NO:

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES HERARD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

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"CAPITAL CASE"
QUESTION PRESENTED FOR REVIEW

I. WHETHER THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO SUPPRESS JAMES HERARD'S STATEMENTS PURSUANT TO THE 5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA v ARIZONA* AS THEY WERE NOT VOLUNTARY, WERE MADE AFTER HE REQUESTED COUNSEL, AND SUBSEQUENTLY AFTER HIS COUNSEL INVOKED HIS RIGHT TO COUNSEL AND TO REMAIN SILENT?

II. WHETHER THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO ALLOW JAMES HERARD'S EXPERT WITNESS TO TESTIFY CONCERNING THE REID TECHNIQUE IN INTERROGATIONS AND FALSE CONFESSIONS?

III. WHETHER JAMES HERARD WAS UNLAWFULLY AND IMPROPERLY SENTENCED TO DEATH BY A JUDGE BASED UPON AN 8-4 JURY RECOMMENDATION?

INTERESTED PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Counsel for the Petitioner, James Herard, certifies that the following persons are parties to the proceedings pursuant to Rule 29.6, Supreme Court Rules:

1. Honorable Paul Backman, Circuit Judge
2. Thomas Coleman, Assistant State Attorney
1. James Herard, Defendant/Petitioner
2. Office of the Attorney General
3. Office of the State Attorney, 17th Judicial Circuit in and for Broward County, FL
4. Mitchell Polay, Defense Counsel

5. Richard L. Rosenbaum, Esq., Post Conviction and Appellate Counsel

6. Michael J. Satz, State Attorney, 17th Judicial Circuit

7. Stephen Zacoor, Assistant State Attorney

8. Counsel certifies that no publicly traded company or corporation has an interest in the outcome of this case or appeal.

LIST OF PROCEEDINGS DIRECTLY RELATED TO THE CASE IN THIS COURT

- *State of Florida v. James Herard*, Broward County, FL Case No: 09-004654 CF10A; Sentencing Order entered on January 23, 2015.
- *James Herard v. State of Florida*, Florida Supreme Court Case No: SC15-391; Opinion entered on July 3, 2024.

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PETITION FOR WRIT OF CERTIORARI

James Herard respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the Opinion of the Florida Supreme Court rendered in Case No: SC 2015-0391 on July 3, 2024, in *James Herard v. State of Florida*, which affirmed the Judgment, Conviction and Death Sentence and Life Sentences imposed in *State v. James Herard*, Broward County Case No: 09-004654 CF10A.

OPINION BELOW

A copy of the decision of the Florida Supreme Court which affirmed the Judgment, Conviction and Sentence entered on July 3, 2024 in *James Herard v. State of*

Florida, Florida Supreme Court Case No: SC2015-0391 is contained in Appendix (A-3). Also included in the Appendix is the Indictment (A-1); the Sentencing Order entered on January 23, 2015(A-2);-and the Opinion issued on July 3, 2024 in *James Herard v. State of Florida,* Florida Supreme Court Case No: SC2015-0391 (A-3).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), Sup. Ct. R. 10.1 and Part III of the Rules of the Supreme Court of the United States. The state Circuit Court had jurisdiction because Petitioner was charged with violating State of Florida criminal laws. The Florida Supreme Court had jurisdiction over James Herard's direct appeal of his Death sentence, which provide that the Florida Supreme Court shall have jurisdiction for Death Penalty appeals.

The decision of the Florida Supreme Court was entered on July 3, 2024. (A-3). An Application for Extension of Time to file this Petition was timely filed with this Court and presented to Justice Clarence Thomas, who, on September 27, 2024, extended the time for filing this Petition to and including November 1, 2024. This Petition is timely filed pursuant to Sup. Ct. R. 13.1.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner relies upon the following constitutional provisions, treaties, statutes, rules, ordinances, and regulations:

1) Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; not shall private property be taken for public use without just compensation

2) Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

3) Fourteenth Amendment to the United States Constitution:

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3) Rule 52(b), Fed.R.Crim.P. (Harmless and Plain Error):

(b) Plain Error. A plain error that affects substantial rights

may be considered even though it was not brought to the Court's attention.

6) Case law specified herein.

STATEMENT OF THE CASE

The Charges

On March 4, 2009, a twenty-one (21) Count, five (5) co-defendant Indictment was returned by the Grand Jury in Broward County charging James Herard a/k/a J-LOC and co-defendants, Jonathan Jackson a/k/a BLUE, Tharod Bell a/k/a SMOKE, Charles Faustin a/k/a PSYCHO, and Calvin Weatherspoon a/k/a SLICC. James Herard was charged with premeditated murder, armed robbery, RICO, conspiracy to commit RICO, Directing the Activities of a Gang, and related offenses in what became known as the "Dunkin Donuts Robbery" case. (R 16). James Herard was charged as follows:

Count I – First Degree Murder of Eric Jean-Pierre (firearm); Count II – First Degree Murder of Kiem Huynh (firearm); Count III – Racketeering (RICO) [13 predicate acts]; Count IV – Conspiracy to commit RICO; Count V – Directing the Activities of a Gang; Count VI – Armed Robbery of Miguel Guerrero (firearm); Count VII – Armed Robbery of Gary Metayer (firearm); Count VIII – Attempted First Degree Murder of Jacob Rivera; Count IX – Aggravated Battery of Keith Williams; Count X – Attempted First Degree Murder of Tremaine Williams; Count XI – Attempted First Degree Murder of Chazdin Edwards; Count XII – Attempted First Degree Murder of Jamie Mozie; Count XIII – Attempted First Degree Murder of Demetrick Caldwell; Count XIV – Armed Robbery of MD Miah (firearm); Count XV – Armed Robbery of

Artie Edmonds (firearm); Count XVI – Armed Robbery of Corey Marchand (firearm); Count XVII – Armed Robbery of Deny Jean-Louis (firearm); Count XVIII – Attempted Robbery of Wilson Perez (firearm)[1]; Count XIX – Attempted Robbery of Idelfonzo Sanchez (firearm)[2]; Count James Herard – Robbery Chao Le Kim (firearm); and Count XXI – Robbery of Richard Sills and/or Taiwan Gayne (firearm).

On April 1, 2009, a not guilty plea was entered on James Herard's behalf. (R 16). The same date, the State filed its Notice of Intent to Seek Death Penalty pursuant to Rule 3.202, Fla.R.Crim.P.. (R 21). The Notice failed to contain any of the aggravating factors upon which the State would later rely. *Id.*

The Trial

Jury selection commenced on March 26, 2014. (T 1-1651). A 12-member jury and 6 alternates were selected and sworn. (R 1043-1044). Following voir dire, opening statements commenced on April 29, 2014. Thereafter, the State of Florida elicited testimony from 39 witnesses in it's case in chief in a case which spanned 16 days. (R 1040). The prosecution introduced 43 exhibits. At the conclusion of the State's case, the defense moved for Judgment of Acquittal. The motion was denied. (R 1041).

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[1] In the midst of trial, the State nolle prossed Count XVIII (attempted robbery with a firearm). (R 926).

[2] In the midst of trial, the State nolle prossed Count XIX (attempted robbery with a firearm). (R 926).

The Defendant elected not to testify at trial. A colloquy was conducted. (T 2705-2706). The defense called two witnesses before resting, renewing all previous objections, and again lodging an *ore tenus* Motion for Judgment of Acquittal as to all Counts. (T 2703; 2710). At the close of all of the evidence, the defense renewed it's Motion for Judgment of Acquittal based "upon a different standard." (T 2706-2707). The Court again denied each defense Motion for Judgment of Acquittal. (*Id.*)

Neither the State nor defense sought any lesser included offenses on Counts I or II. (T 2708-2709). The jury was instructed by the Court and retired to deliberate. (T 2845) During the course of the deliberations several questions were lodged by the jury. (R 944-949; 951-961).

On May 16, 2014, the jury returned verdicts of guilt on all Counts, save Count XVII where a not guilty verdict was returned. (T 1043; 1058; 3058; R 962-981).

The Penalty Phase (8-4)

The Penalty phase was conducted on June 3rd and 4th, 2014. (R 1082). Following opening statements, the State called Detective Brian Hardy as it's sole witness, and then rested its case. The defense presented testimony from Dr. Raiford and Dr. Gelmaud, and civilian witnesses, Harry Geruenus, Kenyer Tilla, Edna Cereford, Addeline Redelus, and Wilda Frederick. The State called Detective Visners in rebuttal.

Following closing arguments, the jury was charged and deliberated for approximately an hour and a half before rendering its advisory sentence wherein the jury, by a vote of 8 – 4, "advises and recommends to the Court that it impose the Death Penalty upon the Defendant, James Herard, for the first-degree murder of Eric Jean-Pierre." (R 1082; 1085).

***Spencer* Hearing**

A *Spencer* hearing was conducted on September 12th, 20th, and 22nd, 2014 (R 1126); T 3217-3330, 1519-1569). Four witnesses were called by the defense: Omar Hunter, Charlene Marcelin, Guerson Mesadieu, and James Herard.

James Herard's Testimony at *Spencer* Hearing

James Herard elected to testify on his own behalf at the *Spencer* Hearing. (R 1799). James Herard testified "I believe I am innocent. I am not guilty." (CR 1810).

James Herard repeatedly claimed his innocence. (CR 1818-1819), stating:

> You know what I mean, this whole confession was baloney. You know if you eliminate the whole statement from my trial, there is nothing to support the State's theory that I committed these crimes. (CR 1820).

James Herard further stated:

> "I know the Supreme Court is going to overturn this. The Supreme Court is going to look at this case." (*Id.*)

He called his first-degree murder conviction "absurd." (CR 1821). The State did not question the Defendant. (CR 1823). James Herard addressed the Judge, maintaining his innocence. He stated "**I know the Supreme Court won't allow me to die for something I didn't commit**." (CR 1821) [Emphasis added]

The Death Sentence Imposed

Sentencing was conducted on January 23, 2015. Judge Backman entered a 20-page Sentencing Order and ruled that James Herard was more responsible for the November, 2008, murder of Eric Jean-Pierre in Lauderhill than the person who actually pulled the trigger, and therefore deserved the harshest possible sentence. (R 1274-1294)

In the Court's Sentencing Order, Judge Backman found three statutory aggravating factors: 1) Previous conviction of a predicate felony; 2) The capital felony was committed in a cold, calculated, and premeditated manner (CCP); and that 3) The capital felony was committed by a criminal gang member.

The Court found five statutory mitigating factors: 1) Defendant was under the influence of extremely mental or emotional disturbance; 2) Age of Defendant; 3) Crime was committed by another person; 4) The Defendant acted under extreme duress; and 5) The Defendant could not appreciate the criminality of his conduct or conform his conduct to the requirements of law. The Court found 19 non-statutory mitigating factors established. *Herard v. State*, 390 So.3d 610, fn. 4(Fla. 2024).

After the **jury's 8-4 recommendation**, James Herard was sentenced to death for Jean-Pierre's death. (Count I) (R 1292). On Count II, James Herard was sentenced to life in Florida State Prison, with no eligibility for parole. As to the remaining sixteen (16) Counts for which he was found guilty, James Herard was sentenced to life in Florida State Prison. The Court imposed minimum mandatory 10/20/Life sentences as to Counts II, VIII, X, XIII, XIV, and the Court sentenced him to Life imprisonment under the 10/20/Life statute as a mandatory minimum. (R 1292).

A Notice of Appeal was timely filed. (R 1306). On appeal, Herard raised the following issues:

> I. THE TRIAL COURT REVERSIBLY ERRED BY DENYING THE DEFENDANT'S MOTION TO DISMISS ON DUE PROCESS GROUNDS AFTER A "DEFENSE FAVORABLE POTENTIAL JURY PANEL" WAS STRICKEN WITHOUT SUFFICIENT CAUSE
>
> II. THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO SUPPRESS JAMES HERARD'S STATEMENTS PURSUANT TO THE 5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND MIRANDA v ARIZONA AS THEY WERE NOT VOLUNTARY, WERE MADE AFTER BE REQUESTED COUNSEL, AND SUBSEQUENTLY AFTER HIS COUNSEL INVOKED HIS RIGHT TO COUNSEL AND TO REMAIN SILENT
>
> III. REVERSIBLE ERROR OCCURRED WHEN THE TRIAL COURT ALLOWED THE INTRODUCTION OF PHYSICAL EVIDENCE UNRELATED TO THE CHARGES
>
> IV. THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO ALLOW JAMES HERARD'S EXPERT WITNESS TO TESTIFY

CONCERNING THE REID TECHNIQUE INTERROGATIONS AND FALSE CONFESSIONS

V. JAMES HERARD WAS UNLAWFULLY AND IMPROPERLY SENTENCED TO DEATH BY A JUDGE BASED UPON AN 8-4 JURY RECOMMENDATION

Supplemental Initial Brief:

A Supplemental Initial Brief was subsequently filed, adding the following argument:

THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO SUPPRESS JAMES HERARD'S STATEMENTS PURSUANT TO THE 5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA v ARIZONA* AS THEY WERE NOT VOLUNTARY, WERE MADE AFTER HE REQUESTED COUNSEL, AND SUBSEQUENTLY AFTER HIS COUNSEL INVOKED HIS RIGHT TO COUNSEL AND TO REMAIN SILENT

The State filed it's Answer Brief, Amended Answer Brief and Supplemental Answer Brief. Thereafter, a Reply Brief was filed on Herard's behalf.

Following Oral Argument, on July 3, 2024, the Court issued it's thirty (30) page *per curiam* decision, with Judge Labarga concurring in result. The Florida Supreme Court addressed Herard's claims and analyzed the issues under both the Florida and United States Constitutions. Ultimately, the Florida Supreme Court affirmed the Judgment, Conviction and Sentence. This Petition with Certiorari ensues.

James Herard remains incarcerated on Death Row at Union Correctional

Institution in Raiford, FL.

STATEMENT OF THE FACTS

Motion to Suppress

Nineteen-year-old James Herard was originally arrested in Lauderhill, FL on December 2, 2008 for the robbery of a dog. He was immediately taken into custody. After his arrest, James Herard was alleged to have made incriminatory statements to various law enforcement officers from December 2, 2008 to December 4, 2008. A Motion to Suppress Statements filed on James Herard's behalf incorporated all of the statements alleged to have been made by James Herard to members of the law enforcement, specifically from the Sunrise, Plantation, Delray, BSO, and Lauderhill police departments. (T 1422). The Court conducted a hearing on the Motion on November 19th and 20th, 2013, at which time the State elicited testimony from three witnesses: Dets. Trevor Goodwin, Bryan Hardy and Shawn Visners.

The Prosecutor submitted a DVD of James Herard's interrogation at the BSO Public Safety Bldg. into evidence. (T 1423; 1826). The State played an audiotape of the interrogation of Herard. (T 1489-90).

The Court viewed the video in which Lauderhill Det. Ericka Williams read the Defendant his *Miranda* warnings prior to questioning him. At the point where the detective asked the Defendant if he understood his rights and was willing to speak to her

without an attorney, James Herard stated "I don't agree to that." (T 1421) [Emphasis added]. James Herard made it clear to the detectives that he wanted to speak to a lawyer. (T 1421).

Det. Williams was gathering her paperwork to exit the interrogation room when she alleged the Defendant asked "How long do I have to wait for an attorney?" The detective had a brief conversation with James Herard and told him that he would be booked and processed. According to the detective, James Herard stated "Do I have to wait for an attorney? I want to talk." Det. Williams asked "Do you want to talk to us?" and the Defendant allegedly replied "Yes." At that point, James Herard gave a statement regarding the theft of the dog. (R 816). Thereafter, BSO Sgt. Ruben and other detectives went to the Lauderhill Police Dept. There, law enforcement interrogated James Herard on tape for approximately 12 hours.

On December 4th, after Herard's Initial Appearance, Det. Visners visited James Herard in the Broward County Main Jail and took another statement from Herard despite the fact that Herard's constitutional rights had been invoked at James Herard's Initial Appearance.

Goodwin stated that Herard was in the interrogation room at the BSO Public Safety Building for approximately 12 hours. (T 1447). Each time Herard fell asleep, the detectives would purposely come in and wake him. According to Goodwin, he asked

Herard if he had previously asked for a lawyer and Herard answered in the negative. (T 1448). Herard said that he didn't want to speak with law enforcement unless he could make a telephone call. Herard was allowed to make a call to his cousin, Patrick.

Det. Goodwin testified that he utilized the "Reid Technique[3]" in interrogating James Herard. That involved lying to the Defendant repeatedly. Goodwin admitted telling Herard that he could talk with him now, or go to prison, "they had enough evidence." (T 1449). Goodwin admitted telling Herard that it would be better for him if he spoke to law enforcement. (T 1450).

Goodwin admitted that Herard was questioned by a number of different detectives from different agencies. At first, James Herard denied being the shooter or in any way involved in the crimes. Ultimately, after hours of custodial interrogation, he told Goodwin that he was the shooter in the Tamarac Dunkin Donuts robbery. (T 1450).

James Herard's Initial Appearance on the charges was conducted at 8:30 am on December 4, 2008. The defense submitted a copy of the invocation of Herard's rights filed at the Magistrate hearing on December 4, 2008, prior to the Sunrise detective going to the jail to interrogate him later that afternoon. (T 1490).

Despite James Herard's invocation of his rights in court, Sunrise Detectives Visners and Ransone met with Herard later in the Broward County Jail and conducted a

[3] The defense argued that the Reid Technique, created and promoted by Reid and Associates, predictably contributes to false confessions.

custodian interrogation. Detective Visners re-administered the *Miranda* rights. (T 1472). A Sunrise Police Department waiver of rights form was executed by Herard. Thereafter, the detectives interrogated Herard about the Sunrise Dunkin' Donuts robbery without any recording, either audio and/or video. (T 1475).

James Herard denied being involved in the Tamarac incident. The officer said that his car was there, but James Herard responded that ... "my car being there doesn't necessarily mean I was there [unintelligible/talk over] ..." (ST 18). James Herard stated "I know that I wasn't at no Tamarac." (ST 23).

Trial

As set forth by the Florida Supreme Court:

> Herard was the second-in-command of the "BACC Street Crips," a Lauderhill-based branch of the national Crips gang. In the early morning hours of November 14, 2008, Herard and two fellow gang members drove the streets of Lauderhill in search of a victim for their ongoing body-count competition. They randomly came upon Eric Jean-Pierre, who had no gang affiliation and just happened to be walking home from a bus stop. As the gang members' car pulled up alongside Jean-Pierre, Herard's co-passenger, Tharod Bell, reached out from the vehicle with a 20-gauge shotgun. Herard told Bell to "bust it, bust it, bust it," prompting the latter to shoot Jean-Pierre in the chest at point-blank range. The blast blew away part of Jean-Pierre's heart and killed him almost instantly.
>
> That murder was one of many gang-related crimes that Herard and his associates committed between June and December 2008. Those crimes included Herard's murder of Kiem Huynh, which occurred during the robbery of a Dunkin' Donuts store in Tamarac, FL. There were also robberies and shootings at Dunkin' Donuts stores in Plantation, FL

> (where Herard had been an employee), Sunrise, FL, and Delray Beach, FL, along with shootings that targeted rival gang members in Lauderhill, FL. On December 2, 2008, Herard and another gang member assaulted two people and stole their pit bull. Lauderhill detectives who witnessed the incident immediately arrested Herard, ending his crime spree.
>
> An indictment and a May 2014 trial on 19 felony Counts ensued. The backbone of the evidence at trial consisted of incriminating statements that Herard made to law enforcement during a series of interrogations in the two days or so after his arrest for stealing the pit bull. About the Jean-Pierre murder, for example, Herard told investigators that Tharod Bell would not have pulled the trigger if Herard himself had not provoked the shooting by repeatedly telling Bell to "bust it." The State also presented evidence linking Herard to the 20-gauge shotgun used in many of the shootings (including the two murders) and to a white Toyota Camry seen in surveillance footage near many of the crimes. *Herard*, 390 So.3d at 616.

