconduct. And renew  
7 the motion to appoint a special master. Were there other  
8 motions that you recall?

9 MR. WILLIAMS: I don't believe there were, Your  
10 Honor. I guess one was, or the other one was, if I got --  
11 I guess in the alternative, if the Court did not feel a  
12 special master should be appointed, to at some point seize  
13 the prosecutor's file and make a complete copy of it and seal  
14 it for future review in case, in case this should end in  
15 a conviction in this courtroom. So that on appellate review  
16 there can be a review of exactly what information has or has  
17 not been properly presented on discovery to the defense.

18 THE COURT: You're not prepared to go forward then  
19 on the, on anything other than the motion in limine?

20 MR. WILLIAMS: That's correct, Your Honor. I was  
21 under the impression that was all we were going to discuss  
22 this morning, and I wouldn't have had the opportunity to  
23 subpoena the witnesses in. I was under the impression I  
24 would have more time.

25 THE COURT: Mr. MacGillivray?

1 MR. MACGILLIVRAY: I was under the same impression  
2 as the Court, Your Honor.

3 THE COURT: You ready to proceed here?

4 MR. MACGILLIVRAY: Yes. Does the Court have before  
5 it a memorandum of March 15th, 1983, setting forth the other  
6 acts?

7 THE COURT: Yes.

8 MR. MACGILLIVRAY: Does the Court desire the State  
9 any more specificity than is there or --? Our addendum we've  
10 advanced.

11 THE COURT: Well, is there anything additional you  
12 wish to put on other than what's in the memorandum?

13 MR. MACGILLIVRAY: Yes, Your Honor. We filed  
14 Friday afternoon, I think around five o'clock --I know the  
15 judge was still here --an additional memorandum listing two  
16 other armed robberies. Whether or not service has been made  
17 I --

18 MR. WILLIAMS: I received that.

19 MR. MACGILLIVRAY: I asked Steve Skidmore to  
20 serve the defendant personally because I didn't know where  
21 Mr. Williams would be over the weekend. I'm afraid his mail  
22 would not have arrived --.

23 In addition to the 14 aggravated robberies listed that  
24 Skatzes and Rogers participated in in the period of August  
25 '78 through October 12th, '79 --these aggravated robberies

1 started with some people named Mosurer who owned the OK  
2 Pizza Restaurant in Marion in August of '78, ended with the  
3 aggravated robbery-murder here on October 12th, 1979. When  
4 Mr. Rogers started or agreed to cooperate with the State,  
5 the State became aware of two other aggravated robberies.  
6 One was the Westlawn Party Store in Marion, Ohio. That's  
7 the --one. An armed robbery we have here that the Court  
8 has on the memorandum is number twelve, the Foodtown robbery  
9 in Bucyrus, Ohio.

10 This is very interesting because the victims weren't sure  
11 whether they were robbed by black men or white men. Mr.  
12 Rogers will testify that they experimented with Afro-type  
13 wigs, Afro-type beards. And even went to Columbus and Cleve-  
14 land, the theatrical-type shops and bought some theatrical-  
15 type makeup to make themselves appear black. And the victims  
16 from Foodtown can corroborate this.

17 On, during this series of time, specifically on November  
18 the 3d, 1978, a 14-year-old girl whose father ran the Westlawn  
19 Party Store who was, name was Pottopopaus was shot by, and  
20 killed during an aggravated robbery by what she thought was  
21 a black man. A witness outside that Westlawn Party Store  
22 has a very interesting idea of this black man, described as  
23 having very fine features. And I believe having acne scars  
24 on the face. In any event, shortly after that, Rogers will  
25 testify that the Defendant Skatzes admitted to him that he

1 in fact wearing his black makeup had murdered Mr. Pottopopaus.

2 Similarly during this period of time on November 20th,  
3 just 17 days later, 1978, and, I believe, a Certified Station  
4 in Marion, Skatzes once again according to Rogers dressed  
5 as a black man, shot a gasoline station attendant in the  
6 hand and wrist --

7 THE COURT: You're referring to the Gastown service  
8 station?

9 MR. MACGILLIVRAY: Yes. Yes, Your Honor. During  
10 another aggravated robbery. Both of those robberies were Skatzes  
11 alone. And just like Arthur Smith, when he was alone with  
12 the victim, no one else was around is when these shootings  
13 occurred, Your Honor.

14 THE COURT: Well, Mr. MacGillivray, perhaps we'd  
15 better run through these one by one and indicate to the Court  
16 what elements that are in issue which you intend for the  
17 evidence to show. And then in addition to the elements, the,  
18 which language of the rule or statute that is being indicated  
19 here.

