

**IN THE SUPREME COURT OF FLORIDA**

**No. SC15-391**

**JAMES HERARD,  
Appellant,**

**v.**

**STATE OF FLORIDA,  
Appellee.**

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**On Appeal from the Circuit Court of the  
Seventeenth Judicial Circuit of Florida  
(Case 062011CF005061A888 10)**

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**SUPPLEMENTAL ANSWER BRIEF OF APPELLEE**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS . . . . . i

TABLE OF AUTHORITIES . . . . . ii

PRELIMINARY STATEMENT . . . . . 1

STATEMENT OF THE CASE AND FACTS . . . . . 1

SUMMARY OF THE ARGUMENT . . . . . 1

ARGUMENT . . . . . 2

ISSUE II – THE TRIAL COURT’S FINDING THAT HERARD’S RIGHTS WAIVERS WERE KNOWING AND INTELLIGENT WAS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND ITS DENIAL OF HERARD’S MOTION TO SUPPRESS WAS CORRECT UNDER THE LAW. (Restated) . . . . . 24

CONCLUSION . . . . . 6

**TABLE OF AUTHORITIES**

*Miranda v. Arizona*,  
384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966)..... 2

## PRELIMINARY STATEMENT

This Supplemental Brief sets out additional facts from Appellant's statement admitted before the jury. The State does not present any additional arguments on Issue II, the subject of Herard's supplemental brief, since he relied on the arguments and authorities in his original brief.

The State adopts Herard's utilization of "STT" to refer to the Supplemental Trial Transcripts which contain the corrected transcripts of Herard's statements introduced at trial. References to those transcripts will be made using "STT" followed by the page number.

## STATEMENT OF THE CASE AND FACTS

The State relies on the procedural history and the facts contained in the Amended Answer Brief.

## SUMMARY OF THE ARGUMENT

The State relies on the summary of the argument contained in the Amended Answer Brief.

## ARGUMENT

### II

THE TRIAL COURT'S FINDING THAT HERARD'S RIGHTS WAIVERS WERE KNOWING AND INTELLIGENT WAS SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE AND ITS DENIAL OF HERARD'S MOTION TO SUPPRESS WAS CORRECT UNDER THE LAW. (Restated)

Herard asserts that the trial court erred when it denied his motion to suppress the statements he made to various police agencies, arguing that the statements were not voluntary because he was promised leniency if he made a statement. He also contends that he invoked his *Miranda*<sup>1</sup> rights and did not re-initiate contact with the police; he further argues that the police were required to give him another full warnings and waiver of his rights before the interview proceeded if he did re-initiate contact. He also claims that because no attorney was provided him after he demanded one, he was effectively denied his right to counsel which any subsequent *Miranda* warnings could not cure. Herard misconstrues the facts and the law in his

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966).

argument. The record shows Herard knowingly, intelligently, and voluntarily waived his right to remain silent. The trial court's factual findings were supported by the record and its legal conclusion that Herard re-initiated the initial interview and that his waivers were knowing and voluntary are legally correct. The State asks this court to affirm the trial court's ruling.

As discussed in the State's previous Amended Answer Brief, Detective Williams of the Lauderhill Police Department was the first law enforcement to interview Herard. She began the interview by fully advising Herard of his rights. After that interview, Herard was taken to another facility where detectives of other agencies interviewed him for the various crimes in those other jurisdictions. Portions of those interviews were presented to the jury in State Exhibits 39 and 41, and are the portion of the trial contained in the supplemental trial testimony filed in December 2022.

Detective Goodwin was present for a large portion of those recordings. He began his interview by advising Herard of his *Miranda* rights, which Herard waived and agreed to speak with him.

Det. Goodwin questioned Herard about the crimes in Sunrise, Tamarac, Delray, and others, pointing out the similarities among the crimes, including the same shoe print, the shotgun, the clothing, and the car. (STT 350-450, 548) Herard initially denied participating in most of the incidents but gradually admitted to so doing although minimizing his role in each. (STT 351, 356, 360, 362-65, 373-75, 401, 403, 461, 463-69) Herard eventually admitted robbing the Dunkin' Donuts in Tamarac, although saying that Jackson was the shooter. (STT 491-503, 520-33) He then admitted the robbery in Sunrise, naming his co-defendants. (STT 515-517)

Detectives from Lauderhill interviewed Herard about the murder of Eric Jean-Pierre. Herard adamantly and repeatedly denied committing that murder or of even being present. (STT 537-43, 552-60) It was that homicide that Herard kept denying to the various detectives until the end of the interview, although he admitted to being the shooter in the other crimes. (STT 576, 585, 589) The discussion of the Jean-Pierre murder sparked Herard's honesty, saying that he would be truthful about the other crimes provided that

the officers believed him on this particular crime. He admitted being the shooter in Delray and Tamarac. (STT 564-70) He then admitted to shooting Demetrick Caldwell in Sunrise. (STT 573-74) He also admitted to the shootings at Mission Lakes Plaza (STT 571-79) as well as the shooting at the apartment complex (STT 579-83).

After telling the detectives about his actions in those robberies and shootings, Herard asked for the Lauderhill detective to return so he could “change his story.” (STT 593) He then admitted that he was in the car when his co-defendant Bell shot Jean-Pierre. He acknowledged that he provoked the shooting, urging Bell to “bust” [shoot] when Bell hesitated. (STT 598-610) At the conclusion of that interview, Herard also admitted the Plantation robbery. (STT 614-16)

As the court noted in its order denying the motion to suppress, the detectives made sure that Herard had numerous breaks for food, sleep, and telephone calls to his girlfriend and cousin. (STT 349, 480, 551, 593–14) This transcript of Herard’s interview fully supports the trial court’s denial of the suppression motion. The State relies on its previous arguments and legal analysis contained in the Amended

Answer Brief. This Court should affirm.

CONCLUSION

Based on the foregoing arguments and authority, the State respectfully submits that this Court affirm the convictions and sentence.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically to Richard Rosenbaum at [Richard@RLRosenbaum.com](mailto:Richard@RLRosenbaum.com) this 21st day of August, 2023.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this foregoing Answer Brief is 14-point Bookman Old Style, in compliance with Rule 9.045, Florida Rules of Appellate Procedure. I further certify that the document contains 879 words from the Preliminary Statement to the Conclusion.

*/s/ Lisa-Marie Lerner*  
\_\_\_\_\_  
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