Herard did not testify at trial. Defense counsel sought to counter the State's evidence by arguing that Herard's statements to law enforcement were inconsistent (he initially denied having shot anyone), unreliable, and involuntary. Counsel emphasized that Herard was only 19 years old at the time of the police questioning. The defense also stressed that police had been unable to recover the shotgun used in the murders and other crimes, and maintained that there was no physical or scientific evidence implicating Herard.

Dr. Gregory DeClue

Dr. Gregory DeClue was permitted to proffer testimony outside the presence of the jury, but disallowed from testifying as an expert witness before the jury as to

exculpatory matters concerning the method used in interrogating Herard. (T 2670). Dr. DeClue proffered his extensive educational background. (T 2670). He has been a licensed psychologist in the State of Florida since 1984. He worked in police psychology for 20 years. (T 2671). He has published over 40 articles, written one book that had been published, and a book chapter. He stated that the book which was published was titled "Interrogations and Disputed Confessions, A Manual for Forensic Psychologists." (T 2672). Dr. DeClue testified as to his extensive work in the area of false confessions. (T 2672-2674). Specifically, he discussed the Reid Technique.

Dr. DeClue proffered that he was asked to review case materials provided to ascertain whether the Reid Technique was used in the interrogation of James Herard. After reviewing the case materials and the condensed DVD of the interrogation, he concluded that the Reid Technique was, in fact, used in this case. (T 2674-2675). The doctor testified that the Reid Technique can lead to false confessions and explained how and why.

The doctor testified that in cases in which the Reid Technique was used to interrogate a suspect, there had been "multiple exonerations." (T 2676). Finally, the doctor was able to proffer that of the first 250 cases from the Innocent Project which resulted in DNA exonerations, it was determined that 40 of those people confessed to

crimes for which they were eventually exonerated. (T 2677). Dr. DeClue was cross examined by the prosecution. (T 2670-2677).

With regards to this case, Dr. DeClue proffered that he reviewed almost 5 of the 17 hours of video. (T 2684). He reviewed the condensed DVD shown to the jury and on re-direct examination, he testified again that during the 5 hours of video he observed, the Reid Technique being used and what the technique entailed. (T 2685). The doctor's testimony was disallowed.

REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should issue in this case to review the federal constitutional questions raised herein. Pursuant to Rule 10, S.Ct.R., compelling reasons support certiorari review at bar.

ARGUMENTS

I. ERROR OCCURRED WHEN THE COURT REFUSED TO SUPPRESS JAMES HERARD'S STATEMENTS PURSUANT TO THE 5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA v ARIZONA* AS THEY WERE NOT VOLUNTARY, WERE MADE AFTER BE REQUESTED COUNSEL, AND SUBSEQUENTLY AFTER HIS COUNSEL INVOKED HIS RIGHT TO COUNSEL AND TO REMAIN SILENT

The Fifth Amendment guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. To protect that right, the Supreme Court held in *Miranda v. Arizona* that once a defendant "indicates in

any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease" and that "any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." 384 U.S. 436, 473-74, 86 S. Ct. 1602 (1966).

Two motions to suppress were filed by the defense. The trial court examined the initial interrogation at the Lauderhill Police Department on the night of December 2, 2008, and two interrogations at the BSO Public Safety Bldg., with the last being on December 4, 2008, at approximately 6:00 pm after James Herard's counsel had formally invoked his right to remain silent and notified the Court and State that James Herard was represented by counsel.

It is well settled that *Miranda* safeguards an individual's unfettered "right to choose between speech and silence. . .throughout the interrogation process." *Miranda v. Arizona*, 384 U.S. 436, 469, 86 S. Ct. 1602 (1966). *Miranda* makes clear that officials must "scrupulously honor" a suspect's right to end questioning: "[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Id.* at 473-74, 479. The Supreme Court defined with greater clarity the scope of a suspect's right to end questioning in *Michigan v. Mosley*, 423 U.S. 96, 96 S. Ct. 321 (1975). According to *Mosley*: "[t]hrough the exercise of his option to terminate questioning [the suspect] can control the time at

which questioning occurs, the subjects discussed, and the duration of the interrogation [and] the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his "right to cut off questioning" was "scrupulously honored." *Id.* at 103-04.

Miranda "warnings are required before any statement may be admitted into evidence at trial which was elicited from a person in custody through interrogation." *Endress v. Dugger*, 880 F.2d 1244, 1248 (11th Cir. 1989), cert. denied, 495 U.S. 904, 110 S. Ct. 1923 (1990). "Since the warnings are required only in the situation of a custodial interrogation, many courts have addressed the issues of when a person is in "custody' or has been "interrogated' for the purposes of *Miranda*." *Id.*

In *Michigan v. Mosley*, the Supreme Court addressed "under what circumstances, if any, a resumption of questioning" after a defendant has invoked his right to remain silent "is permissible." 423 U.S. 96, 101, 96 S. Ct. 321 (1975). The Court rejected extreme rules in either direction that would "permit the continuation of custodial interrogation after a momentary cessation" or impose "a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation," instead charting a middle ground: "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* at 102-04. Applying that

standard, the *Mosley* Court held that admitting the defendant's statements—obtained in a second interview conducted a few hours after the defendant had invoked his rights in a first interview about a different crime, by a different police officer, in a different location—did not violate *Miranda*. *Id.* at 104-05, 107.

Although *Mosley* provided "no clear guidance on the specific circumstances under which questioning may be resumed," the courts have identified four relevant factors: 1) whether "the initial interrogation ended immediately" upon invocation of the right to remain silent; 2) whether "a substantial amount of time elapsed" before questioning resumed; 3) whether the suspect "was again read his rights" before the second round of questioning; and 4) whether the second round of questioning was done "by a different officer about an unrelated crime." *Gore v. Sec'y for Dep't of Corr.*, 492 F.3d 1273, 1296-97 (11th Cir. 2007). In *Gore*, the Court held "We have not held that the absence of a single *Mosley* factor is dispositive," and have instead looked "to the circumstances as a whole." *Id.* at 1298-99. So, for example, a second interview may be permissible under *Mosley* even if it concerns the same crime as the first. See *United States v. Nash*, 910 F.2d 749, 752 (11th Cir. 1990); *United States v. Bosby*, 675 F.2d 1174, 1181-82 (11th Cir. 1982); see also *Gore*, 492 F.3d at 1298-99 (refusing, in habeas context, to say that state court's decision on this point was "objectively unreasonable"). No such analysis was applied by the Court in this case, and Herard maintains that his

initial invocation of his right to counsel and formal invocation filed by counsel tainted all of the questioning thereafter.

With regards to the statements made at the BSO Public Safety Bldg., James Herard asserted that they too were not voluntary and were made based upon promises of leniency and coercive tactics. In all, James Herard was in custody approximately 25 hours and despite the trial court's finding to the contrary, was not given sufficient bathroom breaks or other breaks between questioning.

Finally, James Herard had already invoked his right to counsel via a filing in the court record, yet Det. Visners took Herard's statement later the same day on December 4, 2008, when he was prohibited from directly communicating with the represented Defendant.

The United States Supreme Court has determined that the right to have counsel present during an interrogation is indispensable to the protection of the Fifth Amendment Privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436 (1966) "The Fifth Amendment privilege is so fundamental to our system. . . and the expedient of giving an adequate warning . . . so simple [that] we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given." *Id.* at 468. Here, law enforcement violated James Herard's rights.

In *Roberts v. State* 874 So.2d 1225, 1227 (Fla. 4th DCA 2004), the court stated:

> In *Miranda,* the Supreme Court said that the right to have counsel present during an interrogation is indispensable to the protection of the Fifth Amendment privilege against self-incrimination. The Court described the right-to-counsel warning which must be given: [W]e hold that an individual held for interrogation must be **clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation**.... As with the [other] warnings . . . this warning is an absolute prerequisite to interrogation.
>
> *Miranda*, 384 U.S. at 471–72, 86.

The court in *Roberts v. State* further stated:

> No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead. Only through such a warning is there ascertainable assurance that the accused was aware of this right.
>
> *Roberts*, 874 So.2d 1225, 1229

The State's entire case, as to all Counts, was based on James Herard's statements. The defense argued that the statements were all of the evidence that existed other than speculation that he was the tall, slim man with a shotgun in the underlying crimes. There was no physical evidence linking James Herard to the crimes. There was no DNA evidence to tie James Herard to the offenses. No fingerprints established James Herard's involvement in the crimes. All the State had was the coerced, involuntary, unlawfully obtained statement of James Herard. (T 3770).

Herard's Motions to Suppress incorporated all of the statements made to law enforcement. (R 1421-1423). The State introduced into evidence at the suppression

hearing a disc of Mr. Herard's interrogation and the reading of the *Miranda* rights into evidence. (R 1423). The prosecutor advised that there was no need to publish the entire 12-hour video. *Id.*

Additionally, Det. Goodwin was questioned about a portion of the video where Herard asked to go to the bathroom. Herard repeatedly knocked on the locked door but no one answered. James Herard ended up having to urinate into a McDonald's cup. (T 1437). According to Goodwin, Delray officers were in the monitoring room watching Mr. Herard, but did not respond. When Goodwin went to talk to Herard, one of the Delray officers told him to "be careful", advising Goodwin that Herard had urinated in a cup. (T 1438).

The defense argued Herard was never properly Mirandized by the police officers. The defense argued that initially Detectives Walters or Williams, or both, asked Herard if he agreed to speak to law enforcement. The defense position was that all questioning should have stopped at that juncture. The Court erred in determining that Herard reinitiated conversation by "asking how long do I have to wait here." The defense argued to the contrary.

The defense position was that Herard was not properly advised of all of this rights pursuant to the 5th Amendment, his statements were involuntary, and he was denied access to counsel. See *Minnick v. Mississippi*, 498 U.S. 146 US S.Ct., 111 S.Ct. 846

(1990) and *Arizona v. Robertson*, 486 US 675, 108 S.Ct. 2093 (1998). The Petitioner maintained that the trial court's error in refusing to suppress the statement warrant reversal.

In *State v. Penna*, 385 So.3d 595 (Fla. May 2, 2024), the Florida Supreme Court recently explained the legal test governing claims like Herard's. As applied to Herard's situation, the Petitioner unequivocally invoked *Miranda* requiring law enforcement to cease questioning. Following that, Herard never re-initiated contact with the police and it was not established that Herard knowingly and voluntarily waived his earlier invoked *Miranda* rights. *Herard,* 390 So.3d at 618-619.

In this case, the police re-Mirandizing Herard later did not dissipate the taint since he was never afforded access to counsel in the interim. Therefore, his request for an attorney was never honored. Instead, the Lauderhill Police interrogated Herard the morning after the robbery arrest, and at that juncture, Herard made a request for counsel. The police twisted the issue to "do you want to talk to us or not?" That wasn't Herard's question. His question was "how long do I have to wait for a lawyer? I want a lawyer." (T 1494).

The Petitioner admits that under certain circumstances, the failure to suppress statements obtained in violation of *Miranda* can be harmless error." *Owen v. Alabama*, 849 F.2d 536, 540 (11th Cir. 1988); see also *Parker v. Singletary*, 974 F.2d

1562, 1574 (11th Cir. 1992). Here, the error was not harmless. "To qualify as harmless, an error must not contribute to the defendant's conviction." *Owen*, 849 F.2d at 540. "If, upon its reading of the trial record, the appellate court is firmly convinced that the evidence of guilt was so overwhelming that the trier of fact would have reached the same result without the tainted evidence, then there is insufficient prejudice to mandate the invalidation of the conviction." *Cape v. Francis*, 741 F.2d 1287, 1294-95 (11th Cir. 1984), cert. denied, 474 U.S. 911, 106 S. Ct. 281(1985); see also *Owen*, 849 F.2d at 540.

Based upon the totality of the circumstances, the Court reversibly erred in allowing James Herard's statements at trial. Certiorari review is warranted.

II. THE TRIAL COURT REVERSIBLY ERRED BY REFUSING TO ALLOW JAMES HERARD'S EXPERT WITNESS TO TESTIFY CONCERNING THE REID TECHNIQUE INTERROGATIONS AND FALSE CONFESSIONS

James Herard maintains that the trial court reversibly erred by refusing to allow the defense expert witness to testify concerning the interrogations and resultant statements in this case. The expert was prepared to testify concerning "the Reid Technique[4]" of interrogation and false confessions and to provide information not known to the typical lay person. A proffer was given and issue properly preserved. (T 2670-2686).

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[4] As far back as 1966, in the seminal case of *Miranda v. Arizona*, the United States Supreme Court expressed wariness of the Reid Technique.

The defense argued that Section 90.702, Fla.Stat., was modified and that the *Daubert* standard had been adopted in federal and state courts. The defense position was the witness had technical or other specialized knowledge which would assist the trier of fact in understanding the evidence and determining a fact in issue. (T 2691-2692). The Court refused to allow the testimony. The Court cited *United States v. Michael Jaclis*, 784 F.Supp.2d 59 (D.Mass. 2011) in which the Court found that proffered expert lacked the experience to be qualified as an expert on false confessions. The Court determined that false confessions were not caused by the application of the Reid Technique and are the result of improper interrogation procedures where behavior that the courts have ruled to be objectionable, "such as threatening inevitable consequences, making a promise of leniency in return for the confession, denied a subject their rights, and conducting an excessively long interrogation." (T 2687-2703).

The defense renewed its request to allow Dr. DeClue to testify as to the narrow area in which the doctor had specialized knowledge which would assist the tryer of fact in understanding evidence in this case. (T 2687).

The State contended that applying *Daubert*, there was no science to the research Dr. DeClue referred to in his proffer. (T 2688). The State urged the Court to rely on a case from Michigan, *People v. Kowalski*, 492 Mich. 106 (Mich. Sup.Ct. 2012). (T 2689) and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786

(1993). The State argued testimony concerning the doctor's analysis of the Reid Technique was a doctor's personal opinion based upon training and experience, which is what *Daubert* eliminated. The Prosecution argued that the evidence failed under *Daubert.*

The Court cited *Perez v. BellSouth Tellecom, Inc.*, 138 So.3d 492 (Fla. 3rd DCA 2014), rev. denied 153 So.3d 908 (Fla. 2014), for the proposition that the subject of an expert's testimony must be scientific knowledge and that in order to qualify as scientific knowledge, so as to become admissible, the inference or excretion must be derived by a scientific method. The touchtone of scientific method is scientific testing. General acceptance in the scientific community alone is no longer sufficient under *Daubert.* (T 2698).

Further, the Court analyzed the testimony under Section 90.403, Fla.Stat. and found that "any, probative value is far outweighed by the unfair prejudice to the State's right to a fair trial, the great risk of misleading the jury and the jury may assign undue weight to such testimony. (T 2700). Rule 403, F.R.E.

It is well settled that the trial judge is the "gatekeeper of the evidence" and has a fundamental duty that the proffered expert testimony was relevant and reliable. *Daubert* 509 U.S. at 589. In *In Re: Amendments to the Florida Evidence Code*, 278 So.3d 551

(Fla. 2019), the Florida Supreme Court approved using the "*Daubert*" standard in the procedural evidence rules to qualify expert testimony and witnesses at trial.

James Herard maintains that the trial court's refusal to allow his expert witness, Dr. DeClue, to testify was reversible error and that certiorari review is warranted.

III. JAMES HERARD WAS UNLAWFULLY AND IMPROPERLY SENTENCED TO DEATH BY A JUDGE BASED UPON AN 8-4 JURY RECOMMENDATION

James Herard maintains that his state and federal constitutional rights were violated when he was sentenced to Death on Count I. James Herard was not the shooter who inflicted the murder. The actual shooter received a Life sentence for murder. The jury recommended death by a vote of 8-4 (R 962-981). He was sentenced under an unconstitutional sentencing scheme. See *Hurst v. Florida*. His sentence violates the 5th, 6th, 8th, and 14th Amendments to the United States Constitution and applicable portions of Florida law.

The Petitioner also contends that the Florida death penalty in effect at the time was unconstitutional because it failed to adequately narrow the class of cases eligible for the death penalty.

A) James Herard was Sentenced Under an Unconstitutional Sentencing Scheme in Violation of the 5th, 6th, and 14th Amendments to the United States Constitution and Article 1, Section 22 of the Florida Constitution

In January 2016, the United States Supreme Court issued its decision in *Hurst v. Florida*, 136 S.Ct. 616 (2020), holding that Florida's former capital sentencing scheme violated the Sixth Amendment because it "required the judge to hold a separate hearing and determine whether sufficient aggravating circumstances existed to justify imposing the death penalty" even though "[t]he Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." *Hurst v. Florida*, 136 S. Ct. at 619.

In *Hurst*, the Court held that:

> Before the trial judge may consider imposing a sentence of death, the jury in a capital case must unanimously and expressly find all the aggravating factors that were proven beyond a reasonable doubt, unanimously find that the aggravating factors are sufficient to impose death, unanimously find that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend a sentence of death. *Hurst,* 202 So. 3d at 57.

In *Hurst,* the Court stated:

> "We hold this sentencing scheme unconstitutional. The 6th Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough."
> *Hurst v. Florida* at 619.

Florida's sentencing scheme, which required the judge alone to find the existence of an aggravated circumstance has been declared unconstitutional. See *Hurst v. Florida*

at 619; 624. In reaction to the *Hurst* decision, the Florida Legislature amended the death penalty statute. In *Perry v. State*, 210 So.3d 630 (2016).

> "In addressing the second certified question of whether the Act may be applied in pending prosecutions, we necessarily review the constitutionality of the Act in light of our opinion in *Hurst*. In that opinion, we held that as a result of the longstanding adherence to unanimity in criminal jury trials in Florida, the right to a jury trial set forth in Article 1, Section 22 of the Florida Constitution requires that in cases in which the penalty phase jury is not waived, the findings necessary to increase the penalty from a mandatory life sentence to death must be found beyond a reasonable doubt by a unanimous jury." *Hurst v. State*, 202 So.3d 40, 74 (2106).

Those findings specifically include unanimity as to all aggravating factors to be considered, unanimity that sufficient aggravating factors exist for the imposition of the death penalty, unanimity that the aggravating factors outweigh the mitigation circumstances, and unanimity in the final jury recommendation for death. (*Id.*)

Since the appellant herein was sentenced under an unconstitutional statute, this court should reverse and remand his death sentence and order a new penalty phase hearing.