20 MR. MACGILLIVRAY: Okay, Your Honor. I think it  
21 might be easier for my presentation if I do a little bit of  
22 skipping around here.

23 The first one I want to talk about is the one that  
24 occurred August the 4th, 1978. It's Number 13 on your list,  
25 Your Honor. This shows the inception of the whole plan.

1 Rogers will testify that although he was working full-time,  
2 Skatzes had lost his job, was in dire need of money. Rogers  
3 will also testify that although he was working full-time,  
4 he was having trouble paying his bills. Skatzes had talked  
5 to him a couple, three times about getting into armed robberies;  
6 that they wanted a relatively sure one to start with. This  
7 OK Pizza --and that's somewhat confusing, because the OK  
8 Pizza is located in Marion. But Mosurer, who will testify,  
9 the owner, lives in Morrow County in a rural area. Since  
10 George Skatzes had tended bar and worked with Mosurer, he  
11 knew of the habits as far as the taking the money from the  
12 restaurant and taking it home. They thought they had a pretty  
13 easy setup because it was a rural area, no police around and  
14 et cetera, et cetera; and that would be a good one to start  
15 on.

16 And Mr. Mosurer will be here to testify that up to just  
17 a few months before this Skatzes in fact did work for him  
18 and how they were, Rogers waited on him in the house when  
19 they came in, tied them both up, put them on the floor.  
20 Although it was on the floor, it was very similar to the way  
21 Art Smith was tied up and put down, put down face-down on  
22 the ground, et cetera, et cetera.

23 Number one, that is not only the proof of the plan or  
24 the preparation or intent; that is the inception of this plan  
25 of armed robberies. I think 14 or 15, plus the two, the murder

1 and the shooting, in just about a 14-month time.

2 I, there was one other armed robbery, Your Honor, that  
3 we didn't know about because we couldn't get a report on.  
4 It occurred around Labor Day, 1979, in Richwood, Ohio, at  
5 a gas station. The victim is, believe it or not, a Belle-  
6 fontaine resident by the name of Roland Harrington. He will  
7 testify that --or Rogers will testify first that he and  
8 Skatzes went there with the intention of robbing the receipts  
9 from the gasoline station. As a matter of fact, they missed  
10 him by about five minutes. The manager just left with the  
11 receipts. But they robbed the attendant, forced him to  
12 lie down on the floor of his trailer, wrapped him up with tape,  
13 bound his hands and feet.

14 An interesting thing about Mr. Harrington is he will  
15 testify that there was one other man who kind of sounded like  
16 a black because blacks always talk a way; and the other man,  
17 who was Skatzes, was yelling at Rogers, "Kill the motherfucker,  
18 kill the motherfucker." Needless to say, this corroborates  
19 Mr. Rogers' statement about what Skatzes told him after he  
20 killed Arthur Smith, "I had to kill the motherfucker."

21 Once again, it shows the intent to rob. The opportunity,  
22 the motive, plan and, or more importantly, identity. And in  
23 absence of mistake or accident, here we have Skatzes wanting  
24 Rogers to shoot someone. It was no accident when Art Smith  
25 was killed. And --



1 THE COURT: Which number is this you're referring  
2 to here?

3 MR. MACGILLIVRAY: Your Honor, I'm sorry. That,  
4 that was not numbered. I just --this is one of those, of  
5 course there were so many of them that Rogers had trouble  
6 remembering. We've --that slipped by us. It occurred about  
7 Labor Day in 1979. It was at Richwood; it was a gas station.  
8 The victim's name is Roland Harrington. At the time we filed  
9 this, Mr. Rogers hadn't even remembered that one because  
10 they left with no money, I think was one reason. They  
11 missed the payroll, or they missed the receipts.

12 THE COURT: Well, let's see; we have 14 in the  
13 original memorandum. Is that right?

14 MR. MACGILLIVRAY: Yes, Your Honor. And we're  
15 talking about three more beyond those.

16 THE COURT: So we can refer to this one as Number  
17 15 and the Westlawn is 16. The Gastown is 17. For purposes  
18 of abbreviation here in discussion.

19 MR. MACGILLIVRAY: The --your Number 8, Your Honor,  
20 would be the next one that occurred in chronological order.  
21 This would be the bar known as the Brown Jug, I think, at  
22 the outskirts of Marion, Ohio, on Route 4. Although Skatzes  
23 waited in the car about a quarter of a mile away, Rogers  
24 waited outside. When a somewhat elderly lady came out, Rogers  
25 accosted her at gunpoint; but she started screaming. He

1 wanted to take her car; she threw the keys away. He did  
2 grab the money bag. I think the importance here is, once  
3 again, of course, the plan of armed robberies. But also shows  
4 that Rogers is not the type to go around murdering people  
5 just because he gets some resistance and has to grab the money  
6 and go or shove the woman away. The woman was quite vulnerable.  
7 It would have been very easy to kill her. He wasn't sure  
8 at the time he told us whether or not he was successful in  
9 getting the money bag, but now he remembers that he is sure  
10 that he got the money bag and he stole six or seven hundred  
11 dollars. This conforms to the statement of the victim.

12 The next robbery occurred a couple weeks later,  
13 September 27th, '78. And that would be your Number 10,  
14 Your Honor. Kentucky Fried Chicken. This time Rogers waited  
15 in the car while Skatzes went inside. Rogers will also  
16 testify that --he won't have the dates --that Skatzes had  
17 told him he had robbed that place several times before. And  
18 it shows continuing course of conduct of these two and how  
19 often these robberies occurred. In addition to the motive,  
20 opportunity, all the other things we've listed in the  
21 memorandum, Your Honor.

22 The next robbery occurred about a week later on October  
23 2d, '78. That was the Pizza Hut in Marion. I'll try to  
24 find your number.

25 MR. WILLIAMS: Eleven.

1 MR. MACGILLIVRAY: Number 11. In addition to  
2 showing the normal things proved by these armed robberies,  
3 the very interesting tie-in here is that the victim, the  
4 statements indicate that, as Rogers will testify, that he  
5 was thrown in the trunk of his car and heard them jump out  
6 of his car, jump in their car and take off. And just like  
7 here, both the victim and his car and their car was parked in  
8 an apartment complex, just like Mr. Rogers had testified,  
9 so it would not draw attention. The apartment complex was  
10 right adjacent to this site of this aggravated robbery.

11 Three days later, Skatzes and Rogers were at it again.  
12 This time they'd gone from Marion to Bucyrus.

13 I think, Your Honor, if I may digress a minute, this is  
14 why it's so important that we be able to show all these;  
15 because it shows the area that these two operated in -- Bucyrus,  
16 Marion, even Marysville, Findlay. And I'll never forget, when  
17 this case first came out, we had just a few of these. And I  
18 said, hey, the farthest away appears to be Delaware. Let's  
19 draw a circle from Kenton to Delaware and Marion to Delaware  
20 and see if Bellefontaine falls in that circle. And it sure  
21 did, Your Honor.

22 In any event, as I said earlier, this time they got tired  
23 of wearing ski masks. Think they wanted to change their M.O.  
24 so if they got caught once, they wouldn't be tied in to all  
25 these other aggravated robberies. So they disguised themselves

1 as black men. We've talked about that before. And that's  
2 stated in the memorandum. The State believes it's necessary  
3 information.

4 They took about nine days off before they robbed again.  
5 And this is Weaver's IGA. That's once again another store,  
6 Mount Gilead. There were three victims there. One of the  
7 victims, like Art Smith, was pistol whipped by George Skatzes.  
8 This time the three victims saw both the tall guy and the  
9 shorter guy. A walkie-talkie was used. And now for the  
10 first time, Dan Stanley comes on the scene. They picked  
11 up a third partner, and he was involved as their driver. And  
12 there was quite a bit of controversy afterwards because  
13 Stanley got scared off or somehow and left Skatzes and Rogers  
14 out in the cold for quite awhile. And they had to find another  
15 way all the way home from Mount Gilead.

16 About nine days later --excuse me, eleven days later,  
17 some people named Reeces were robbed. This was by Skatzes  
18 and Rogers. And just like Arthur Smith, the victims were  
19 forced to lie down and their hands and feet were tied. And  
20 it goes to prove motive, opportunity and intent, preparation,  
21 plan and knowledge, identity. And corroboration of Mr. Rogers'  
22 testimony on these matters if he's allowed to testify. That  
23 was Number 7 on your list, Your Honor. I'm sorry.

24 The next crime these two committed together, actually  
25 the next three, were breaking and enterings. And as the

1 State has indicated, since this was an aggravated robbery here  
2 and since these other acts are a little different type crime  
3 since the Court has dismissed, or severed the J & J Belle  
4 Center B&E from this case, the State does not intend to  
5 introduce the B&E's at this time, Your Honor.

6 Skatzes became upset with what he called the "Lima  
7 crowd". He didn't want to operate with Stanley, particularly  
8 after Stanley took off at Reeces. So although Rogers engaged  
9 in a couple, three other armed robberies either by himself  
10 or with someone other than Skatzes --excuse me, Your Honor.  
11 I've missed a couple here. I've missed several here. I've  
12 got four pages, and I got on the wrong page.

13 After Crawbaugh's, there was another theft; and then  
14 we have the J & J. As the State indicated, we do not intend  
15 to introduce these.