B) *Poole's* Decision to "Recede From" Hurst Claims Does Not Negate the Need for Resentencing Proceedings

In *State v. Poole*, 297 So. 3d 487 (Fla. 2020) and *Owen v. State*, 2020 Fla. LEXIS 1050 (Fla. 2020), this Court "recede[d] from *Hurst v. State,* except to the extent that it held that a jury must unanimously find the existence of statutory aggravating

circumstance beyond a reasonable doubt," *Poole*, 297 So. 3d at 491. If *Poole* sets forth the law in Florida that this Court believes applies to James Herard's death sentence, the law of Florida and James Herard's death sentence are inconsistent with at least three provisions of the federal Constitution and it's Florida counterparts in multiple respects.[5]

In the aftermath of *Hurst v. State*, the Court rejected that position. See *Franklin v. State*, 209 So. 3d 1241, 1248 (Fla. 2016) ("We also reject the State's contention that Franklin's prior convictions for other violent felonies insulate Franklin's death sentence from *Ring* and *Hurst v. Florida*."); *Jolmson v. State*, 205 So. 3d 1285, 1289 (Fla. 2016) ("We reject the State's contention that Johnson's contemporaneous convictions for other violent felonies insulate Johnson's death sentences from *Ring* and *Hurst v. Florida*. *Hurst*, 202 So. 3d at 53 n.7.").

The Court wrote in *Poole*:

> The jury in *Poole*'s case unanimously found that, during the course of the first-degree murder of Noah Scott, Poole committed the crimes of attempted first-degree murder of White, sexual battery of White, armed burglary, and armed robbery. Under this Court's longstanding precedent interpreting *Ring v. Arizona* and under a correct understanding of *Hurst v. Florida* this satisfied the requirement that a jury unanimously find a

[5] Apart from the constitutional invalidity of the *Poole* framework as a general matter, which is discussed *infra*, the application of that framework specifically to *Hurst* – who appeal of a decision decided under prior law was pending in the Court when that law was unforeseeably upended to his disadvantage – would violate James Herard's federal due process rights as enunciated in *Bouie v. City of Columbia*, 378 U.S. 347, 353-354 (1964) as well as the *ex post facto* and Equal Protection principles canvassed *supra* at pp. 57-59. *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 90-92 (1965); *Cole v. Arkansas*, 333 U.S. 196 (1948).

> statutory aggravating circumstance beyond a reasonable doubt. See *Poole II*, 151 So. 3d at 419. In light of our decision to recede from *Hurst v. State* except to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance, we reverse the portion of the trial court's order vacating Poole's death sentence.
>
> *Poole,* 297 So. 3d at 508.

Thus, silently abrogating the post-*Hurst* cases, the Court appears to hold that the constitutional requirements for the imposition of a capital sentence were satisfied when the guilt-phase jury found James Herard guilty of crimes that were also aggravating circumstances. At that point the jury had, albeit unknowingly, created a situation in which "death is presumed to be the proper sentence," and the Constitution did not require the judge to receive any further input from the jury before imposing that sentence. *Poole*, 297 So. 3d at 502. Certiorari review is warranted.

C) Applying the Reasoning of Poole to James Herard's Case Violates the Eighth Amendment

The Eighth Amendment requires the State to ensure that the death penalty is reliably inflicted only on the most morally culpable subset of those criminals who commit the most serious homicides (see, e.g., *Roper v. Simmons*. 543 U.S. 551, 568 (2005); *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980)).

The Supreme Court has consistently recognized that the death penalty is "qualitatively different" from all other punishments, and therefore "demands

extraordinary procedural protection against error." The Court has repeatedly described two aspects of capital punishment that make it "different in kind" from any form of imprisonment, including life imprisonment: first, the "finality" of the punishment makes any error "irrevocable or irreversible;" and second, the death penalty is different in its "severity or enormity." See, e.g., *Atkins v. Virginia*, 536 U.S. 304 (2002), Scalia, dissenting.

The essentially non-existent sentencing role that *Poole* allocates to the jury is not only at odds with decades of binding precedent, but also disregards centuries of common law history, contemporary consensus in the States, and "the unique nature of the death penalty and the heightened reliability demanded by the Eighth Amendment in the determination whether the death penalty is appropriate in a particular case." *Sumner v. Shuman*, 483 U.S. 66, 72 (1987). Only a unanimous jury verdict can supply the requisite assurance of reliability. See *Brief of Law Professors and Social Scientists as Amici Curiae in Support of Petitioner in Ramos v. Louisiana*, 140 S. Ct. 1390 (2020).

The system sanctioned by *Poole* is irreconcilably inconsistent with the Eighth Amendment, and therefore applying the Florida death penalty statute as interpreted by *Poole* to James Herard violates the United States Constitution. Certiorari review is warranted.

D) The Eighth Amendment Requires that the Ultimate Decision to Impose a Sentence of Death Rather Than Life Must be Made by a Unanimous Jury

The Petitioner contends that *Poole* is irreconcilable with the Eighth Amendment's requirement that the ultimate decision to impose a sentence of death rather than life must be made by a unanimous jury. Contrary to the position of the *Poole* majority, unanimous-jury sentencing in capital cases is now a requirement of the Eighth Amendment to the federal Constitution. As the Court is aware, see *Poole*, 297 So. 3d at 513 (Labarga, J., dissenting), only Alabama and now, again, Florida, hold the contrary position, which James Herard asserts is inconsistent with both contemporary standards of decency and the overwhelming consensus of American jurisdictions. *Poole* is at odds with the judgment of the Florida Legislature rendered in 2017, and still firmly in place, that a death sentence without unanimous jury approval cannot be applied. As this Court concluded years ago, the requirement of jury unanimity reflects the vital role of the jury as the conscience of the community. It is deeply rooted in common law, is required in capital cases by the Eighth Amendment, and made applicable to the states pursuant to the Fourteenth Amendment.

Capital sentencing procedures that have been repudiated as a result of the "evolving standards of decency that mark the progress of a maturing society," *Atkins v. Virginia*, 536 U.S. 304, 312 (2002), violate the Eighth Amendment, see *Woodson v.*

North Carolina, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325,332-33 (1976), as do capital sentencing procedures which are out of touch with the overwhelming consensus of contemporary practice in jurisdictions nationwide. See, e.g., *Beck v. Alabama,* 447 U.S. 625, 635 (1980).

These considerations demonstrate that the Eighth Amendment demands a unanimous jury determination in favor of a death sentence before a state may impose that sentence. To give James Herard anything less would violate his state and federal constitutional rights based upon the split recommendation by the jury as to punishment.

E) Even if the Eighth Amendment Does Not Require Jury Unanimity in Death Sentencing, it at Least Requires a Jury to Make the Ultimate Decision to Impose a Death Sentence

James Herard maintains that the Eighth Amendment requires both jury sentencing and jury unanimity in capital cases. However, this Court need not accept that jury unanimity is a federal constitutional requirement in order to conclude that the application of *Poole* in this case would violate James Herard's Eighth Amendment rights. It is enough for the Court to agree that the Eighth Amendment at least requires, as Justices Stevens, Breyer, and others have explained, that a jury make the ultimate decision to impose a death sentence, whether unanimously or not. See, e.g., *Harris v. Alabama*, 513 U.S. 504, 515-26 (1995) (Stevens, J., dissenting); *Ring*, 536 U.S. at 615-18 (Breyer, J., concurring). Such a requirement reflects the vital role of the jury in

reflecting a "reasoned moral response." See, e.g., *Penry v. Johnson*, 532 U.S. 782, 797 (2001) to the balance of aggravation and mitigation. The reason is straightforward. See, e.g., *Reynolds v. Florida*, 139 S. Ct. 27, 28-29 (2018) (Breyer, J., statement respecting the denial of certiorari). As more and more states abandon the death penalty altogether, the split in national opinion on whether the death penalty itself is "cruel and unusual" has deepened. Even in retentionist jurisdictions, increasing numbers of people believe that the death penalty continues to be imposed based on convictions that may tum out to be unreliable and that it is often applied in a geographically, racially, and socio-economically biased manner.

In this situation, juries, rather than "a single government official," i.e., a Judge, *Ring,* 536 U.S. at 619 (Breyer, J., concurring), are the only mechanism that can provide a death sentence comporting with the Eighth Amendment: an expression of the "conscience of the community on the ultimate question of life or death," *Witherspoon v. Illinois*, 391 U.S. 510, 519 (1968), and whether the particular crime at hand is "so grievous an affront to humanity that the only adequate response may be the penalty of death," *Gregg*, 428 U.S. at 184 (opinion of Stewart, Powell, and Stevens, JJ.). Even if this Court does not accept that the Eighth Amendment requires jurors to be unanimous in making a death determination, it should at least decide that the Eighth Amendment requires a jury to make the ultimate decision. For that reason, *Poole* cannot be

constitutionally applied to James Herard and a Life sentence must be imposed or this matter remanded for re-sentencing.

F) Applying the Reasoning of *Poole* to James Herard's Case Violates the Sixth Amendment

The Petitioner maintains that the regime sanctioned by *Poole* diminishes the jury's factfinding role below the Sixth Amendment floor established long ago. Because a jury verdict at trial will be carried during all subsequent stages of the proceedings and review, Florida's capital punishment system that seeks to make death flow from the fact of conviction of the crimes on trial, while insulating jurors from consideration of that prospect, violates the Sixth Amendment. *Adams v. Texas*, 448 U.S. 38, 50 (1980).

One of the aggravating factors found by the Court at bar is the statutory aggravating factor delineated in Fla. Stat. Ann. Section 921.141(6)(b) (2020) is that the defendant was "previously convicted of ... a felony involving the use or threat of violence to the person." On its face, this factor is void for vagueness, see,' *Johnson v. United States*, 576 U.S. 591, 595-97 (2015), and Florida death sentences cannot constitutionally be based upon it.

Even if the statute were not invalid on its face, reading it as *Poole* does makes it involved as applied because *Poole*'s re-writing of the statute reduces the jury's role

below the floor laid down by the Sixth Amendment in *Hurst v. Florida*[6].

This Court has repeatedly recognized that the contours of the statutory aggravating factor are fact-dependent, requiring consideration of more than just the legal elements of the crime.

Here, the violation of *Hurst v. Florida* is manifest. See *Mathis v. United States*, 136 S. Ct. 2243, 2252 (2016). Re-sentencing is required.

G) The Trial Judge Failed to Narrow the Class of Cases Eligible for Sentencing Under the Death Penalty

A capital punishment scheme must genuinely narrow the category of cases subject to the death penalty. *Furman v. Georgia*, 408 US 236 (1972); *Zant v. Stephens*, 462 US 862 (1983). The Florida death penalty scheme, post *Hurst & Poole*, fails to comply with this constitutional requirement. Every conceivable fact and situation which could support a charge of 1st degree murder includes at least one of Florida's aggravating factors. The Legislature could have simply combined the 16 aggravating

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[6] Any reliance on *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) to deny James Herard's *Hurst*-based claims would be a stark violation of the Sixth Amendment. As *Apprendi* itself recognized, "it is arguable that *Almendarez-Torres v. United States* [a decision primarily concerned with federal statutory construction -] was incorrectly decided" insofar as it implied that a prior conviction might be an exception to the "general rule" that the Sixth Amendment (as incorporated into the Fourteenth) requires that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi,* 530 U.S. at 490.

factors enumerated in Section 921.141, Fla.Stat. into one aggravating factor which could be succinctly stated as follows:

> "Any person convicted of 1st degree murder in Florida is eligible for the death penalty unless the jury finds there is sufficient mitigation to justify the imposition of a life sentence."

The sixteen (16) aggravating circumstances listed in the statute must be construed together and, combined and, when combined, failed to narrow the class of cases of 1st degree murder that are eligible for the death penalty. Thus, James Herard urges this court to declare Florida Statute 921.141 unconstitutional as applied to James Herard because it violates the 5th, 6th, 8th, and 14th Amendments of the United States Constitution, and applicable provisions of the Florida Constitution, by failing to sufficiently narrow the class of cases that are eligible for the death penalty and is otherwise unconstitutional. Certiorari review is warranted.

CONCLUSION

"Death is different." *Gregg v. Georgia*, 428 U.S. 153 (1976); *Furman v. Georgia*, 408 U.S. 238 (1972); *Woodson v. North Carolina*, 428 U.S. 280, 322 (1976); and *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455 (2012). It is unwarranted in this case. The jury recommended imposition of the death penalty by a vote of 8-4, and this case should be in the "pipeline" of cases wherein, at a minimum, re-sentencing is required because the Florida Death Penalty regime at the time was held to be unconstitutional.

Based upon the foregoing cases, authorities, policies and arguments, the Petitioner, James Herard, respectfully requests this Honorable Court grant certiorari and review the Florida Supreme Court's decision affirming James Herard's conviction and sentence of Death and remand for further proceedings.

Respectfully submitted,

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Ft. Lauderdale, Florida
November 1, 2024

APENDIX

APPENDIX

3409

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

In the Circuit Court of the Seventeenth Judicial Circuit of the State of Florida

THE STATE OF FLORIDA	INDICTMENT FOR
vs.	
JAMES HERARD aka J-LOC (Counts I-XXI)	I. 1ST DEGREE MURDER (FIREARM)
JONATHAN JACKSON aka BLU (Counts III-V & VIII-XII)	II. 1ST DEGREE MURDER (FIREARM)
THAROD BELL aka SMOKE (Counts I-IV & VIII-XX)	III. RACKETEERING (R.I.C.O.)
CHARLES FAUSTIN aka PSYCHO (Counts I, III-IV, & IX-XIX)	IV. CONSPIRACY TO COMMIT R.I.C.O.
CALVIN WEATHERSPOON aka SLICC (Counts III-IV, VI-VII,XIX, & XXI)	V. DIRECTING ACTIVITIES OF A GANG
	VI. – VII. ROBBERY (FIREARM)
	VIII. ATT. 1ST DEGREE MURDER
	IX. AGGRAVATED BATTERY
	X. – XIII. ATT. 1ST DEGREE MURDER
	XIV. – XVII. ROBBERY (FIREARM)
	XVIII – XIX. ATT. ROBBERY (FIREARM)
	XX. – XXI. ROBBERY (FIREARM)

For Broward County, at the Fall 2008 Term thereof, on the 4th day of March in the year of our Lord Two Thousand Nine, to-wit: The Grand Jurors of the State of Florida, inquiring in and for the County of Broward, State of Florida, upon their oaths do present that

COUNT I

MURDER IN THE FIRST DEGREE -- FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 14th day of November, A.D. 2008, in the County and State aforesaid, did then and there unlawfully and feloniously and from a premeditated design to effect the death of a human being, Eric Jean-Pierre, did kill and murder the said Eric Jean-Pierre, by shooting him with a firearm, to wit: a shotgun, and in the course of the crime committed **THAROD BELL AKA SMOKE** did have actual possession of a firearm, and did discharge said firearm, causing the death of Eric Jean-Pierre; and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 775.087(1), 775.087(2), and 874.04;

A-1

COUNT II

MURDER IN THE FIRST DEGREE – FIREARM

JAMES HERARD AKA J-LOC and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Kiem Huynh, did kill and murder the said Kiem Huynh, by shooting him with a firearm, and in the course of the crime committed, **JAMES HERARD AKA J-LOC** did have actual possession of a firearm, and did discharge said firearm, causing the death of Kiem Huynh, and **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary to F.S. 782.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT III

RACKETEERING

JONATHAN JACKSON AKA BLU OR BLU-JAY, JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC**, beginning on or about the 20th day of June 2008 and continuing through the 3rd day of December, A.D. 2008, in the County and State aforesaid and in such other County or Counties in the State as set forth in the pattern of racketeering activity more particularly described below, were then and there associated with an enterprise, to wit: a criminal street gang, named and referred to as **"BACC STREET CRIPS,"** that both functioned as a continuing unit and had a common purpose of engaging in a course of criminal conduct, to wit:

(A) Homicide, relating to Chapter 782, Florida Statutes;

(B) Robbery and Theft, relating to Chapter 812, Florida Statutes;

(C) Assault and Battery, relating to Chapter 784, Florida Statutes;

(D) Criminal Gangs, relating to Chapter 874, Florida Statutes;

and did unlawfully, knowingly and feloniously conduct or participate in such enterprise directly or indirectly through a pattern of racketeering activity as defined in Section 895.02(4) of the Florida Statutes, to wit: by engaging in at least two incidents of racketeering conduct that had the same intents, results, accomplices, victims or methods of commission, or were interrelated by distinguishing characteristics and were not isolated incidents, including the following:

RACKETEERING INCIDENT # 1 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC**, on the 20th day of June, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Garry Metayer and/or Miguel Guerrero, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Garry Metayer and/or Miguel Guerrero of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Garry Metayer and/or Miguel Guerrero in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statues;

RACKETEERING INCIDENT # 2 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC**, and **JONATHAN JACKSON AKA BLU OR BLU-JAY**, on the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Jacob Rivera, a human being, attempt to kill Jacob Rivera by discharging a firearm at and toward Jacob Rivera, and in the course thereof there were carried firearms, to wit: shotguns, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 3 – AGGRAVATED BATTERY

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO**, on or about the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully touch or strike Keith Williams against his will with a deadly weapon, to wit: a hot steam iron, and/or intentionally or knowingly cause the said Keith Williams great bodily harm, permanent disability, or permanent disfigurement by burning the said Keith Williams multiple times with said iron, relating to Chapter 784, Florida Statutes;

RACKETEERING INCIDENT # 4 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Tremaine Williams, West, Chazdin Edwards, and James Mozie, human beings, attempt to kill Tremaine Williams,, Chazdin Edwards, and James Mozie, by discharging a firearm at and toward the said Tremaine Williams, Chazdin Edwards, and James Mozie, and in the course thereof there was carried a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 5 – MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** on the 14th day of November, A.D. 2008, in the County and State aforesaid, did then and there unlawfully and feloniously and from a premeditated design to effect the death of a human being, Eric Jean-Pierre, did kill and murder the said Eric Jean-Pierre, by shooting him with a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 6 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO,** and **THAROD BELL AKA SMOKE**, on the 15th day of November, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Demetrick Caldwell, a human being, attempt to kill Demetrick Caldwell, by discharging a firearm at and toward the said Demetrick Caldwell, and in the course thereof there was carried a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 7 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of MD Miah, Artie Edmonds, and/or Corey Marchand, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive MD Miah, Artie Edmonds, and/or Corey Marchand of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said MD Miah, Artie Edmonds, and/or Corey Marchand in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 8 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in Palm Beach County, Florida, did unlawfully take from the person or custody of Henry Bornstein and/or Gerald Lakin, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Henry Bornstein and/or Gerald Lakin of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Henry Bornstein and/or Gerald Lakin in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 9 – ATT. FELONY MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in Palm Beach County, Florida, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Henry Bornstein, did attempt to kill and murder the said Henry Bornstein, by shooting him with a firearm, to wit a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 10 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take, or attempt to take, from the person or custody of Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 11 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Chao Le Kim, certain property of value, to wit: U.S. currency, a purse and its contents, with the intent to temporarily or permanently deprive Chao Le Kim of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Chao Le Kim in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 12 – MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Kiem Huynh, did kill and murder the said Kiem Huynh, by shooting him with a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 13 -- ROBBERY

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY** and **CALVIN WEATHERSPOON AKA SLICC** on the 3rd day of December, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Richard Sills and/or Taiwan Gayee, certain property of value, to wit: a Canine, with the intent to temporarily or permanently deprive Richard Sills and/or Taiwan Gayee of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Richard Sills and/or Taiwan Gayee in fear, relating to Chapter 812, Florida Statutes;

contrary to Sections 895.02 and 895.03(3) of the Florida Statutes, and

COUNT IV

CONSPIRACY TO COMMIT RACKETEERING

JONATHAN JACKSON AKA BLU OR BLU-JAY, JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** and others known and unknown to the Grand Jury, beginning on or about the 20th day of June, A.D. 2008, and continuing through the 3rd day of December, A.D. 2008, in the County of Broward, and in such other County or Counties in the State as denominated in the pattern of racketeering activity set forth in Count III, were then and there associated with an enterprise, more particularly described as a Criminal Street Gang, to wit: **BACC STREET CRIPS**, that both functioned as a continuing unit and had a common purpose of engaging in a course of criminal conduct, and did then and there unlawfully, willfully, and knowingly agree, conspire, combine, or confederate with one another and with other persons whose identities are both known and unknown to the Grand Jury, to engage in said enterprise through a pattern of racketeering activity including at least two incidents of racketeering conduct that had the same or similar intent, results, accomplices, victims or methods of commission or that otherwise were interrelated by distinguishing characteristics, and were not isolated incidents, including Homicide, relating to Chapter 782, Robbery and Theft, relating to Chapter 812, and Assault and Battery, relating to Chapter 784 of the Florida Statutes, contrary to F.S. 777.04(3), 895.02, 895.03(3), and 895.03(4).