16 The next robbery, the aggravated robbery was December  
17 19th, 1978. That is the Rink's Bargain City in Findlay. And  
18 it's Number 1, I believe, on your list, Your Honor. Stanley  
19 was along on this as a driver, once again. Rogers will  
20 testify that Stanley had received a tip about the vulnerability  
21 of Rink's managers. And at that time both the Findlay Rink's  
22 store and the Bellefontaine Rink's store were under considera-  
23 tion as the subject of aggravated robbery. That Stanley  
24 drove, waited in the car while --just like they did at the  
25 Rink's store here, Rogers and Skatzes waited for the victim

1 to get in the car. The Rink's store had kind of a, had a food  
2 store on one side and a general merchandise store on the  
3 other side up there so there were two managers that came out  
4 at the same time. Both these managers were accosted at gun-  
5 point by Rogers and Skatzes. One manager said he couldn't  
6 get back in because the alarm was automatic and the police  
7 would be notified. So when Rogers went back in, Skatzes  
8 forced this man to lie on the ground and just like Arthur  
9 Smith was forced to lie on the ground, tried to chloroform  
10 him to knock him out. Death threats were made. Rogers  
11 went inside, got some money from the one side of the store,  
12 from the one manager, both --put the other manager back out,  
13 threw them both in the trunk of the car to get that ten-  
14 minute headstart that Rogers has talked about briefly when  
15 he's testified. And which was also the same reason Rogers  
16 understood why it was necessary to take Art Smith out and  
17 bind him up in a secluded rural area. So they could get  
18 their ten-minute headstart before he could get loose and  
19 turn the alarm in to authorities.

20 I think Rogers can also testify that Rink's stores,  
21 as far as, I think, Chillicothe away, were being considered  
22 by he and Skatzes as possible other aggravated robbery  
23 possibilities.

24 Just three days later they moved from Findlay down to  
25 Kenton. This time it's not only Stanley, Skatzes, and Rogers,

1 but they picked up a fourth --Jerry Whitaker. Who will also  
2 testify here, as will Stanley. Whitaker, Stanley, and Rogers  
3 will all testify that Jack Valvano, they had cased it enough  
4 to know that he brought the cash home and took it to the bank  
5 the next day or whatever. He just brought the money home.  
6 They lurked outside his garage. They being Skatzes and Whitaker  
7 this time. As Valvano pulled in the garage, came out to  
8 close the door and go into his house, he was grabbed; the money  
9 was grabbed. He was thrown in the trunk of his car and left  
10 there.

11 Now we're on January 4th, '79. And this is the Leader  
12 Bar and Grill in Marion, Ohio. It's Number 5 on your list,  
13 Your Honor. Once again we have the same four that perpetrated  
14 immediately preceding the aggravated robbery at Super Value  
15 in Kenton. They started out the robbery in another bar that  
16 night and didn't like the looks of it, so they decided to  
17 take the Leader Bar and Grill. Since Skatzes and Whitaker  
18 had done the legwork on the Super Value a couple weeks prior,  
19 it was determined that it'd only be fair that the guys who  
20 waited in the car that time, namely, Stanley and Rogers,  
21 did the robbery at the Leader Bar and Grill.

22 A little different this time because this was during  
23 business hours. There were a half a dozen or so patrons in  
24 the place. They were all made to lie on the floor at gunpoint.  
25 Peter Bell, the proprietor of the grill, was a lot more feisty

1 than anyone thought he would be. Stanley had to hit him,  
2 knocked him against the counter. Drew blood from his head.  
3 He still kept resisting. He grabbed Rogers a couple, three  
4 times. Rogers shot once, grazed his stomach. More than  
5 grazed his stomach; it went in his stomach. Peter Bell  
6 still wasn't too happy, and he ended up like getting eighty  
7 or ninety dollars with blood all over it. And this gentleman,  
8 he must be a remarkable individual, went to bed to take a rest.  
9 And it was a couple hours later before he knew he was even  
10 wounded.

11 The next aggravated robbery that involved Skatzes would  
12 have been January 28, 1979. And that was Clancy's Restaurant  
13 in Kenton, Ohio. That was kind of a spur of the moment thing.  
14 Rogers and Skatzes were just kind of driving around Kenton.  
15 They saw the manager getting ready to file his day's receipts.  
16 They hadn't been following him; this was just a spur of the  
17 moment thing. And Skatzes jumped out of the car; Rogers  
18 went up to the bank, the night deposit or whatever and grabbed  
19 the money and ran back to the car. And they took off.

20 The next crime these two committed is about three nights  
21 later. But that was a breaking and entering, Your Honor, and  
22 so the State has agreed not to introduce evidence of that.

23 The next aggravated robbery is, the business name involved  
24 is Dino's West. They waited in a house until the proprietor  
25 came by, and he came by with someone else. They, being Rogers



1 and Skatzes, took them back into the apartment above the  
2 business. By this time they'd gotten the manager of the  
3 business, so now they had three people bound up and on the  
4 floor at gunpoint.

5 THE COURT: This was in Marion?

6 MR. MACGILLIVRAY: Marion, Ohio; yes, Your Honor.

7 THE COURT: Number 9, I believe.

8 MR. MACGILLIVRAY: Dino also, or the proprietor  
9 of Dino's West also had some sort of a drive-thru in Kenton,  
10 Ohio, with a safe in it. And since they now had, I think, the  
11 keys or at least the combination of that safe in Kenton,  
12 while Rogers held these three people at gunpoint in Marion,  
13 Skatzes drove clear down to Kenton to break into the other  
14 store that one of these three owned. And it took so long  
15 that somehow Rogers got concerned about why Skatzes hadn't  
16 returned, and he took off and did not wait there at gunpoint  
17 for more than a couple hours. This started the falling out  
18 that I had alluded to earlier. And that would have been the  
19 last aggravated robbery until several months. And that would  
20 have been around Labor Day when they got started again, when  
21 I said earlier, the one I said earlier, the Richwood Certified.

22 Then Lee's Steakhouse would have been next, September  
23 the 12th of 1979. If I can find that number. That's Number  
24 2 on the memorandum list, Your Honor.

25 THE COURT: What day was Labor Day of '79, do you

1 recall?

2 MR. MACGILLIVRAY: No, I don't, Your Honor. Both  
3 the, Mr. Rogers and the victim are hazy as to when that  
4 exactly occurred. The victim says about four years. We  
5 can't find a police report or sheriff's report on it to  
6 pinpoint the exact date. Rogers does remember, he thinks  
7 it was during a gas crunch; and that was around Labor Day  
8 or maybe later. Maybe around Little Brown Jug time or some-  
9 thing. They figured this was one of the few gas stations  
10 open, and that it would probably have some good receipts  
11 because of the weekend traffic. So the date is just a, is  
12 a guesstimate, unfortunately. But Lee's and Richwood are  
13 real close together.

14 Then after Lee's Steakhouse we come to the end.  
15 Unfortunately it didn't end there. They still had another  
16 30 days being partners together. And that brings us right  
17 back to October 12th, 1979. Although Rogers went on to  
18 other aggravated robberies himself, never again did he  
19 associate in that capacity with Skatzes.

20 THE COURT: The Westlawn and Gastown were both in  
21 Marion, Ohio?

22 MR. MACGILLIVRAY: Yes. They're somewhat different,  
23 Your Honor. We've talked to --every other robbery other  
24 than those, Skatzes was along with Rogers or others. The  
25 Westlawn and the Gastown are somewhat different. The State

1 will admit this. Because Rogers was not involved in either  
2 one of those. He's saying that Skatzes admitted the Westlawn  
3 murder and the Gastown shooting to him, Your Honor.

4 I think I did forget one --the Cardinal, September 28th,  
5 '79, a Marysville supermarket. That was Skatzes and Rogers.  
6 I didn't have it on my little chronological list which I use  
7 to help get all these crimes in some kind of order in my mind.  
8 That is Number 14 on your list, Your Honor. And that would  
9 have come between Lee's Steakhouse in Marion and Rink's here  
10 in Bellefontaine. It's one of those I can say we didn't know  
11 about until fairly late in the game after Rogers had agreed  
12 to cooperate. Skatzes waited outside while Rogers accosted  
13 the victims and with the mask and everything, the same M.O.,  
14 et cetera, as all these other aggravated robberies.

15 THE COURT: And the elements that generally you're  
16 trying to show with these other acts are intent and identity  
17 and what else, Mr. MacGillivray?

18 MR. MACGILLIVRAY: Well, motive. Motive for Art  
19 Smith. We've already seen defense counsel saying maybe the  
20 wife killed him or was hinted at broadly. The profit of  
21 motive, was the motive for them being there was plain old  
22 aggravated robbery.

23 THE COURT: Well, of course, motive is not a  
24 specific element of the offense.

25 MR. MACGILLIVRAY: Right. I'm referring to

1 404, Your Honor, (B). The other crimes as long as they're  
2 acts --. Opportunity, they were doing this once or twice a  
3 month. More often two or three days apart even, over that  
4 14-month period. The intent, preparation, plan --okay.  
5 I guess I need not go on. The Court, I guess the Court's  
6 question was the element of the specific crime. All I can  
7 say, Your Honor, is, you know, I know motive is not a, you  
8 know, is not an element of any crime, be it murder or anything  
9 else. But it's admissible to prove any other relevant element  
10 of that crime. And the motive here was aggravated robbery.  
11 It wasn't some exotic thing, because the daughter, Cathy,  
12 had a nine-dollar-check or whatever and a lot of red herrings  
13 the defense are going to try to throw up.