COUNT V

DIRECTING THE ACTIVITIES OF CRIMINAL GANG

JONATHAN JACKSON AKA BLU OR BLU-JAY and **JAMES HERARD AKA J-LOC** beginning on or about the 1st day of October, A.D. 2008 and continuing through the 3rd day of December, A.D. 2008, in the County and State aforesaid did knowingly and unlawfully initiate, organize, plan, finance, direct, manage, or supervise criminal gang related activity, contrary to F.S. 874.10;

COUNT VI

ARMED ROBBERY -- FIREARM

JAMES HERARD AKA J-LOC and **CALVIN WEATHERSPOON AKA SLICC,** on the 20th day of June A.D. 2008, did unlawfully take from the person or custody of Miguel Guerrero, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Miguel Guerrero of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Miguel Guerrero in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC,** and **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary to F.S. 812.13(1), 812.13(2)(a), and 775.087(2);

COUNT VII

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC and **CALVIN WEATHERSPOON AKA SLICC** on the 20th day of June, A.D. 2008 in the County and State aforesaid did unlawfully take from the person or custody of Garry Metayer, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Garry Metayer of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Garry Metayer in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC,** and **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), and 775.087(2);

COUNT VIII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC and **JONATHAN JACKSON AKA BLU OR BLU-JAY,** on the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Jacob Rivera, a human being, attempt to kill Jacob Rivera by discharging a firearm at and toward Jacob Rivera, and in the course thereof there were carried firearms, to wit: shotguns in the actual possession of **JAMES HERARD AKA J-LOC**, who discharged said firearm, and **JAMES HERARD AKA J-LOC JONATHAN** and **JACKSON AKA BLU OR BLU-JAY** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT IX

AGGRAVATED BATTERY

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on or about the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully touch or strike Keith Williams against his will with a deadly weapon, to wit: a hot steam iron, and/or intentionally or knowingly cause the said Keith Williams great bodily harm, permanent disability, or permanent disfigurement by burning the said Keith Williams multiple times with said iron, and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 784.045(1)(a) and 874.04;

COUNT X

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Tremaine Williams, a human being, attempt to kill Tremaine Williams by discharging a firearm at and toward the said Tremaine Williams, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XI

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Chazdin Edwards, a human being, attempt to kill Chazdin Edwards by discharging a firearm at and toward the said Chazdin Edwards, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of James Mozie, a human being, attempt to kill James Mozie by discharging a firearm at and toward the said James Mozie, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XIII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO, and **THAROD BELL AKA SMOKE**, on the 15th day of November, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Demetrick Caldwell, a human being, attempt to kill Demetrick Caldwell, by discharging a firearm at and toward the said Demetrick Caldwell, and in the course thereof there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** who did discharge said firearm, and **JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO,** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT XIV

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of MD Miah, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive MD Miah of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said MD Miah, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and a handgun in the actual possession of **THAROD BELL AKA SMOKE,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XV

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Artie Edmonds, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Artie Edmonds of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Artie Edmonds, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and a handgun in the actual possession of **THAROD BELL AKA SMOKE,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XVI

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Corey Marchand, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Corey Marchand of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Corey Marchand, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC,** and a handgun in the actual possession of **THAROD BELL AKA SMOKE, and JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XVII

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Deny Jean-Louis certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Deny Jean-Louis of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Deny Jean-Louis in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 775.087(2), and 874.04;

COUNT XVIII

ATTEMPTED ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully attempt to take from the person or custody of Wilson Perez certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Wilson Perez of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Wilson Perez in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 777.04(1), 775.087(2) and 874.04;

COUNT XIX

ATTEMPTED ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and CALVIN WEATHERSPOON AKA SLICC on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully attempt to take from the person or custody of Idelfonzo Sanchez, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Idelfonzo Sanchez, of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Idelfonzo, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 777.04(1), 775.087(2) and 874;

COUNT XX

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Chao Le Kim, certain property of value, to wit: U.S. currency, a purse and its contents, with the intent to temporarily or permanently deprive Chao Le Kim of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Chao Le Kim in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary, to F.S. 812.13(1), 812.13(2)(a), 775.087(2), and 874.04;

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COUNT XXI

ARMED ROBBERY – FIREARM

19

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY and **CALVIN WEATHERSPOON AKA SLICC** on the 3rd day of December, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Richard Sills and/or Taiwan Gayee, certain property of value, to wit: a Canine, with the intent to temporarily or permanently deprive Richard Sills and/or Taiwan Gayee of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Richard Sills and/or Taiwan Gayee in fear and in the course thereof, there was carried a firearm, to wit: a handgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary, to F.S. 812.13(1) and 874.04;

of the Florida Statutes, made and provided to the evil example of all others in the like case offending, and against the peace and dignity of the State of Florida.

A TRUE BILL:

B Kra
FOREPERSON

I HEREBY CERTIFY that I have advised the Grand Jury returning the Indictment, as authorized and required by law.

CIRCUIT COURT
17th
JUDICIAL
CIRCUIT
BROWARD COUNTY, FLORIDA

Assistant State Attorney for the Seventeenth Judicial Circuit of the State of Florida, Prosecuting for said State

James Herard
B/M DOB: 08/12/1989
SS# 594-86-7755

Jonathan Jackson
B/M DOB: 03/15/1986
SS# 590-40-2607

Tharod Bell
B/M DOB: 08/27/1987
SS# 589-40-7653

Charles Faustin
B/M DOB: 06/08/1990
SS# 593-98-4601

Calvin Weatherspoon
B/M DOB: 10/08/1988
SS# 589-37-6049

IN THE CIRCUIT COURT
Seventeenth Judicial Circuit
County of Broward
STATE OF FLORIDA
vs.

JAMES HERARD,
JONATHAN JACKSON,
THAROD BELL,
CHARLES FAUSTIN, &
CALVIN WEATHERSPOON

INDICTMENT

For
I. 1ST DEGREE MURDER (FIREARM)
II. 1ST DEGREE MURDER (FIREARM)
III RACKETEERING (R.I.C.O.)
IV. CONSPIRACY TO COMMIT R.I.C.O.
V. DIRECTING ACTIVITIES OF A GANG
VI. – VII. ROBBERY (FIREARM)
VIII. ATT. 1ST DEGREE MURDER
IX. AGGRAVATED BATTERY
X. – XIII. ATT. 1st DEGREE MURDER (FIREARM)
XIV. – XVII. ROBBERY (FIREARM)
XVIII. – XIX. ATT. ROBBERY (FIREARM)
XX --XXI. ROBBERY (FIREARM)

Found Fall Term, A.D. 2008

A TRUE BILL
B Kram
FOREPERSON

Filed MAR 04 2009
HOWARD C. FORMAN Clerk
By D.C.

ASSISTANT STATE ATTORNEY

Order

THE COURT ORDERS that the Defendant is to be admitted to bail upon posting bond in the sum of
$_____

DATED_____

CIRCUIT JUDGE

* * * *

Order

THE COURT ORDERS that the Defendant is to be held without bond.

DATED March 4, 2009
Mily Rodriguez Powell
CIRCUIT JUDGE

APR 0 1 2009 M/g plea entered
Kelley D/C

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BROWARD COUNTY, FL
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FELONY

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	)	CASE NO.: 09-004654CF10A
	)	
Plaintiff,	)	JUDGE: PAUL L. BACKMAN
	)	
v.	)	DIVISION: FX
	)	
JAMES HERARD,	)	
	)	
Defendant.	)	

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON JAN 23 2015
BY

SENTENCING ORDER

The Defendant was Indicted by the Broward County Grand Jury on March 4th, 2008. After considerable discovery and motion practice, which was extensive as a result of the number of counts, numerous witnesses, 5 total Co-Defendants, three of whom the State was seeking the Death Penalty and 13 lawyers with their schedules. The trial began on April 29th, 2014, and the jury returned their verdicts on May 16th, 2014.

The Indictment Charged the Defendant as follows:

Count 1, First Degree Murder with a Firearm of Eric Jean-Pierre on November 14th, 2008; Count 2, First Degree Murder with a Firearm of Kiem Huynh on November 27th, 2008; Count 3, Racketeering consisting of 13 Racketeering Incidents; Count 4, Conspiracy to Commit Racketeering consisting of the same 13 Racketeering Incidents as Count 3; Count 5, Directing the Activities of a Criminal Gang; Count 6, Robbery with a Firearm, the victim being Miguel Guerrero; Count 7, Robbery with a Firearm, the victim being Garry Metayer; Count 8, Attempted First Degree Murder with a Firearm, the victim being Jacob Rivera, Count 9, Aggravated Battery, the victim being Keith Williams; Count 10, Attempted First Degree Murder, the victim being Tremaine Williams; Count 11, Attempted First Degree Murder, the victim being Chazdin Edwards; Count 12, Attempted First Degree Murder, the victim being James Mozie; Count 13,

A-2

Racketeering as charged in the Indictment; Count 5, Guilty of Directing the Activities of a Criminal Gang; Count 6, Guilty of the lessor included offense of Robbery and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 7, Guilty of the lessor included offense of Robbery and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 8, Guilty of Attempted Murder in the First Degree as charged in the Indictment, with actual possession of a firearm, Discharge of the Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 9, Guilty of Aggravated Battery as charged in the Indictment and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 10, Guilty of Attempted Murder in the First Degree as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 11, Guilty of the lesser included offense of Attempted Murder in the Second Degree with a Firearm, with actual possession of a Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 12, Guilty of the lesser included offense of Attempted Murder in the Second Degree with a Firearm, with actual possession of a Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 13, Guilty of Attempted Murder in the First Degree as charged in the Indictment with actual possession of a firearm, Discharge of the Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang, Count 14, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 15, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 16, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting,

Spencer Hearing, having had the benefit of the parties legal memoranda and the Pre-Sentence Investigation, having heard and considered further argument in favor of, and in opposition to the death penalty, and having accorded great weight and consideration to the recommendation of the Jury, this Court finds as follows:

FACTS

From June, 2008, through December, 2008, the Defendant was a member of a criminal street gang known as the "BACC Street Crips." The Defendant played a leadership role in the gang. He was second-in-command and enforcer of this subset of the Crips. The BACC Street Crips, like most other criminal gangs, had a formal structure, hierarchy, hand signals, their own specific gang colors (including "war" colors) and had a rivalry with the "Bloods," whom they considered to be their enemy.

The Defendant and other members of the Crips committed at least five robberies and several shootings in the time span of June, 2008, through December, 2008. They also sought out and shot members of the Bloods. One such incident took place on October 13, 2008. The Defendant and other members of the Crips hatched a plan to shoot some rival gang members who they believed attacked fellow Crip member Keith Williams. The Defendant handed Keith Williams the 20 gauge shotgun and ordered Keith Williams to shoot Jacob Rivera. Williams got scared and shot into the air; however, the Defendant took back the 20 gauge shotgun and shot Jacob Rivera, a member of the rival gang, the Bloods. Rivera survived his injuries. The jury found the Defendant guilty of Attempted Murder in the First Degree (Count 8)

The Defendant, along with co-defendant Jonathan Jackson (the leader of the Crips) and others, severely injured one of their own gang members, Keith Williams, for his failure to carry out the order to murder one of the Bloods (Jacob Rivera). Keith Williams testified before the jury and this Court that he didn't want to kill anyone. His "punishment" was meted out by the Defendant and Jackson on October 13th, 2008. They burned Williams four times with a hot

aforementioned crimes. MD Miah, Corey Marchand and Artie Edmunds were in Dunkin Donuts when the Defendant came in. The Defendant stole money and property from Corey Marchand and Artie Edmonds, and stole money from the cash register as well. The jury convicted the Defendant of three counts of Robbery with a Firearm (Counts 14, 15 and 16).

On November 26, 2008, the day before Thanksgiving, the Defendant along with Bell, Faustin and fellow Crip member Calvin Weatherspoon decided to commit another robbery of a Dunkin Donuts in Delray Beach, Florida (Palm Beach County). The Defendant armed himself again with the same 20 gauge shotgun. The Defendant shot several customers. Paul Barrata was shot in the face through his windshield as he pulled into the parking lot. He suffered permanent blindness. Henry Bornstein was shot three times and his jaw was blown off from one of the shotgun blasts. The Delray Beach crimes were relevant as a predicate act to support the R.I.C.O. (Count 3) and the Conspiracy to Commit R.I.C.O. (Count 4). The Defendant was found guilty of those two counts.

Thanksgiving Day, November 27, 2008, the Defendant and Bell decided to commit another robbery at another Dunkin Donuts in Tamarac. Just as he had done previously, the Defendant had the 20 gauge shotgun in tow when he entered the Dunkin Donuts. Kiem Huyhn was just leaving Dunkin Donuts with coffee and donuts in his arms, using his back to open the door. The Defendant shot Huyhn in the back with the shotgun. His motive was both to prevent Huyhn from escaping and to send a message to the other patrons and employees that he and Bell meant business. The Defendant then stole Huyhn's sister-in-law's (Chao Le Kim) money and property. The jury convicted the Defendant of the First Degree Murder of Kiem Huyhn (Count 2) and the Robbery with a Firearm (Count 18).

The Defendant's crime spree came to an end on December 2, 2008. On that day the Defendant, along with Jackson and Weatherspoon were driving in the city of Lauderhill when they decided to commit another robbery. Two Lauderhill Detectives were conducting surveillance unrelated to the crimes being committed by the Defendants, when they noticed the Defendant and Weatherspoon jump out of a car that Jackson was driving and approach two men (Richard Sills and Taiwan Gayee) who were walking a pit-bull dog. The Defendant and

Battery (victim Keith Williams, Count 9); Attempted First Degree Murder with a Firearm (victim Tremaine Williams, Count 10); Attempted Second Degree Murder with a Firearm (victim Chazdin Edwards, Count 11); Attempted Second Degree Murder with a Firearm (victim James Mozie, Count 12); Attempted First Degree Murder with a Firearm (victim Demetrick Caldwell, Count 13); Robbery with a Firearm (victim MD Miah, Count 14); Robbery with a Firearm (victim Artie Edmonds, Count 15); Robbery with a Firearm (victim Corey Marchand, Count 16); Robbery with a Firearm (victim Chao Le Kim, Count 18) and Robbery (victim Richard Sills and/or Taiwan Gayee), Count 19).

For the purposes of this statute, a prior conviction is any conviction on a defendant's record in which the defendant was previously convicted of another capital felony or of a felony involving the use of threat or violence to the person. In other words, the previous conviction crime may have occurred prior to or after the capital felony at issue but was sentenced before the capital felony at issue in this case. See *Castro v. State,* 644 So. 2d 987 (Fla. 1994); *King v. State*, 390 So. 3d 315 (Fla. 1980) and *Elledge v. State*, 346 So. 2d 998 (Fla. 1977).

In addition to being convicted of the capital felony at issue, James Herard was also convicted in case number 08-23586CF10B (two counts of Robbery with a Weapon). The Defendant was tried before this Court, convicted on August 26, 2010, and sentenced to two twenty (20) year consecutive sentences in prison on November 9, 2010. The Defendant exercised his right of self-representation for this trial. This Court had the Defendant evaluated to ensure he was competent to make the decision, and after the Doctor's finding of Competence, this Court conducted a Faretta Colloquy with Mr. Herard and found he was making a free, voluntary and intelligent waiver of Counsel. Certified copies of the aforementioned conviction were entered into evidence at the penalty phase.

Certified copies of the Palm Beach County crimes, case number 2008CF017526, for which the Defendant was previously convicted, were also admitted into evidence at the penalty phase. Those crimes included two counts of Attempted First Degree Murder with a Firearm, six counts of Robbery with a Firearm and five counts of Possession of a Firearm while Committing False Imprisonment in connection with the Delray Beach Dunkin Donuts case (as previously

first-degree murder.

Applying the above to the instant case, the Defendant was a member in a leadership position of the "BACC Street Crips, as second in command and as the enforcer." He and his cohorts committed several violent crimes in the days and months prior to the murder of Eric Jean-Pierre. As previously discussed in this Order, the Defendant and his fellow Crip members engaged in a competition to see who could murder the most people. The defendant referred to it as hunting humans. They hatched their plan and then drove around several cities in search of unsuspecting victims for the sole purpose of seeing who would have the highest "body count." The Defendant always, for each of the violent felonies charged, carried his 20 gauge shotgun throughout his crime spree and when he saw Eric Jean-Pierre walking down the street he handed the 20 gauge shotgun to Therod Bell and ordered fellow gang member Bell to kill him as a right of passage and to get him a body.

The Defendant was the sole driving force in the death of Eric Jean-Pierre, who had the misfortune of walking home from a bus stop, when he was brutally shot down at the Defendant's urging and prodding. He repeatedly told Bell "bust it, bust it, bust it". But for the Defendant ordering Bell to kill Eric Jean-Pierre, he took the 20 gauge shotgun handed to him by the Defendant and pulled the trigger killing Eric Jean-Pierre. Eric Jean-Pierre was shot in the chest with a 20 gauge shotgun which literally tore the lower part of his chest off. Eric Jean-Pierre knew that he was going to be killed as a result of the Defendant's actions and statements proceeding the fatal shot causing his death. Therod Bell was fully aware of the punishment he would face if he did not carry out the Defendant's command. Bell knew this was a kill or be killed situation and that Eric Jean-Pierre was going to die no matter what. It was well established by the Defendant himself what punishment would happen to any one of the gang members if they failed to carry out his demands. This was demonstrated on October 13th, 2008, when he committed the Aggravated Battery upon Keith Williams, (the victim in Count 9), who did not follow an order of the Defendant to kill Jacob Rivera. The defendant, having been told by Williams that he could not shoot, then took back the 20 gauge shotgun which he had previously handed to Williams, and proceeded to shoot Jacob Rivera, who survived.

The Defendant seemed to take pride in killing, saying to detectives "you might as well give me that body (Eric Jean-Pierre) because Tharod would not have done it if I didn't provoke it." It

statute. The Defendant fits the definition of five of those criteria. The Defendant has admitted several times that he is a member of the "BACC Street Crips" under §874.03(a). Not only is he admittedly a member of the Crips, but he went into great detail regarding gang signs and symbols (see §874.03(e)). He also spoke of the rivalry he has with other criminal gangs and his intent to kill them.

Next, the Defendant was known to wear the color blue, which is the Crips gang color. Wearing the color of the gang is another factor in defining someone as a criminal gang member under §874.03(d). The day of his arrest he was dressed completely in blue clothing. He was also observed in surveillance videos during some of his various crimes wearing blue.

It has also been proven that the Defendant regularly associated with other "BACC Street Crips" members including the leader of the gang Jonathan Jackson (known as "Blue" and "OG"), Tharod Bell, Calvin Weatherspoon and Charles Faustin. The Defendant was with at least one of the aforementioned individuals during each of the crimes he has been convicted of committing. Associating with one or more criminal gang members is another criteria in which someone can be defined as a criminal gang member per §874.03(j) and (g).

Competent, substantial evidence adduced at trial established that the Defendant was a Criminal Gang Member as defined by §874.03 Fla. Stat. He committed the murder of Eric Jean-Pierre as an active member of the BACC Street Crips and did so as part of a "body count" competition with Tharod Bell and Charles Faustin. This aggravating factor has been proven beyond a reasonable doubt and is accorded great weight.

No other aggravating factors enumerated by statute are applicable to the instant case, and as such, none other than those factors above which have proven beyond a reasonable doubt were considered by this Court.

STATUTORY MITIGATING FACTORS

The Defense presented Statutory Mitigating Factors and many Non-Statutory Mitigators as discussed below.

LAW OFFICES OF RICHARD L. ROSENBAUM
(ADMITTED 1984)

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Richard@RLRosenbaum.com
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October 31, 2024

LEGAL MAIL – ATTORNEY/CLIENT PRIVILEGE
LaTravis Gallashaw, Inmate ID # 170157781
TGK Center
7000 NW 41st Street
Miami, FL 33166

Re: *Gallashaw v. USA* / Post-Conviction

Dear LaTravis:

Enclosed please find an article I thought you should review concerning judge Wolfson's ruling. This was the lead article in a statewide publication called the Florida Defender, published by the Florida Association of criminal Defense lawyers, of which I am a member.

The article is self-explanatory. I will continue to keep you posted of all developments.

Sincerely,

RICHARD L. ROSENBAUM

RLR/mlc
Encls.

**** FILED: BROWARD COUNTY, FL Howard C. Forman, CLERK 1/23/2015 4:45:06 AM.****

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	)	CASE NO.: 09-004654CF10A
Plaintiff,	)	JUDGE: PAUL L. BACKMAN
v.	)	DIVISION: FX
JAMES HERARD,	)	
Defendant.	)	

Filed In Open Court,
CLERK OF THE CIRCUIT COURT
ON JAN 23 2015
BY

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The Indictment Charged the Defendant as follows:

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Attempted First Degree Murder, the victim being Demetrick Caldwell; Count 14, Armed Robbery with a Firearm, the victim being MD Miah; Count 15, Armed Robbery with a Firearm, the victim being Artie Edmonds; Count 16, Armed Robbery with a Firearm, the victim being Corey Marchand; Count 17, Armed Robbery with a Firearm, the victim being Deny Jean-Louis; Count 18, Attempted Robbery with a Firearm, the victim being Chao Le Kim; Count 19, Attempted Robbery with a Firearm, the victim being Richard Sills and/or Taiway Gayee; Count 20, Robbery with a Firearm and Count 21, Robbery with a Firearm. The State Nolle Pros'd Counts 18 and 19, as set forth in the original Indictment before trial. To avoid confusion by the jury, Counts 20 and 21 were renumbered for verdict purposes only.

Jury selection started on February 11th, 2014, and continued on the 12th, 13th, 14th and 18th. At that point in time, the Governor issued a Death Warrant for John Henry. Mr. Kulik was the attorney of record and had no choice but to give that case his full time and attention, as a Death Warrant takes priority over anything else As a result, the jury, not sworn, was excused over Mr. Herard's strenuous objections Jury selection began anew on March 26th and 27th, and continued in April on the 1st, 2nd, 3rd, 6th, 7th, 14th thru the 18th. This Court granted the Defense as many preemptory challenges as they needed.

The trial began April 29th, 2014, and on May 16, 2014, the jury found as follows: Count 1, Guilty of Murder in the First Degree with a Firearm, as charged in the Indictment, of Eric Jean-Pierre, for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 2, Guilty of Murder in the First Degree with a Firearm, as charged in the Indictment, of Kiem Huynh, with actual possession of a Firearm, Discharge of the Firearm actually inflicting death to Kiem Huynh as a result of discharging a firearm in his possession and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 3, Guilty of Racketeering as charged in the Indictment; Count 4, Guilty of Conspiracy to Commit

Racketeering as charged in the Indictment; Count 5, Guilty of Directing the Activities of a Criminal Gang; Count 6, Guilty of the lessor included offense of Robbery and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 7, Guilty of the lessor included offense of Robbery and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 8, Guilty of Attempted Murder in the First Degree as charged in the Indictment, with actual possession of a firearm, Discharge of the Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 9, Guilty of Aggravated Battery as charged in the Indictment and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 10, Guilty of Attempted Murder in the First Degree as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 11, Guilty of the lesser included offense of Attempted Murder in the Second Degree with a Firearm, with actual possession of a Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 12, Guilty of the lesser included offense of Attempted Murder in the Second Degree with a Firearm, with actual possession of a Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 13, Guilty of Attempted Murder in the First Degree as charged in the Indictment with actual possession of a firearm, Discharge of the Firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang, Count 14, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 15, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang; Count 16, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting,

promoting or furthering the interests of a criminal gang, Count 17, Not Guilty; Count 18, Guilty of Robbery with a Firearm as charged in the Indictment with actual possession of a firearm and for the purpose of benefiting, promoting or furthering the interests of a criminal gang and Count 19, Guilty of the lessor included offense of Robbery and for the purpose of benefiting, promoting or furthering the interests of a criminal gang.

Shortly thereafter, the penalty phase was conducted on June 2nd, 3rd and 4th, 2014. Prior to the actual beginning of the Penalty Phase, on June 2nd, as a precautionary measure, the Court ordered a psychological evaluation of the Defendant to determine whether or not he was competent. Dr. Attyia conducted the evaluation, which all parties were in possession of, indicating the Defendant was competent to proceed At the conclusion of all the testimony and arguments of counsel, the same jury by a vote of eight (8) to four (4), recommended the Defendant should be sentenced to death on Count 1 for the First Degree Murder of Eric Jean-Pierre. As to Count 2, the First Degree Murder of Kiem Huyhn, a majority of the jurors recommended life in prison A Pre-Sentence Investigation Report (PSI) was ordered and received by all parties for purposes of additional Mitigation not otherwise presented.

A Spencer hearing followed (pursuant to *Spencer* v. *State*, 615 So. 2d 688 (Fla. 1993) on September 8th, 12th and 22nd, 2014, at which time both the Defense and the State were permitted to present additional evidence regarding the sentencing of the Defendant not previously presented to the Penalty Phase Jury. Prior to the Spencer Hearing on August 20th, 2014, the Defendant informed the Court he had additional witnesses he wanted called to testify. Both the State and Defense presented additional witnesses including all those requested by the Defendant at the Spencer Hearing At the conclusion of the Spencer Hearing the Court requested Sentencing Memorandums from the Parties, which were received and reviewed by the Court. Having heard the evidence presented in both the guilt and penalty phases and the

Spencer Hearing, having had the benefit of the parties legal memoranda and the Pre-Sentence Investigation, having heard and considered further argument in favor of, and in opposition to the death penalty, and having accorded great weight and consideration to the recommendation of the Jury, this Court finds as follows:

FACTS

From June, 2008, through December, 2008, the Defendant was a member of a criminal street gang known as the "BACC Street Crips." The Defendant played a leadership role in the gang. He was second-in-command and enforcer of this subset of the Crips. The BACC Street Crips, like most other criminal gangs, had a formal structure, hierarchy, hand signals, their own specific gang colors (including "war" colors) and had a rivalry with the "Bloods," whom they considered to be their enemy.

The Defendant and other members of the Crips committed at least five robberies and several shootings in the time span of June, 2008, through December, 2008. They also sought out and shot members of the Bloods. One such incident took place on October 13, 2008. The Defendant and other members of the Crips hatched a plan to shoot some rival gang members who they believed attacked fellow Crip member Keith Williams. The Defendant handed Keith Williams the 20 gauge shotgun and ordered Keith Williams to shoot Jacob Rivera. Williams got scared and shot into the air; however, the Defendant took back the 20 gauge shotgun and shot Jacob Rivera, a member of the rival gang, the Bloods. Rivera survived his injuries. The jury found the Defendant guilty of Attempted Murder in the First Degree (Count 8)

The Defendant, along with co-defendant Jonathan Jackson (the leader of the Crips) and others, severely injured one of their own gang members, Keith Williams, for his failure to carry out the order to murder one of the Bloods (Jacob Rivera). Keith Williams testified before the jury and this Court that he didn't want to kill anyone. His "punishment" was meted out by the Defendant and Jackson on October 13th, 2008. They burned Williams four times with a hot

steam iron on his chest. He showed the jury and this Court his scars. The jury returned a guilty verdict for Aggravated Battery (Count 9)

On October 19, 2008, the Defendant used a 20 gauge shotgun to shoot rival gang members Tremaine Williams, James Mozie and Chazdin Edwards. All three survived. Regarding those crimes, the jury returned a guilty verdict of Attempted Murder in the First Degree with a Firearm regarding Count 10 and a guilty verdict on two counts of Attempted Murder in the Second Degree with a Firearm, a lesser included offense, as to Counts 11 and 12.

The Defendant, along with fellow gang members Tharod Bell and Charles Faustin, were looking for someone to kill on November 14, 2008. It was a competition the three of them were having to see who would have the highest number of "kills." The Defendant thought he already had killed one of the above-referenced victims (the October 13, 2008, shootings) so he wanted to "get Tharod a body." Eric Jean-Pierre had the misfortune of walking home from a bus stop when he was gunned down at the Defendant's urging and prodding. He repeatedly told Bell "bust it, bust it, bust it." Herard, in his statement to police, said "you might as well give me that body because Therod would not have done that if I didn't provoke it." Jean-Pierre was shot in the chest with a 20 gauge shotgun which literally tore the lower part of his heart off.

The following day, November 15, 2008, the same trio had a plan to rob a Dunkin Donuts store in Tamarac, however that plan fell through due to a police presence there. They then drove to the city of Sunrise where they saw a young man, Demetrick Caldwell, walking down the street wearing a red bandana. They assumed that he was a member of the Bloods because of the color of the bandana in his pocket. The Defendant, along with fellow gang members Charles Faustin and Tharod Bell, followed Caldwell home. The Defendant shot Caldwell several times with the same 20 gauge shotgun from the previous crimes. Caldwell survived. The Defendant, in his statement to police, said that he shot Caldwell because he believed he was a member of the Bloods and because of their killing game competition. The Defendant was convicted of Attempted First Degree Murder with a Firearm (Count 13).

Nine days later, on November 24, 2008, the same trio decided to rob a Dunkin Donuts in the city of Sunrise. The Defendant brought with him the same 20 gauge shotgun used in the

aforementioned crimes. MD Miah, Corey Marchand and Artie Edmunds were in Dunkin Donuts when the Defendant came in. The Defendant stole money and property from Corey Marchand and Artie Edmonds, and stole money from the cash register as well. The jury convicted the Defendant of three counts of Robbery with a Firearm (Counts 14, 15 and 16).

On November 26, 2008, the day before Thanksgiving, the Defendant along with Bell, Faustin and fellow Crip member Calvin Weatherspoon decided to commit another robbery of a Dunkin Donuts in Delray Beach, Florida (Palm Beach County). The Defendant armed himself again with the same 20 gauge shotgun. The Defendant shot several customers. Paul Barrata was shot in the face through his windshield as he pulled into the parking lot. He suffered permanent blindness. Henry Bornstein was shot three times and his jaw was blown off from one of the shotgun blasts. The Delray Beach crimes were relevant as a predicate act to support the R.I.C.O. (Count 3) and the Conspiracy to Commit R.I.C.O. (Count 4). The Defendant was found guilty of those two counts.

Thanksgiving Day, November 27, 2008, the Defendant and Bell decided to commit another robbery at another Dunkin Donuts in Tamarac. Just as he had done previously, the Defendant had the 20 gauge shotgun in tow when he entered the Dunkin Donuts. Kiem Huyhn was just leaving Dunkin Donuts with coffee and donuts in his arms, using his back to open the door. The Defendant shot Huyhn in the back with the shotgun. His motive was both to prevent Huyhn from escaping and to send a message to the other patrons and employees that he and Bell meant business. The Defendant then stole Huyhn's sister-in-law's (Chao Le Kim) money and property. The jury convicted the Defendant of the First Degree Murder of Kiem Huyhn (Count 2) and the Robbery with a Firearm (Count 18).

The Defendant's crime spree came to an end on December 2, 2008. On that day the Defendant, along with Jackson and Weatherspoon were driving in the city of Lauderhill when they decided to commit another robbery. Two Lauderhill Detectives were conducting surveillance unrelated to the crimes being committed by the Defendants, when they noticed the Defendant and Weatherspoon jump out of a car that Jackson was driving and approach two men (Richard Sills and Taiwan Gayee) who were walking a pit-bull dog. The Defendant and

Weatherspoon approached the men from behind and the Defendant put some kind of object in Sills side, which (Sills) believed to be a gun. The Defendant said "give up the dog" and Sills complied. They were immediately captured by the two detectives who were in the immediate area. The jury found the Defendant guilty of Robbery (a lesser included offense of Robbery with a Firearm) on Count 19.

This Court has heard all evidence presented in both the guilt and penalty phase of the trial, has thoroughly reviewed all evidence presented during the Guilt Phase, Penalty Phase, Spencer Hearing, the pre-sentence investigation, the memoranda filed on behalf of the State and Defendant, in addition to all other arguments put forth by the parties. As is its duty, this Court has given great weight and consideration to the sentencing recommendation provided by the jury. This Court is now required to consider and give individual consideration to each aggravating and mitigating factor presented by the parties, as set forth in §921.141, Fla. Stat. As such, this Court finds as follows:

STATUTORY AGGRAVATING FACTORS

The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person as enumerated in §921.141(5)(b), Fla. Stat.

The Florida Supreme Court has ". . . long recognized that a contemporaneous conviction for a violent felony can serve as a basis for the prior violent felony aggravator". See *Buzia v. State*, 926 So. 2d 1203, 1209 (Fla. 2006); *LeCroy v. State*, 533 So. 2d 750, 755 (Fla. 1988); *Correll v. State*, 523 So. 2d 562, 568 (Fla. 1988). Therefore, all of the violent felonies for which the Defendant was convicted of contemporaneously to the murder of Eric Jean-Pierre are considered an aggravator. The violent felonies for which the Defendant was convicted contemporaneously are: Murder in the First Degree (victim Kiem Huynh, Count 2); Robbery (victim Miguel Guerrero, Count 6); Robbery (victim Garry Metayer, Count 7), Attempted First Degree Murder with a Firearm (victim Jacob Rivera, Count 8); Aggravated

Battery (victim Keith Williams, Count 9); Attempted First Degree Murder with a Firearm (victim Tremaine Williams, Count 10); Attempted Second Degree Murder with a Firearm (victim Chazdin Edwards, Count 11); Attempted Second Degree Murder with a Firearm (victim James Mozie, Count 12); Attempted First Degree Murder with a Firearm (victim Demetrick Caldwell, Count 13); Robbery with a Firearm (victim MD Miah, Count 14); Robbery with a Firearm (victim Artie Edmonds, Count 15); Robbery with a Firearm (victim Corey Marchand, Count 16); Robbery with a Firearm (victim Chao Le Kim, Count 18) and Robbery (victim Richard Sills and/or Taiwan Gayee), Count 19).

For the purposes of this statute, a prior conviction is any conviction on a defendant's record in which the defendant was previously convicted of another capital felony or of a felony involving the use of threat or violence to the person. In other words, the previous conviction crime may have occurred prior to or after the capital felony at issue but was sentenced before the capital felony at issue in this case. See *Castro v. State,* 644 So. 2d 987 (Fla. 1994); *King v. State*, 390 So. 3d 315 (Fla. 1980) and *Elledge v. State*, 346 So. 2d 998 (Fla. 1977).

In addition to being convicted of the capital felony at issue, James Herard was also convicted in case number 08-23586CF10B (two counts of Robbery with a Weapon). The Defendant was tried before this Court, convicted on August 26, 2010, and sentenced to two twenty (20) year consecutive sentences in prison on November 9, 2010. The Defendant exercised his right of self-representation for this trial. This Court had the Defendant evaluated to ensure he was competent to make the decision, and after the Doctor's finding of Competence, this Court conducted a Faretta Colloquy with Mr. Herard and found he was making a free, voluntary and intelligent waiver of Counsel. Certified copies of the aforementioned conviction were entered into evidence at the penalty phase.

Certified copies of the Palm Beach County crimes, case number 2008CF017526, for which the Defendant was previously convicted, were also admitted into evidence at the penalty phase. Those crimes included two counts of Attempted First Degree Murder with a Firearm, six counts of Robbery with a Firearm and five counts of Possession of a Firearm while Committing False Imprisonment in connection with the Delray Beach Dunkin Donuts case (as previously

described in this Order).

Competent, substantial evidence supports this aggravator. This aggravating factor has been proven beyond a reasonable doubt and is accorded great weight. See *Tedder v. State*, 322 So. 2d 923, 934 (Fla. 1975).

The Capital Felony was committed in a cold, calculated and premeditated manner, and without any pretense of moral or legal justification as enumerated in §921.141(5)(i), Fla. Stat.

Competent, substantial evidence supports this aggravator. Throughout the course of the trial and the penalty phase, evidence was presented which demonstrated the Defendant's murder of Eric Jean-Pierre was "cold" (it was the product of calm and cool reflection), "calculated" (the Defendant had a plan in which to carry out the murder) and it was "premeditated" (the Defendant premeditated the murder at a heightened level, as demonstrated by a substantial period of reflection and without any "pretense of moral or legal justification)." See *Thompson v. State*, 565 So. 2d 1311 (Fla. 1990) and *Roger v. State*, 511 So. 2d 526 (Fla. 1987). To further elaborate, the "cold, calculated and premeditated" aggravator applies to "murders more cold-blooded, more ruthless, and more plotting than the ordinarily reprehensible crime of premeditated first-degree murder." See *Porter v. State,* 564 So.2d 1060, 1064 (Fla.1990), *cert. denied* 498 U.S. 1110, 111 S.Ct. 1024, 112 L.Ed.2d 1106 (1991). This Court must apply the aforementioned enhanced definition with "calm and cool reflection" on the part of the Defendant. See *Richardson v. State*, 604 So.2d 1107, 1109 (Fla.1992). The Florida Supreme Court has adopted the phrase "heightened premeditation" to distinguish this aggravating circumstance from the premeditation element of first-degree murder. *Id.; Rogers v. State*, 511 So.2d 526, 533 (Fla.1987), *cert. denied,* "Calculated" refers to a careful plan or a prearranged design. *Rogers*, 511 So.2d at 533. The Florida Supreme Court's explanation on the terms "cold, calculated and premeditated" define it as something more than premeditated

first-degree murder.