14 We have a legal problem here the Court's aware of  
15 because Rogers is an admitted accomplice --

16 MR. WILLIAMS: Is a what, Doug?

17 MR. MACGILLIVRAY: Is an accomplice. The State  
18 needs to corroborate his testimony. It has to be done. And  
19 his credibility has been attacked or will be attacked if  
20 the opening statement of defendant is accurate. So these  
21 are admissible, I think, under another rule to establish  
22 credibility that what he's saying here is exactly what these  
23 victims experienced several years ago. It shows how good  
24 his memory, Rogers' memory is. It corroborates other  
25 accomplices such as Stanley and Whitaker, because their stories

1 are going to mesh with the victims, Your Honor.

2 THE COURT: Well, the Court notes that a number  
3 of these are different. I think you pointed out that the  
4 last two that you give us memorandums on, Westlawn and  
5 Gastown, are different from the standpoint that the, you're  
6 saying the defendant was alone.

7 I think the case law indicates that the other acts  
8 can only be used if they're so significant that they bear  
9 the signature of the accused when they're being carried out.  
10 The Westlawn and Gastown certainly appear to be quite dif-  
11 ferent from the Rink's, what we're talking about here.

12 MR. MACGILLIVRAY: Yes; they were Mr. Skatzes  
13 solely, Your Honor. I admit that. But the shooting is  
14 the, is the one common indicator, the shootings, to tie these  
15 together showing Mr. Skatzes' intent. Absence of mistake  
16 or accident.

17 THE COURT: The other language of case law refers  
18 to localities, and I think you've addressed yourself to that.  
19 And the time limitations, you've had some case law that says  
20 eight years is definitely too far to stretch these out over.  
21 You're talking here of, I think --

22 MR. MACGILLIVRAY: August '78 to October the 12th,  
23 1979, Your Honor. August 4th, '78. Only a little over 14  
24 months.

25 THE COURT: Mr. Williams?

1           MR. WILLIAMS: Your Honor, the similar act statute  
2 was not passed in order to help prosecutors convict people  
3 when they don't have enough evidence on the crime that they're  
4 charged with. It had a specific purpose. There's a lot of  
5 case law on it. And the case law is pretty clear that none  
6 of these things that Mr. MacGillivray has brought up are re-  
7 motely other acts or similar acts under that statute.

8           THE COURT: You feel the statute has been overridden  
9 by the rule or not?

10           MR. WILLIAMS: The rule and the statute are identical  
11 except for the word "identity" being used in the rule and  
12 not being used in the statute, Your Honor. But they're  
13 identical language, so there's no superceding or overruling.  
14 There's just one additional point in addition to motive or  
15 intent, absence of mistake or accident, scheme, plan, or  
16 system. Also adds identity in the rule. That's the only  
17 difference, Your Honor.

18           THE COURT: Well, I think the --

19           MR. WILLIAMS: But the law --

20           THE COURT: The statute has scheme and system,  
21 which the rule doesn't have; and the rule has opportunity,  
22 preparation, knowledge, and identity, which the statute  
23 doesn't have. But they start out in similar language.

24           MR. WILLIAMS: I'm sure they'll be interpreted the  
25 same way, as far as what, what I'm going to be arguing here.

1 If the Court looks at the original indictment and the  
2 second indictment that came down, anyone looking at that  
3 indictment couldn't help but see that there was a period  
4 of approximately six, seven months when there was a string  
5 of these robberies that Mr. MacGillivray's testified -- talked  
6 about. And that Mr. Rogers is saying they had this common  
7 scheme in which he talked about scanner radios and walkie-  
8 talkies and ski masks and tying people up or putting them in  
9 coolers or putting them in the trunk of their car. We never  
10 heard him talk about scanner radios, walkie-talkies or  
11 anything of that nature on the witness stand concerning the  
12 Rink's case in Bellefontaine.

13 Also I think it's real important to note that between  
14 the Rink's case here in Bellefontaine, October of '79, and  
15 the last case that -- although I understand now Mr. Rogers  
16 is saying September 12th and September 28th there were these  
17 robberies at Lee's Steakhouse and Cardinal supermarket, but  
18 again these witnesses will testify only one man robbed them.  
19 It's Mr. Rogers saying that George was waiting down the  
20 road a few, a few blocks.