Applying the above to the instant case, the Defendant was a member in a leadership position of the "BACC Street Crips, as second in command and as the enforcer." He and his cohorts committed several violent crimes in the days and months prior to the murder of Eric Jean-Pierre. As previously discussed in this Order, the Defendant and his fellow Crip members engaged in a competition to see who could murder the most people. The defendant referred to it as hunting humans. They hatched their plan and then drove around several cities in search of unsuspecting victims for the sole purpose of seeing who would have the highest "body count." The Defendant always, for each of the violent felonies charged, carried his 20 gauge shotgun throughout his crime spree and when he saw Eric Jean-Pierre walking down the street he handed the 20 gauge shotgun to Therod Bell and ordered fellow gang member Bell to kill him as a right of passage and to get him a body.

The Defendant was the sole driving force in the death of Eric Jean-Pierre, who had the misfortune of walking home from a bus stop, when he was brutally shot down at the Defendant's urging and prodding. He repeatedly told Bell "bust it, bust it, bust it". But for the Defendant ordering Bell to kill Eric Jean-Pierre, he took the 20 gauge shotgun handed to him by the Defendant and pulled the trigger killing Eric Jean-Pierre. Eric Jean-Pierre was shot in the chest with a 20 gauge shotgun which literally tore the lower part of his chest off. Eric Jean-Pierre knew that he was going to be killed as a result of the Defendant's actions and statements proceeding the fatal shot causing his death. Therod Bell was fully aware of the punishment he would face if he did not carry out the Defendant's command. Bell knew this was a kill or be killed situation and that Eric Jean-Pierre was going to die no matter what. It was well established by the Defendant himself what punishment would happen to any one of the gang members if they failed to carry out his demands. This was demonstrated on October 13th, 2008, when he committed the Aggravated Battery upon Keith Williams, (the victim in Count 9), who did not follow an order of the Defendant to kill Jacob Rivera. The defendant, having been told by Williams that he could not shoot, then took back the 20 gauge shotgun which he had previously handed to Williams, and proceeded to shoot Jacob Rivera, who survived.

The Defendant seemed to take pride in killing, saying to detectives "you might as well give me that body (Eric Jean-Pierre) because Tharod would not have done it if I didn't provoke it." It

was well established during the trial that the Defendant truly enjoyed killing, as he stated to Detective Berrena, that shooting people "is like going on a date, it's like sex to me." That statement alone demonstrates the Defendant's ruthlessness and cold-bloodedness. It was not until the time the detectives were questioning him that they were able to pull together the involvement of the Defendant and his Co-Defendants as the perpetrators of this brutal crime spree.

While there is no question that the Defendant clearly demonstrated a "heightened premeditation" regarding committing a murder, there was no evidence presented that he specifically planned to murder any individual in particular (including Eric Jean-Pierre), instead he was looking for any "body." That fact however has no effect on the cold, calculated and premeditated aggravator. *See Provenzano v. State*, 497 So. 2d 1177 (Fla. 1986); *McCrutchen v. State*, 96 So. 2d 152 (Fla. 1957).

No evidence was presented that the Defendant had a moral or legal justification for killing Eric Jean-Pierre. In fact, it was quite the contrary. The Defendant and his accomplices were on a mission to kill for no other reason than their murderous "body count" competition.

Competent, substantial evidence exists to conclude that the Defendant had a premeditated design to kill. See *Washington v. State,* 432 So. 3d 44 (Fla. 1983). This Court finds this aggravating factor has been proven beyond a reasonable doubt and is accorded great weight. See *Tedder v. State*, 322 So. 2d 923, 934 (Fla. 1975). The mental mitigation presented by the Defendant has been carefully considered by the court in light of the holding in *Almeida v. State*, 748 So. 2d 922 (Fla. 1999). This Court is convinced that the Defendant was sufficiently in control of his faculties to plan and carry out the murder of Eric Jean-Pierre.

The capital felony was committed by a criminal gang member as defined in §874.03 Fla. Stat. for the aggravator listed in §921.141(5)(n)

As indicated earlier, the Defendant was a member of the criminal gang known as the "BACC Street Crips." Section 874.03(3), Fla. Stat. states that in order to be considered a criminal gang member, a defendant must meet at least two of the eleven criteria outlined in the

statute. The Defendant fits the definition of five of those criteria. The Defendant has admitted several times that he is a member of the "BACC Street Crips" under §874.03(a). Not only is he admittedly a member of the Crips, but he went into great detail regarding gang signs and symbols (see §874.03(e)). He also spoke of the rivalry he has with other criminal gangs and his intent to kill them.

Next, the Defendant was known to wear the color blue, which is the Crips gang color. Wearing the color of the gang is another factor in defining someone as a criminal gang member under §874.03(d). The day of his arrest he was dressed completely in blue clothing. He was also observed in surveillance videos during some of his various crimes wearing blue.

It has also been proven that the Defendant regularly associated with other "BACC Street Crips" members including the leader of the gang Jonathan Jackson (known as "Blue" and "OG"), Tharod Bell, Calvin Weatherspoon and Charles Faustin. The Defendant was with at least one of the aforementioned individuals during each of the crimes he has been convicted of committing. Associating with one or more criminal gang members is another criteria in which someone can be defined as a criminal gang member per §874.03(j) and (g).

Competent, substantial evidence adduced at trial established that the Defendant was a Criminal Gang Member as defined by §874.03 Fla. Stat. He committed the murder of Eric Jean-Pierre as an active member of the BACC Street Crips and did so as part of a "body count" competition with Tharod Bell and Charles Faustin. This aggravating factor has been proven beyond a reasonable doubt and is accorded great weight.

No other aggravating factors enumerated by statute are applicable to the instant case, and as such, none other than those factors above which have proven beyond a reasonable doubt were considered by this Court.

STATUTORY MITIGATING FACTORS

The Defense presented Statutory Mitigating Factors and many Non-Statutory Mitigators as discussed below.

The Defendant was under the influence of extreme mental or emotional disturbance.

Dr. Miriam Glemaud testified, at the Penalty Phase, on behalf of the Defendant. She performed no psychological testing on the Defendant and her testimony was derived solely from her two interviews with the Defendant. The application of this mitigating factor was not supported by competent substantial evidence. The evidence proven at trial showed that the Defendant orchestrated a carefully planned, organized crime spree which lasted several months. That kind of planning is inconsistent with someone who allegedly has a extreme mental or emotional disturbance. As such, this mitigating factor has not be established.

Age of Defendant

The Defendant was 19 years old at the time when these crimes were perpetrated. The State argues that this mitigating circumstance does not apply to the Defendant and his conduct, especially since there is no evidence of mental or emotional immaturity, which are necessary components of this mitigator. This Court agrees.

"[W]here the defendant is not a minor, . . no per se rule exists which pinpoints a particular age as an automatic factor in mitigation". See *Troy v. State*, 31 Fla. L. Weekly S677 (Fla. 2006) and *Shellito v. State*, 701 So. 2d 837, 843 (Fla. 1997). Moreover, the Florida Supreme Court has further held that ". . . [a]ge twenty, in and of itself, does not require a finding of the age mitigator". See *Troy v. State*, 31 Fla. L. Weekly S677 (Fla. 2006) and *Garcia v. State*, 492 So. 2d 360, 367 (Fla. 1986).

In the instant case, the Defendant was approximately 19 years old when he orchestrated, ordered and intimidated Therod Bell to shoot and kill Eric Jean-Pierre. In order for a person who is legally an adult to claim age as a mitigating factor, it must be linked to some other characteristic such as mental or emotional immaturity. The Court previously discussed the issue of emotional health of the Defendant above. Additionally, this Court had the Defendant independently evaluated for Competency during the course of the proceedings. See *Echols v. State*, 484 So. 2d 569 (Fla. 1985). Thus, this mitigating factor has not been established.

The crime was committed by another person and the Defendant's participation was relatively minor.

It has been established that Eric Jean-Pierre was actually shot by Therod Bell. However, the evidence established at trial proved beyond a reasonable doubt that the Defendant was a dominant actor and major participant in the murder. He put the shotgun in Bell's hands and ordered and intimidated him to shoot Eric Jean-Pierre as part of their murderous "body count" competition.

Courts have held that in order for a sentence of death to be proportionate when the defendant is not the actual killer, the factors set in *Tison v. Arizona*, 481 U.S. 137 (1987) and *Enmund v. Florida*, 458 U.S. 782 (1982). In *Tison*, the Court held "...the death penalty may be proportional punishment if the evidence shows both that the defendant was a major participant in the crime and that the defendant's state of mind amounted to reckless indifference to human life. *Supra* at 158. The Florida Supreme Court in *Jackson v. State*, 575 So. 2d 181, 190 (Fla. 1991) held "individualized culpability" is the focus. "A critical facet of the individualized determination of the culpability required is the mental state with which the defendant commits the crime." These elements, stated above, were proven beyond a reasonable doubt in both the guilt and penalty phases. The Defendant was the "field" leader and enforcer of the BACC Street Crips and while "in the field" actively engaged in a sick competition to see who could kill the most people for sport. He did so willingly and knowingly. Therefore, this mitigating factor does not apply.

The Defendant acted under extreme duress or under substantial domination of another.

The evidence adduced at trial clearly refutes this mitigating factor. It was proven beyond a reasonable doubt at trial and the penalty phase that the Defendant was in charge of the Crips activities while "in the field." He was the shooter of all of other victims in this case and took credit with detectives for the murder of Eric Jean-Pierre, stating that Bell would not have shot Eric Jean-Pierre but for his insistence and intimidation. It was the Defendant who orchestrated this "body count" game. In fact, it was this Defendant's co-defendants (Bell, Weatherspoon and

Faustin) that were substantially under the control of the Defendant. Therefore, this mitigating factor has not been established.

The Defendant could not appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

There was no evidence presented to support this factor. The testimony led to the opposite conclusion. The Defendant's cousin testified that he was a loving, caring family member when he was in the company of her family. Yet when he was with his fellow Crips, he was on a murderous crime spree that spanned the course of several months. Therefore, this mitigating factor has not been established.

NON-STATUTORY MITIGATING FACTORS

Any other factors:

1. The Court has already discussed the applicability of the Mental Mitigator above. This Court finds the Doctor's testimony would support the Non-Statutory Mitigator and gives it little weight.
2. This Court finds that the following Non-Statutory Mitigators have been established:

a: The Defendant was raised without a father.

b: The Defendant was raised in very poor financial circumstances and his mother was a strict disciplinarian who believed in punishments considered child abuse today.

c: The Defendant was repeatedly subjected and forced to kneel for an unbearable amount of time and had his fingers burnt.

d: The Defendant has always had a very close, loving relationship with his mother.

e: The Defendant maintained very good, respectful relationships with his aunts, uncles and numerous cousins.

f: The Defendant has a big heart, many times going out of his way to help unfortunate others.

g: The Defendant befriended Omar Hunter, who suffered from sickle-cell anemia and

gave him transportation for treatments when Mr. Hunter had no one else.

h: The Defendant during his incarceration, had a helpful attitude towards others. Many inmates appeared and testified about the help and guidance he provided and how he encouraged fellow inmates to become productive even though incarcerated.

i: The Defendant wrote a novel while awaiting trial.

j: The Defendant talked two fellow inmates out of giving up and committing suicide.

k: The Defendant might be helpful and productive while incarcerated.

l: The Defendant is deeply spiritual.

m: The Defendant consistently attended church and participated during his childhood.

n: The Defendant helped fellow inmates to learn English and Mathematics while incarcerated.

p: The Defendant obtained employment to help his mother financially.

q: The Defendant never received the help and attention he needed to mature as an adult.

r: The Defendant only finished 9th grade.

s: The Defendant started drinking at age seven; his father gave him his first drink, and again as a 14 year old he was drinking Vodka, Rum, Tequila, and Hennessy. In middle school he smoked marijuana and when entering high school was smoking five to six times a day.

The above Non-Statutory Mitigators having been established, this Court affords each and every one Little Weight.

PROPORTIONALITY REVIEW

The Supreme Court of Florida will conduct a proportionality review of the sentence in this case. See *Dixon v. State*, 283 So. 2d 1 (Fla. 1973). It is well established that the death penalty is reserved to the most aggravated and the least mitigated of first degree murders. The evidence in this case established, the Defendant intentionally orchestrated the fatal shooting of Eric Jean-Pierre. Taking into consideration all mitigating factors raised by the Defendant, this Court finds that nothing about these factors suggests to this Court that the ultimate sentences

for the instant offenses are disproportionate. This Court's review of other reported capital cases has led the Court to conclude that the death penalty is not disproportionate under the instant facts.

CONCLUSION

This Court finds that the State has established, beyond and to the exclusion of every reasonable doubt, three aggravating circumstances.

This Court is reasonably convinced no statutory mitigating circumstance exist in this case.

This Court is reasonably convinced that 19 non-statutory mitigating circumstances have been established by the evidence.

In weighing the aggravating factors against the mitigating factors, this Court understands that the process is qualitative and not simply quantitative. This Court must and does look to the nature and quality of the established aggravators and mitigators. Any Victim Impact evidence presented during the penalty phase, cannot and was not, in any way, considered or relied upon by this Court in determining the appropriate sentence to impose.

This Court finds that the aggravating circumstances in this case are overwhelming, (factors one and two being two of the most serious aggravators for the Courts consideration). This finding, that the aggravating factors far outweigh the mitigating factors would not change, even if the Court were to exclude the aggravating factor that the capital felony was committed in a cold, calculated and premeditated manner.

It should be noted by the Supreme Court of Florida, that the Jury's recommendation to impose the death penalty for the brutal murder of Eric Jean Pierre, was found by the jury to be more egregious than the murder of Kiem Huyhn based upon all the testimony and evidence they were presented with. This Court understands that the Jury recommended a sentence of life with no eligibility for parole for the murder of Kiem Huynh. The Defendant's actions in both instances clearly showed the Jury a total indifference to human life by the Defendant, and the Jury understood fully the untenable position that the Defendant put Therod Bell in.

Accordingly, it is hereby

ORDERED AND ADJUDGED that for Count I, the murder of ERIC JEAN-PIERRE, the Defendant, James Herard, is hereby sentenced to death. It is further

ORDERED AND ADJUDGED that for Count II, the murder of KIEM HUYHN, the Defendant, James Herard, is hereby sentenced to life in Florida State Prison with no eligibility of parole. It is also

ORDERED AND ADJUDGED with respect to the remaining 16 Counts for which the Defendant, James Herard was found Guilty, and the Defendant is hereby sentenced to life in Florida State Prison.

This Court has reviewed the Criminal Punishment Code, and based on these offenses, the Defendant scores at total of 795 sentencing points with the lowest permissible prison sentence of 575.3 months (47.9 years) Florida State Prison. This court also finds that the total number of points is in excess of 363 points, permitting the Defendant to be sentenced to Life irrespective of the Maximum Statutory Sentence.

Pursuant to the 10/20/Life Statute, the Jury made the following findings requiring the imposition of the applicable Minimum/Mandatory sentences:

With respect to Count 2, 25 years to Life where the Defendant actually possessed a firearm and discharged said firearm, actually inflicted death.

With respect to Count 8, 20 years, where the Defendant actually possessed a firearm and discharged said firearm.

With respect to Counts 10, 11 and 12, 10 years, where the defendant actually possessed a firearm.

With respect to Count 13, 20 years where the defendant actually possessed a firearm, and discharged a firearm.

With respect to Counts 14, 15 and 16, 10 years, where the defendant actually possessed a firearm.

With respect to Count 20, 10 years, where the Defendant actually possessed a firearm-.

This Court hereby imposes all mandatory and statutory court costs, trust funds, $100.00 cost of prosecution, unless the State submits a motion for the total cost of the prosecution and

investigation, and Special Public Defender's Lien, subject to the J.A.C rules and regulations. Additionally, pursuant to Florida Statute 943.325 the Defendant shall submit two samples of his blood for purposes of the State D.N.A Bank. Further, the Defendant shall pay any restitution established during the trial, or at a separate proceeding, if applicable, as set forth by separate Restitution Orders attached hereto and made a part hereof.

All Counts in this case shall run concurrent to each other, and shall run consecutive to any other active sentence(s) being served by the Defendant. The Defendant shall receive credit of 2243 days for county jail time served.

The Defendant is to be delivered by the Sheriff of Broward County to the Department of Corrections where he is to be securely held by them on Death Row until such time as the Governor of the State of Florida, by his warrant, shall direct the Defendant, James Herard, be put to death.

The Defendant is advised that this judgment and sentence is subject to automatic review by the Supreme Court of Florida as provided in Chapter 921, Florida Statutes.

The Defendant is entitled to appellate counsel for the appeal of these judgments and sentences. Pursuant to Rule 3.11 (e) (A)-(D) Defendant's trial counsel shall file the proper appellate documentation prior to filing any motion to withdraw. The Office of the Public Defender of the Seventeenth Judicial Circuit, Broward County, Florida shall be initially appointed to represent the Defendant in the appeal of these judgments and sentences.

DONE AND ORDERED on this 23rd day of January, 2015, Fort Lauderdale, Broward County, Florida.

PAUL BACKMAN, Circuit Court Judge

Copies furnished to:

Stephen Zaccor, Esq., State Attorney's Office

Thomas Coleman, Esq., State Attorney's Office

Mitchell Polay, Attorney for the Defendant

Kevin Kulik, Esq., Attorney for the Defendant

Supreme Court of Florida

No. SC2015-0391

JAMES HERARD,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

July 3, 2024

PER CURIAM.

After a jury trial, James Herard was found guilty of 18 gang-related felonies, including the first-degree murders of Eric Jean-Pierre and Kiem Huynh. The trial court sentenced Herard to death for the Jean-Pierre murder and to life without the possibility of parole for the Huynh murder. Herard now appeals his convictions and death sentence.[1] For the reasons we explain, we affirm in all respects.

1. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

A-3

I. BACKGROUND

Guilt Phase

Herard was the second-in-command of the "BACC Street Crips," a Lauderhill-based branch of the national Crips gang. In the early morning hours of November 14, 2008, Herard and two fellow gang members drove the streets of Lauderhill in search of a victim for their ongoing body-count competition. They randomly came upon Eric Jean-Pierre, who had no gang affiliation and just happened to be walking home from a bus stop. As the gang members' car pulled up alongside Jean-Pierre, Herard's co-passenger Tharod Bell reached out from the vehicle with a 20-gauge shotgun. Herard told Bell to "bust it, bust it, bust it," prompting the latter to shoot Jean-Pierre in the chest at point-blank range. The blast blew away part of Jean-Pierre's heart and killed him almost instantly.

That murder was one of many gang-related crimes that Herard and his associates committed between June and December 2008. Those crimes included Herard's murder of Kiem Huynh, which occurred during the robbery of a Dunkin' Donuts store in Tamarac. There were also robberies and shootings at Dunkin' Donuts stores

in Plantation (where Herard had been an employee), Sunrise, and Delray Beach, along with shootings that targeted rival gang members in Lauderhill. On December 2, 2008, Herard and another gang member assaulted two people and stole their pit bull. Lauderhill detectives who witnessed the incident immediately arrested Herard, ending his crime spree.

An indictment and a May 2014 trial on 19 felony counts ensued. The backbone of the evidence at trial consisted of incriminating statements that Herard made to law enforcement during a series of interrogations in the two days or so after his arrest for stealing the pit bull. About the Jean-Pierre murder, for example, Herard told investigators that Tharod Bell would not have pulled the trigger if Herard himself had not provoked the shooting by repeatedly telling Bell to "bust it." The State also presented evidence linking Herard to the 20-gauge shotgun used in many of the shootings (including the two murders) and to a white Toyota Camry seen in surveillance footage near many of the crimes.

Herard did not testify at trial. Defense counsel sought to counter the State's evidence by arguing that Herard's statements to law enforcement were inconsistent (he initially denied having shot

anyone), unreliable, and involuntary. Counsel emphasized that Herard was only 19 years old at the time of the police questioning. The defense also stressed that police had been unable to recover the shotgun used in the murders and other crimes, and it maintained that there was no physical or scientific evidence implicating Herard.

The jury found Herard guilty on 18 counts and not guilty on a robbery count. The offenses of conviction consisted of: 2 counts of first-degree murder; 1 count of racketeering; 1 count of conspiracy to commit racketeering; 1 count of directing the activities of a criminal gang; 7 counts of robbery (4 with a firearm); 3 counts of attempted first-degree murder with a firearm; 2 counts of attempted second-degree murder with a firearm; and 1 count of aggravated battery.

Penalty Phase

The same jury returned three weeks later for the penalty phase, at which the State sought imposition of the death penalty for both the Jean-Pierre murder and the Huynh murder.[2] As to the

2. Before the start of the penalty phase, the court ordered a psychological evaluation of Herard to determine if he was

Jean-Pierre murder, the State sought to prove three aggravating circumstances: prior violent felony; cold, calculated, and premeditated; and committed by a criminal gang member. § 921.141(5)(b), (i), (n), Fla. Stat. (2014). Herard presented mitigating evidence through the testimony of two expert and five lay witnesses. The experts, Dr. Gilbert Raiford and Dr. Myriam Glemaud, chiefly testified about the negative impact Herard's upbringing had on his social, psychological, and behavioral development. The lay witnesses, Herard's family members, testified as to his intellect, good nature, and respectful attitude. They claimed these attributes would render him a valuable asset in assisting other inmates if given a life sentence.

By a vote of 8 to 4, the jury recommended that Herard be sentenced to death for the murder of Eric Jean-Pierre. A majority of the jury recommended a sentence of life imprisonment for the murder of Kiem Huynh.

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competent. Dr. Atiya evaluated Herard and found that he was competent to proceed.

After conducting a September 2014 *Spencer*[3] hearing at which Herard himself testified, the trial court on January 23, 2015, issued an order imposing a death sentence for the Jean-Pierre murder. The court found that the State had proven the three proposed aggravating circumstances beyond a reasonable doubt. Indeed, the court found the aggravators "overwhelming."

As to mitigation, the trial court found that Herard had failed to establish any of his five proposed statutory mitigating circumstances: extreme emotional or mental disturbance; minor participant; extreme duress; substantially impaired capacity; and age. § 921.141(6)(b), (d)-(g), Fla. Stat. (2014). But the court found that Herard had established 19 non-statutory mitigating circumstances.[4]

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3. *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

4. The trial court found the following non-statutory mitigating factors were established: (1) Defendant was raised without a father; (2) Defendant was raised in very poor financial circumstances and his mother was a strict disciplinarian who believed in punishments considered child abuse today; (3) Defendant was repeatedly subjected and forced to kneel for an unbearable amount of time and had his fingers burnt; (4) Defendant has always had a very close, loving relationship with his mother; (5) Defendant maintained very good, respectful relationships with his aunts, uncles, and numerous cousins; (6) Defendant has a big heart, many times going

The trial court gave "great weight" to each of the three proven aggravators and "little weight" to each of the established mitigators. And, based on a qualitative assessment, it concluded that the aggravators "far outweigh[ed]" the mitigators. Consistent with the jury's recommendations, the trial court sentenced Herard to death

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out of his way to help unfortunate others; (7) Defendant befriended Omar Hunter, who suffered from sickle-cell anemia and gave him transportation for treatments when Mr. Hunter had no one else; (8) Defendant, during his incarceration, had a helpful attitude towards others. Many inmates appeared and testified about the help and guidance he provided and how he encouraged fellow inmates to become productive even though incarcerated; (9) Defendant wrote a novel while awaiting trial; (10) Defendant talked two fellow inmates out of giving up and committing suicide; (11) Defendant might be helpful and productive while incarcerated; (12) Defendant is deeply spiritual; (13) Defendant consistently attended church and participated during his childhood; (14) Defendant helped fellow inmates learn English and Mathematics while incarcerated; (15) Defendant obtained employment to help his mother financially; (16) Defendant never received the help and attention he needed to mature as an adult; (17) Defendant only finished ninth grade; (18) Defendant started drinking at age seven; his father gave him his first drink, and again as a 14 year old he was drinking vodka, rum, tequila, and Hennessy. In middle school he smoked marijuana and when entering high school was smoking marijuana five to six times a day; and (19) Dr. Glemaud's testimony supports the non-statutory mitigator that Defendant's behavior is attributable to his environment, which did not support the chance for growth and development.

for the Jean-Pierre murder and to life without the possibility of parole for the Huynh murder.

This direct appeal followed.

II. ANALYSIS

On appeal, Herard argues that the trial court erred by: (1) denying Herard's due process-based motion to dismiss; (2) denying Herard's motions to suppress incriminating statements; (3) admitting physical evidence Herard claims was unrelated to the crimes charged; (4) excluding Herard's expert witness testimony about false confessions; and (5) sentencing Herard in a manner that violated the Sixth and Eighth Amendments. As we must, we also consider whether there is sufficient evidence to sustain Herard's conviction for the murder of Eric Jean-Pierre.

Denial of Herard's Motion to Dismiss

Herard's first claim sounds in due process and relates to the trial court's dismissal of the first jury venire. Jury selection in Herard's case initially began on February 11, 2014. A few days later, with jury selection still underway, a death warrant was signed in a different case where the defendant was represented by Kevin Kulik, Herard's penalty-phase counsel. Kulik, who had been

participating in jury selection in Herard's case, unsuccessfully attempted to withdraw as counsel in the death warrant case. The trial court tried and failed to secure replacement penalty-phase counsel for Herard. So, with Kulik temporarily unavailable for Herard's case, the trial court granted the State's request to strike the remaining panel of prospective jurors. The trial court then recessed the case.

When his case started up again a month later, Herard sought dismissal of the pending charges on due process grounds. He argued that he had been "extremely pleased" with the remaining jury pool when the initial venire was dismissed, and he maintained that the State had sought the strike solely to gain a tactical advantage. The trial court denied Herard's motion, and Herard now argues that doing so was reversible error.

To support his argument, Herard relies principally on the Fourth District Court of Appeal's decision in *State v. Goodman*, 696 So. 2d 940 (Fla. 4th DCA 1997). In *Goodman*, after a jury had been selected but before it was sworn, the State "nolle prossed" the case and then refiled the same charges 30 minutes later. *Id.* at 940. The trial court found, and the district court agreed, that the State

had acted solely to avoid trying the case to a jury that included "a member whom it had improperly sought to strike" on racial grounds. *Id.* at 943. On those facts, the *Goodman* court affirmed the trial court's ruling that the State had violated the defendant's due process rights.

This case is nothing like *Goodman*. The record here gives no indication that the State acted in bad faith or for an improper purpose. On the contrary, faced with the temporary unavailability of Herard's penalty-phase counsel (Kevin Kulik), it was reasonable for the State to ask the trial court to dismiss the remaining jury venire and start over once Kulik became available. In his briefing here, Herard does not dispute that even his guilt-phase counsel (Mitch Polay) agreed that jury selection should not continue in Kulik's absence. Herard has not shown a violation of his due process rights.

Admission of Herard's Statements

Herard next challenges the trial court's denial of his motions to suppress various statements he made to law enforcement from December 2 through 4, 2008. Those statements were made: (1) in the Lauderhill Police Department interview room on December 2,

2008; (2) in the Lauderhill Police Department booking area on December 2, 2008; (3) in the Broward Sheriff's Office Public Safety Building interview room on December 3, 2008; and (4) in the Broward County Main Jail on December 4, 2008. The trial court denied Herard's motions after holding a pretrial evidentiary hearing.

In assessing Herard's claims of error, we defer to the trial court's findings of fact as long as they are supported by competent, substantial evidence, and we review de novo the trial court's application of law to those facts. *Delhall v. State*, 95 So. 3d 134, 150 (Fla. 2012); *Thomas v. State*, 894 So. 2d 126, 136 (Fla. 2004). Applying these standards here, we conclude that the trial court did not err in denying Herard's motions to suppress.

1. Lauderhill Police Department interview room.

Herard's initial custodial interrogation was conducted at the Lauderhill Police Department. The interrogation took place after Herard's arrest for stealing the pit bull. Before questioning began, a detective read Herard his *Miranda*[5] rights from a waiver of rights form. Herard initialed the form to indicate that he understood his

5. *Miranda v. Arizona*, 384 U.S. 436 (1966).

rights. The detective then read aloud the remaining portion of the form, which affirmed the voluntariness of Herard's statement and his willingness to answer the detectives' questions without an attorney. When the detective finished reading, Herard said, "I don't agree to that," and added that he wanted an attorney. The detective replied, "Oh, okay, that's no problem."

Immediately thereafter, as the detective collected her paperwork to leave the room, Herard said: "Hold on, hold on. If I get an attorney do I gotta wait?" A brief conversation ensued where the detective explained to Herard that he would not wait in the interview room, but would be booked and remain there until an attorney arrived. Herard then said, "I don't want an attorney." The detective responded, "Do you want to talk or not?" Herard then asked to sign the paperwork. The detective again asked, "Do you want to talk to us?" Herard answered "yes" and proceeded to sign the waiver of rights form. During the ensuing interview, Herard made incriminating statements about the theft of the pit bull.

Herard argues that the trial court erred in denying his motion to suppress any statements he made to the Lauderhill detectives—and that, indeed, *all* the statements he made over two days of

questioning were tainted and inadmissible. According to Herard, once he invoked his right to an attorney, there should have been no further questioning without an attorney present. The trial court rejected that argument after finding that Herard himself reinitiated communication with the police and then validly waived his *Miranda* rights.

Our Court's recent decision in *State v. Penna*, 49 Fla. L. Weekly S119 (May 2, 2024), explained the legal test that governs a claim like Herard's. At the threshold, "[w]hen a suspect unequivocally invokes the *Miranda* right to counsel, the officers must immediately stop questioning the suspect." *Id.* at S120. The parties here have assumed that Herard's invocation of his right to counsel was unequivocal, so we will, too. That takes us to the next steps in the analysis.

There can be no subsequent interrogation of the suspect without counsel present unless two conditions are met: (1) the suspect must reinitiate contact with the police; and (2) the suspect must knowingly and voluntarily waive his earlier-invoked *Miranda* rights. *Id.* "The latter inquiry turns on the totality of the

circumstances." *Id.* at S121. We have no difficulty finding these conditions met here.

When Herard stated that he wanted an attorney, the Lauderhill detectives acknowledged the request and began to leave the room. But Herard immediately reinitiated communication, asking whether he would be booked and if he would have to wait for an attorney. After a detective answered Herard's questions, Herard indicated that he wanted to sign the waiver form. The detective then asked a couple of follow-up questions to clarify Herard's wishes before giving him the form to sign. The entire exchange—from the detective reading the rights disclosure and waiver form, to Herard saying he wanted an attorney, to Herard then changing his mind and signing the form—took less than three minutes. Under these circumstances, the trial court was right to deny Herard's motions to suppress the statements he made to the Lauderhill detectives.

2. Lauderhill Police Department booking area.

After the Lauderhill detectives finished questioning Herard, he was taken to the Broward Sheriff's Office. On his way out of the Lauderhill Police Department, Herard looked into the waiting room

where uniformed officers from Sunrise, Lauderhill, and the Broward Sheriff's Office were gathered. Without prompting, Herard stated: "Sunrise, what is Sunrise doing here? Oh ya, Sunrise. Where is Delray?" At trial, the State used these comments to help establish Herard's connection to the Dunkin' Donuts armed robbery that occurred in Delray Beach. Herard claims that his statement should have been suppressed, but we disagree.

Miranda warnings are not required unless the defendant is both "in custody *and* under interrogation." *Davis v. State*, 698 So. 2d 1182, 1188 (Fla. 1997). Though Herard was clearly in custody, his statements about Sunrise and Delray were not the product of interrogation. Rather, they were entirely spontaneous and unprompted. We find no error in the trial court's denial of the motions to suppress these statements.

3. Broward Sheriff's Office Public Safety Building interview room.

Herard made the next set of statements in response to questioning by officers from various law enforcement agencies while he was in custody at the Broward Sheriff's Office from the early morning through the afternoon of December 3, 2008. It is

undisputed that Herard was again *Mirandized* and that he signed a new waiver of rights form before this interrogation began. Nonetheless, Herard maintains that his subsequent statements were involuntary. Herard points to the length of time he was in custody (starting with his arrest the day before) and says that law enforcement did not give him enough bathroom breaks or other breaks between questioning. He notes that he twice had to urinate in a McDonald's cup (provided earlier by law enforcement as part of a meal) because no one answered when he knocked on the interview room door. Herard vaguely mentions improper "promises of leniency," but because he makes no specific argument on that point, we deem it forfeited.

In its order denying Herard's motion to suppress, the trial court found the following facts:

> Defendant was in custody at the Broward Sheriff's Office for approximately 12 hours. He was fed, was allowed to take at least three naps which totaled at least 3.5 hours, was given at least two bathroom breaks, and other breaks in between questioning. While this Court found it unsettling that Defendant urinated twice in his McDonald's cup, he was in fact afforded bathroom breaks.

The trial court summed up its ruling by explaining that Herard "was not threatened or coerced, nor was he deprived of any of his basic needs including food, rest and an opportunity to use the bathroom."

"Whether a confession is voluntary depends on the totality of the circumstances surrounding the confession." *Sliney v. State*, 699 So. 2d 662, 667 (Fla. 1997). When the voluntariness of a confession is in dispute, it is the State's burden to prove voluntariness by a preponderance of the evidence. *Id.* Proof that a defendant validly waived his *Miranda* rights is a significant but not dispositive factor in determining the voluntariness of a confession. *Id.* at 669.

We find no error in the trial court's ruling. Its factual findings are supported by the record, and its conclusion about the voluntariness of Herard's statements is consistent with precedents of this Court finding confessions voluntary under comparable circumstances. *See, e.g.*, *Perez v. State*, 919 So. 2d 347, 361-62 (Fla. 2005) (voluntary confession stemming from 25-hour interview where the defendant was permitted to take smoking and restroom breaks, provided with food and drink, and slept for about six to eight hours); *Chavez v. State*, 832 So. 2d 730, 749 (Fla. 2002)

(upholding voluntariness of a confession where the defendant was in custody for over 54 hours but provided with food, drink, and cigarettes as requested, given frequent breaks and a six-hour rest period, and repeatedly *Mirandized*).

4. Broward County Main Jail.

Finally, Herard contends that the trial court erred by not suppressing statements he made to law enforcement on December 4, 2008, at the Broward County Main Jail. Around 6:00 p.m. on December 4, two Sunrise detectives visited Herard in jail for questioning. At the outset, Herard was *Mirandized*, waived his rights, and signed a written waiver of rights form. The detectives' purpose in interviewing Herard was to investigate a Dunkin' Donuts robbery and a separate attempted murder, both of which had occurred in Sunrise in November 2008, and both of which would eventually be included among the crimes charged in this case. At trial, the detectives testified about Herard's admission that he participated in the Delray Dunkin' Donuts robbery and that he was the shooter in the attempted murder in Sunrise.

Earlier that day, Herard had attended his first appearance hearing for the pit bull theft. There, Herard was aided by the Public

Defender's Office, which had him execute a "Notice of Defendant's Invocation of His/Her Right to Remain Silent and Right to Counsel." Herard maintains that because he invoked his right to counsel at his first appearance for the pit bull robbery, the Sunrise detectives were prohibited from questioning him on the afternoon of December 4 without counsel present. The trial court disagreed, and so do we.

In *Sapp v. State*, 690 So. 2d 581, 584-86 (Fla. 1997), this Court held that under both federal law and article 1, section 9 of the Florida Constitution, a claim of rights form is ineffective to invoke a suspect's *Miranda* right to counsel if signed before custodial interrogation has begun or is imminent. This is because the "*Miranda* right to counsel is a prophylactic rule that does not operate independent from the danger it seeks to protect against—'the compelling atmosphere inherent in the process of in-custody interrogation'—and the effect that danger can have on a suspect's privilege to avoid compelled self-incrimination." *Id.* at 585 (quoting *Alston v. Redman*, 34 F.3d 1237, 1246 (3d Cir. 1994)).

Sapp controls here. When Herard signed the form purporting to invoke his *Miranda* rights, an interrogation was neither underway nor imminent. Hours later, when the detectives met with him in the

county jail, Herard was again informed of his *Miranda* rights, and he validly waived them.

To the extent Herard makes an argument based on his Sixth Amendment right to counsel, that argument is also unavailing. Unlike the Fifth Amendment-based *Miranda* right to counsel, the Sixth Amendment right to counsel is offense-specific. *See Owen v. State*, 986 So. 2d 534, 544-45 (Fla. 2008); *Durocher v. State*, 596 So. 2d 997, 999 (Fla. 1992) (attachment of Sixth Amendment right to counsel for charged crime did not preclude police questioning about other crime). Assuming a Sixth Amendment right to counsel attached at Herard's December 4 first appearance, that right pertained only to the charge for the pit bull incident. Herard was still only a suspect in the crimes he was questioned about later that day—the Dunkin' Donuts robberies and the Sunrise attempted murder. Therefore, the detectives' questioning of Herard did not implicate his Sixth Amendment right to counsel, rendering it unnecessary to address the potential relevance of Herard's waiver of his *Miranda* rights to remain silent and to counsel at the outset of the December 4 interview. *See Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (a valid waiver of *Miranda* rights "typically does the

trick" for effecting valid a waiver of the Sixth Amendment right to counsel).