21 THE COURT: Which ones are you saying now?

22 MR. WILLIAMS: Pardon me?

23 THE COURT: Which ones again?

24 MR. WILLIAMS: The two that are closest in time  
25 to the Rink's store, September 12th and September 28th, Lee's

1 Steakhouse and Cardinal supermarket. Both of the victims  
2 or the victims in those cases were accosted by one man.  
3 There's no way that that corroborated what happened here.  
4 It's just James Rogers' -- first of all, it's just his bare  
5 assertion that George was anywhere in the neighborhood.  
6 These people didn't see a second man. Of course, it's also  
7 his bare assertion that George Skatzes was in the neighborhood  
8 of the Rink's store on October 12th. There's not one shred  
9 of independent evidence other than Rogers' statement, what  
10 comes out of his lying mouth that there were ski masks used  
11 in Rink's in Bellefontaine or that there was any other M.O.  
12 that's anywhere near what Rogers is talking about. There is  
13 no corroboration for what he is saying.

14 As the Court remembers in Count III of this indictment  
15 that was dismissed at the request of the prosecutor, although  
16 there was an indictment handed down based upon information  
17 presented to the grand jury saying that George Skatzes and  
18 Jimmy Rogers were involved in robbing these people in this  
19 farmhouse in Hardin County, the fact of the matter comes out  
20 it was in fact Becky Boop who was involved with Jimmy Rogers

21 We've got to jump from October 12th all the way back  
22 to February 5th of '79. We have a seven-month stretch of  
23 time in which there's no allegation that George Skatzes and  
24 Jimmy Rogers were together except these two that I just men-  
25 tioned in which the victims saw one person. Right there that



1 indicates, number one, it indicates that probably the guys  
2 that were doing all these ones back in '78-'79 aren't  
3 necessarily together. It takes away, it becomes so remote  
4 in time that it takes away any argument that it's a similar  
5 act.

6 The case law is something Mr. MacGillivray has somehow  
7 overlooked. I think the case in the State of Ohio versus  
8 Hector, which was decided in 1969, which the man was charged  
9 with, I believe he was charged with murdering a dispatcher  
10 at a taxicab company. The prosecution introduced evidence  
11 that in the same week of the killing of the --excuse me,  
12 that it was the same week --

13 THE COURT: This was before the evidence rules were  
14 adopted by Ohio, is that right?

15 MR. WILLIAMS: But we did have the similar act  
16 statute, the other act statute; that's correct, Your Honor.

17 They introduced witnesses saying the man robbed two  
18 taxicab drivers and a grocery store the same week that he  
19 was supposed to have killed this dispatcher. And the Supreme  
20 Court of Ohio says that is too, too removed. You cannot do  
21 that.

22 Here's what they said: To be admissible, such evidence  
23 must be relevant to some issue of proof of guilt of the  
24 particular crime in question.

25 How does the fact that maybe or maybe not George Skatzes

1 committed a crime with Jimmy Rogers a year before, ten months  
2 before, seven months before this particular crime, how does  
3 that show any proof of the crime of killing Arthur Smith  
4 here in Bellefontaine? The proof of armed robbery by a de-  
5 fendant is not per se admissible evidence in the trial of  
6 the defendant for a later armed robbery. It may or may not  
7 be admissible depending upon the probative value of such  
8 evidence as proof of an issue in the case being tried.

9 What's the issue in the case being tried here that  
10 anything that Mr. MacGillivray has told you is going to  
11 establish? There's nothing. All we know is Mr. Smith dis-  
12 appeared and he ended up dead. The money disappeared.

13 Jimmy claims it happened this way. But even then it's  
14 not a, step by step in agreement with the way they, he's  
15 claiming these other robberies occurred seven months and more  
16 prior to this offense. In a prosecution for robbery,  
17 admission of evidence tending to show the defendant had  
18 been guilty of robberies, if not justified under any of the  
19 exceptions, is clearly prejudicial. There must be some  
20 similarity of methodology employed which itself would con-  
21 stitute probative evidence of the probability that the same  
22 person, whoever that might be, committed the crime. There  
23 must be a logical connection between the crime so that proof  
24 of one will naturally tend to show that the accused is the  
25 person who committed the other.

1 Mr. MacGillivray has no evidence that my client is  
2 involved in the Rink's murder except for the word of James  
3 Rogers and the statement that his wife is saying that my  
4 client made to her.] It's all he's got. He's telling you  
5 he wants to bring these things in to corroborate James Rogers.  
6 Well, the rule on corroboration of an accomplice's testimony  
7 is not corroboration that they committed some other crimes.  
8 It's corroboration that they committed this crime. They  
9 have to be corroborated that George Skatzes through some other  
10 evidence committed this crime.

11 They have that corroboration in Diane Rogers, who's  
12 going to say if she's permitted to testify --and I will object  
13 to that and renew this Tom Martin situation; but if she's  
14 permitted to testify, she will claim that George admitted  
15 to her his involvement. That's corroboration. There's no  
16 other corroboration that George Skatzes committed this crime  
17 in Rink's here in Bellefontaine. And none of these other  
18 things corroborate that. So to say that they're admissible  
19 for that purpose is totally erroneous.

20 We've got cases where only one robber was seen. And  
21 they're saying, well, that's a similar act. We've got cases  
22 where people are going home at night and there's a guy waiting  
23 for him at home. And they say that's a similar act. The  
24 Court has to look at the facts of each of these incidents.  
25 They claim that walking into a bar full of crowded people

1 is a similar act; and they say it's a similar act because the  
2 man got hit in the head just like Art Smith, and he got shot  
3 just like Art Smith. And then they stand here and tell you  
4 that he got shot by Jimmy Rogers.

5 In one breath Mr. MacGillivray tells you that this old  
6 lady who gave Rogers a bunch of hassle at that one particular  
7 robbery and he didn't do anything, he didn't shoot her; that  
8 shows that he keeps his cool. Then he turns around and tells  
9 the Court that he walks into the Leader Bar and Grill, the  
10 old man gives him a hard time and he shoots him in the stomach.  
11 And that Danny Stanley hits him in the head. These are the  
12 two State's witnesses that are going to come in here. They're  
13 getting immunities along with the third man who's saying  
14 George was guilty because he's sitting out in the car somewhere  
15 waiting for this to happen. It's not even a similar act  
16 to begin with. Waiting at people's homes for them to come  
17 home --

18 THE COURT: What about the similar act or the  
19 other act referred to in the memorandum as Number 1, the  
20 Rink's Bargain City in Findlay?

21 MR. WILLIAMS: The Court will look, the Court will  
22 see that that occurred ten months, ten months prior to the  
23 Rink's case. It occurred in a totally different locality.  
24 So it's different in time; it's different in locale. Case  
25 law is clear on that also. Rather than read the case, I'll

1 just quote O. Jur. At this point, Your Honor --

2 THE COURT: Well, I'm familiar with the language  
3 of O. Jur., so if you'll just --

4 MR. WILLIAMS: Well, it does say if they're not  
5 committed within the same locality within a period of time  
6 reasonably near the offense for which the accused is being  
7 tried, then they shouldn't be admissible. The fact that  
8 even if it happened --let's assume it's even true that  
9 George was involved ten months earlier in that particular  
10 offense --that has no bearing. It's too remote in time to  
11 say anything about the case here in Rink's, to say that the  
12 same people must have done it.

13 THE COURT: Well, what about the cases or other  
14 acts within two years or so that have been admitted? And  
15 don't you feel that Findlay, Ohio, being only about 48 miles  
16 away, is within the same locale as Bellefontaine?

17 MR. WILLIAMS: I would argue that it's not, Your  
18 Honor.

19 THE COURT: Well, what about the methodology?

20 MR. WILLIAMS: There is no methodology in Rink's  
21 Bellefontaine. There's no methodology. The man disappeared;  
22 and we have no witness to say there was any methodology  
23 except, except Rogers.

24 THE COURT: Number 2, Lee's Steakhouse.

25 MR. WILLIAMS: That's right. The woman was accosted

1 by only one, one robber. Nobody else. Just one man.

2 THE COURT: Only 30 days prior to Rink's.

3 MR. WILLIAMS: I'm sure --

4 THE COURT: Did you have a problem with the time  
5 there?

6 MR. WILLIAMS: I haven't got a problem with the time,  
7 no, Your Honor. I imagine there were a lot of robberies  
8 in this state within 30 days of the Rink's store being robbed.  
9 And there has to be some -- some you got to look at the  
10 statute. That's all I can say, Your Honor. And you've got to  
11 apply the facts of that with the facts of the case here.  
12 It's got to, there has to be a logical connection between the  
13 crimes. It must be relevant to the issue of proof of guilt  
14 of this crime. The fact that one man accosted a woman in  
15 a parking lot in Marion County a month before this case occurred  
16 here does not have, show any logical connection whatsoever  
17 between the two offenses.

18 I could bring, I could bring in proof of every armed  
19 robbery that occurred in the state of Ohio within that 12-  
20 month period or that month period; and I could say that's  
21 a similar act and it shows that all the perpetrators of  
22 those are probably the people that did this Rink's case.  
23 Because that's --

24 THE COURT: Well, what about Number 3 in Kenton,  
25 Ohio? You feel that 22 miles is within the same locale?