Admission of Physical Evidence

Herard next argues that the trial court committed reversible error by admitting several pieces of physical evidence seized from the house of Jonathan Jackson, the leader of the BACC Street Crips gang. The contested evidence consists of a composition notebook, a spiral notebook, ledger paper, a computer printout, a banana style magazine clip, a BB gun, and a composite photographic exhibit of the items. The notebooks and paper contained information about gang membership, meetings, and activities. Herard makes two claims. First, he contends the evidence is unduly prejudicial and lacked relevance, at least to the extent the evidence pertained to Jackson's involvement in gangs other than the BACC Street Crips. Second, he alleges that the search and seizure of Jackson's house was unlawful, rendering the seized items inadmissible. Herard presents no argument on the search and seizure claim, so we deem that issue forfeited.

We find no abuse of discretion in the admission of evidence related to Herard's involvement in the BACC Street Crips, an issue

directly relevant to the racketeering and gang-related charges in the indictment. To the extent there could have been error in the admission of evidence about Jackson's leadership of other gangs, any such error was harmless.

Expert Witness Testimony

Next, Herard claims that the trial court erred by refusing to admit the expert testimony of Mr. Gregroy DeClue, a licensed psychologist. DeClue would have testified about false confessions and related "inherent problems" with the "Reid Technique," a commonly used method of police interrogation "pioneered by John E. Reid and Associates, aimed at extracting confessions and evaluating suspect credibility." *United States v. Jacques*, 744 F.3d 804, 808 n.1 (1st Cir. 2014). In the proffered testimony, DeClue said that the Reid Technique is one that can lead to true confessions and to false confessions, and that it is unknown what percentage of confessions obtained through the Reid Technique are false. He also said that the Reid Technique was used in this case. Finally, he said that safeguards exist to make a false confession less likely; but he could not say whether such safeguards were used in

this case, because he had not seen all the video footage of Herard's police interviews.

The admission of expert testimony is governed by section 90.702, Florida Statutes (2014). Among other requirements, the proposed testimony must be "the product of reliable principles and methods," and it must be the case that "[t]he witness has applied the principles and methods reliably to the facts of the case." § 90.702(2)-(3), Fla. Stat. Here the trial court excluded DeClue's testimony for several reasons, including that DeClue was unprepared to testify reliably to the interrogation techniques—including any safeguards against false confessions—used in this case. For related reasons, the trial court also questioned the relevance of DeClue's testimony.

To resolve this issue, we need not decide whether expert testimony about the phenomenon or prevalence of false confessions could ever be admissible. DeClue was not prepared reliably to address the specifics of Herard's case, including whether law enforcement used adequate safeguards in its questioning. And DeClue's proposed testimony about the purported link between the Reid Technique and false confessions was equivocal and potentially

confusing to the jury. Under these circumstances, we find no abuse of discretion in the trial court's decision to exclude DeClue's testimony.

Herard's Death Sentence

The trial court sentenced Herard to death on January 23, 2015, the jury having recommended that sentence by a vote of 8 to 4. The court conducted Herard's sentencing proceedings under the statutory scheme that the United States Supreme Court partly invalidated in *Hurst v. Florida*, 577 U.S. 92 (2016). There the Court held that Florida's (since amended) capital sentencing statute violated the Sixth Amendment to the extent Florida law "required the judge alone to find the existence of an aggravating circumstance," a predicate to the defendant's eligibility for a death sentence. *Id.* at 103.

In *State v. Poole*, 297 So. 3d 487 (Fla. 2020), we upheld a death sentence imposed under our state's pre-*Hurst v. Florida* sentencing procedures and following an 11 to 1 jury recommendation in favor of death. *Id.* at 493. We found the Sixth Amendment rule of *Hurst v. Florida* satisfied in *Poole* because that jury had unanimously found the defendant guilty of a

contemporaneous violent felony. *Id.* at 508. Partly receding from our own decision in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), we further held that (1) the weighing of aggravating and mitigating factors is not a factual determination or "element" for purposes of the federal or state jury trial guarantee; and (2) neither the Eighth Amendment nor any provision in our state constitution requires jury sentencing in capital cases, or a unanimous jury recommendation, or indeed any jury recommendation at all. *Poole*, 297 So. 3d at 503-05.

There is no dispute that Herard's death sentence satisfies the constitutional requirements explained in *Poole*. As in *Poole*, the aggravating circumstances in Herard's case include the prior violent felony aggravator, i.e., that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person." § 921.141(5)(b), Fla. Stat. Here, the same jury that found Herard guilty of murdering Eric Jean-Pierre also found him guilty of committing many other violent felonies, including the first-degree murder of Kiem Huynh. The State also introduced evidence of Herard's violent felony convictions in other cases. These contemporaneous and prior violent felony

convictions amply "satisfied the [Sixth Amendment] requirement that a jury unanimously find a statutory aggravating circumstance beyond a reasonable doubt." *Poole*, 297 So. 3d at 508.

Herard now argues that our decision in *Poole* is wrong and that we should recede from it. But Herard has offered no good reason for us to do so, and we decline the invitation. Also, consistent with our Court's precedents, we reject Herard's argument that he was sentenced under a death penalty scheme that did not meaningfully narrow the class of defendants eligible for a death sentence. *See, e.g.*, *Johnson v. State*, 969 So. 2d 938, 961 (Fla. 2007) (pre-2016 death penalty sentencing statute sufficiently narrows class of eligible offenders); *Lightbourne v. State*, 438 So. 2d 380, 385 (Fla. 1983) (statutory listing of aggravators and mitigators is not unconstitutionally vague).

We find no merit in Herard's challenges to his death sentence.

Sufficiency of the Evidence

Finally, in cases where a death sentence has been imposed, we must independently review the record to determine whether competent, substantial evidence supports the underlying murder conviction. *See* Fla. R. App. P. 9.142(a)(5); *Kirkman v. State*, 233

So. 3d 456, 469 (Fla. 2018). "In conducting this review, we view the evidence in the light most favorable to the State to determine whether a rational trier of fact could have found the existence of the elements of the crime beyond a reasonable doubt." *Rodgers v. State*, 948 So. 2d 655, 674 (Fla. 2006) (citing *Bradley v. State*, 787 So. 2d 732, 738 (Fla. 2001)).

To prove first-degree premeditated murder, the State had to establish: (1) that Eric Jean-Pierre is dead; (2) that the death of Jean-Pierre was premeditated; and (3) that the death of Jean-Pierre resulted from Herard's criminal act. *See Glover v. State*, 226 So. 3d 795, 804 (Fla. 2017). Under the law of principals, it was not necessary for the State to prove that Herard was the actual shooter. *See* § 777.011, Fla. Stat. (2008) (one who "aids, abets, counsels, hires, or otherwise procures [the] offense to be committed . . . is a principal in the first degree and may be charged, convicted, and punished as such"); *see also Staten v. State*, 519 So. 2d 622, 624 (Fla. 1988) ("In order to be guilty as a principal for a crime physically committed by another, one must intend that the crime be committed and do some act to assist the other person in actually committing the crime.").

In Herard's videotaped statement played for the jury, he discussed the murder of Jean-Pierre with Broward Sheriff's Office detectives. Herard told the detectives that, together with Tharod Bell and another gang member, he drove looking for a "body" for Bell because it was his turn to kill someone. Herard explained that they were in a competition to see who could commit the most murders. They picked Jean-Pierre at random, and as they approached him, Herard told Bell to "bust it, bust it, bust it." Herard even told the detectives that "you might as well give me that body because Tharod would not have done that if I didn't provoke it." The jury also heard evidence from which it could have concluded that the shotgun Bell used to kill Jean-Pierre is the same one Herard used in various other shootings and armed robberies.

In sum, a rational jury could have concluded that Tharod Bell shot and killed Eric Jean-Pierre with Herard's intentional and active aid and encouragement, as part of a plan that Bell and Herard shared. Competent, substantial evidence supports Herard's murder conviction.

III. CONCLUSION

Because Herard has not demonstrated any reversible error, we affirm his convictions and death sentence.

It is so ordered.

MUÑIZ, C.J., and CANADY, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.
LABARGA, J., concurs in result with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

LABARGA, J., concurring in result.

I agree with the majority that under the circumstances of this case, the trial court did not err in denying Herard's motion to suppress the statements he made to law enforcement.

However, in discussing the statements Herard made in the interview room at the Lauderhill Police Department, the majority cites this Court's recent decision in *Penna v. State*, 49 Fla. L. Weekly S119 (Fla. May 2, 2024), which held that when a defendant voluntarily reinitiates contact with law enforcement, "there is no per se requirement that an officer remind or readvise [an accused]

of his *Miranda*[6] rights." I dissented in *Penna*, because I disagree with the majority's conclusion that this Court may not interpret the Fifth Amendment in a way that grants more protections to Florida's citizens. I reaffirm my dissent in *Penna* here.

Additionally, I reaffirm my dissent in *Lawrence v. State*, 308 So. 3d 544 (Fla. 2020), wherein this Court receded from its decades-long practice of conducting proportionality review in cases involving direct appeals of sentences of death.

For these reasons, I can only concur in the result.

An Appeal from the Circuit Court in and for Broward County,
Paul L. Backman, Judge - Case No. 062009CF004654A8881

Richard L. Rosenbaum of the Law Offices of Richard Rosenbaum, Fort Lauderdale, Florida,

for Appellant

Ashley Moody, Attorney General, Tallahassee, Florida, and Lisa-Marie Lerner, Assistant Attorney General, West Palm Beach, Florida,

for Appellee

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6. *Miranda v. Arizona*, 384 U.S. 436 (1966).

3409

09-4054

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

In the Circuit Court of the Seventeenth Judicial Circuit
of the State of Florida

THE STATE OF FLORIDA	INDICTMENT FOR
vs.	
JAMES HERARD aka J-LOC (Counts I-XXI) JONATHAN JACKSON aka BLU (Counts III-V & VIII-XII) THAROD BELL aka SMOKE (Counts I-IV & VIII-XX) CHARLES FAUSTIN aka PSYCHO (Counts I, III-IV, & IX-XIX) CALVIN WEATHERSPOON aka SLICC (Counts III-IV, VI-VII,XIX, & XXI)	I. 1ST DEGREE MURDER (FIREARM) II. 1ST DEGREE MURDER (FIREARM) III. RACKETEERING (R.I.C.O.) IV. CONSPIRACY TO COMMIT R.I.C.O. V. DIRECTING ACTIVITIES OF A GANG VI. – VII. ROBBERY (FIREARM) VIII. ATT. 1ST DEGREE MURDER IX. AGGRAVATED BATTERY X. – XIII. ATT. 1ST DEGREE MURDER XIV. – XVII. ROBBERY (FIREARM) XVIII – XIX. ATT. ROBBERY (FIREARM) XX. – XXI. ROBBERY (FIREARM)

For Broward County, at the Fall 2008 Term thereof, on the 4th day of March in the year of our Lord Two Thousand Nine, to-wit: The Grand Jurors of the State of Florida, inquiring in and for the County of Broward, State of Florida, upon their oaths do present that

COUNT I

MURDER IN THE FIRST DEGREE -- FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 14th day of November, A.D. 2008, in the County and State aforesaid, did then and there unlawfully and feloniously and from a premeditated design to effect the death of a human being, Eric Jean-Pierre, did kill and murder the said Eric Jean-Pierre, by shooting him with a firearm, to wit: a shotgun, and in the course of the crime committed **THAROD BELL AKA SMOKE** did have actual possession of a firearm, and did discharge said firearm, causing the death of Eric Jean-Pierre; and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT II

MURDER IN THE FIRST DEGREE – FIREARM

JAMES HERARD AKA J-LOC and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Kiem Huynh, did kill and murder the said Kiem Huynh, by shooting him with a firearm, and in the course of the crime committed, **JAMES HERARD AKA J-LOC** did have actual possession of a firearm, and did discharge said firearm, causing the death of Kiem Huynh, and **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary to F.S. 782.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT III

RACKETEERING

JONATHAN JACKSON AKA BLU OR BLU-JAY, JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC**, beginning on or about the 20th day of June 2008 and continuing through the 3rd day of December, A.D. 2008, in the County and State aforesaid and in such other County or Counties in the State as set forth in the pattern of racketeering activity more particularly described below, were then and there associated with an enterprise, to wit: a criminal street gang, named and referred to as **"BACC STREET CRIPS,"** that both functioned as a continuing unit and had a common purpose of engaging in a course of criminal conduct, to wit:

(A) Homicide, relating to Chapter 782, Florida Statutes;

(B) Robbery and Theft, relating to Chapter 812, Florida Statutes;

(C) Assault and Battery, relating to Chapter 784, Florida Statutes;

(D) Criminal Gangs, relating to Chapter 874, Florida Statutes;

and did unlawfully, knowingly and feloniously conduct or participate in such enterprise directly or indirectly through a pattern of racketeering activity as defined in Section 895.02(4) of the Florida Statutes, to wit: by engaging in at least two incidents of racketeering conduct that had the same intents, results, accomplices, victims or methods of commission, or were interrelated by distinguishing characteristics and were not isolated incidents, including the following:

RACKETEERING INCIDENT # 1 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC**, on the 20th day of June, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Garry Metayer and/or Miguel Guerrero, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Garry Metayer and/or Miguel Guerrero of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Garry Metayer and/or Miguel Guerrero in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statues;

RACKETEERING INCIDENT # 2 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC**, and **JONATHAN JACKSON AKA BLU OR BLU-JAY**; on the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Jacob Rivera, a human being, attempt to kill Jacob Rivera by discharging a firearm at and toward Jacob Rivera, and in the course thereof there were carried firearms, to wit: shotguns, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 3 – AGGRAVATED BATTERY

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE**, and **CHARLES FAUSTIN AKA PSYCHO**, on or about the 13th day of October, A.D. 2008, in the county and state aforesaid; did unlawfully touch or strike Keith Williams against his will with a deadly weapon, to wit: a hot steam iron, and/or intentionally or knowingly cause the said Keith Williams great bodily harm, permanent disability, or permanent disfigurement by burning the said Keith Williams multiple times with said iron, relating to Chapter 784, Florida Statutes;

RACKETEERING INCIDENT # 4 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE**, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Tremaine Williams, West, Chazdin Edwards, and James Mozie, human beings, attempt to kill Tremaine Williams,, Chazdin Edwards, and James Mozie, by discharging a firearm at and toward the said Tremaine Williams, Chazdin Edwards, and James Mozie, and in the course thereof there was carried a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 5 – MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** on the 14th day of November, A.D. 2008, in the County and State aforesaid, did then and there unlawfully and feloniously and from a premeditated design to effect the death of a human being, Eric Jean-Pierre, did kill and murder the said Eric Jean-Pierre, by shooting him with a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 6 – ATT. MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO,** and **THAROD BELL AKA SMOKE**, on the 15th day of November, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Demetrick Caldwell, a human being, attempt to kill Demetrick Caldwell, by discharging a firearm at and toward the said Demetrick Caldwell, and in the course thereof there was carried a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 7 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of MD Miah, Artie Edmonds, and/or Corey Marchand, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive MD Miah, Artie Edmonds, and/or Corey Marchand of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said MD Miah, Artie Edmonds, and/or Corey Marchand in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 8 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in Palm Beach County, Florida, did unlawfully take from the person or custody of Henry Bornstein and/or Gerald Lakin, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Henry Bornstein and/or Gerald Lakin of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Henry Bornstein and/or Gerald Lakin in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 9 – ATT. FELONY MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in Palm Beach County, Florida, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Henry Bornstein, did attempt to kill and murder the said Henry Bornstein, by shooting him with a firearm, to wit a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 10 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take, or attempt to take, from the person or custody of Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Deny Jean-Louis, Wilson Perez, and/or Idelfonzo Sanchez, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 11 – ARMED ROBBERY

That **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Chao Le Kim, certain property of value, to wit: U.S. currency, a purse and its contents, with the intent to temporarily or permanently deprive Chao Le Kim of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Chao Le Kim in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, relating to Chapter 812, Florida Statutes;

RACKETEERING INCIDENT # 12 – MURDER FIRST DEGREE

That **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully and feloniously and while they were engaged in the commission of or the attempt to commit Robbery, and/or from a premeditated design to effect the death of a human being, to wit: Kiem Huynh, did kill and murder the said Kiem Huynh, by shooting him with a firearm, to wit: a shotgun, relating to Chapter 782, Florida Statutes;

RACKETEERING INCIDENT # 13 -- ROBBERY

That **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY** and **CALVIN WEATHERSPOON AKA SLICC** on the 3rd day of December, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Richard Sills and/or Taiwan Gayee, certain property of value, to wit: a Canine, with the intent to temporarily or permanently deprive Richard Sills and/or Taiwan Gayee of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Richard Sills and/or Taiwan Gayee in fear, relating to Chapter 812, Florida Statutes;

contrary to Sections 895.02 and 895.03(3) of the Florida Statutes, and

COUNT IV

CONSPIRACY TO COMMIT RACKETEERING

JONATHAN JACKSON AKA BLU OR BLU-JAY, JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** and others known and unknown to the Grand Jury, beginning on or about the 20th day of June, A.D. 2008, and continuing through the 3rd day of December, A.D. 2008, in the County of Broward, and in such other County or Counties in the State as denominated in the pattern of racketeering activity set forth in Count III, were then and there associated with an enterprise, more particularly described as a Criminal Street Gang, to wit: **BACC STREET CRIPS**, that both functioned as a continuing unit and had a common purpose of engaging in a course of criminal conduct, and did then and there unlawfully, willfully, and knowingly agree, conspire, combine, or confederate with one another and with other persons whose identities are both known and unknown to the Grand Jury, to engage in said enterprise through a pattern of racketeering activity including at least two incidents of racketeering conduct that had the same or similar intent, results, accomplices, victims or methods of commission or that otherwise were interrelated by distinguishing characteristics, and were not isolated incidents, including Homicide, relating to Chapter 782, Robbery and Theft, relating to Chapter 812, and Assault and Battery, relating to Chapter 784 of the Florida Statutes, contrary to F.S. 777.04(3), 895.02, 895.03(3), and 895.03(4).

COUNT V

DIRECTING THE ACTIVITIES OF CRIMINAL GANG

JONATHAN JACKSON AKA BLU OR BLU-JAY and **JAMES HERARD AKA J-LOC** beginning on or about the 1st day of October, A.D. 2008 and continuing through the 3rd day of December, A.D. 2008, in the County and State aforesaid did knowingly and unlawfully initiate, organize, plan, finance, direct, manage, or supervise criminal gang related activity, contrary to F.S. 874.10;

COUNT VI

ARMED ROBBERY -- FIREARM

JAMES HERARD AKA J-LOC and **CALVIN WEATHERSPOON AKA SLICC,** on the 20th day of June A.D. 2008, did unlawfully take from the person or custody of Miguel Guerrero, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Miguel Guerrero of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Miguel Guerrero in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC**, and **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary to F.S. 812.13(1), 812.13(2)(a), and 775.087(2);

COUNT VII

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC and **CALVIN WEATHERSPOON AKA SLICC** on the 20th day of June, A.D. 2008 in the County and State aforesaid did unlawfully take from the person or custody of Garry Metayer, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Garry Metayer of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Garry Metayer in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC**, and **JAMES HERARD AKA J-LOC** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), and 775.087(2);

COUNT VIII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC and **JONATHAN JACKSON AKA BLU OR BLU-JAY,** on the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Jacob Rivera, a human being, attempt to kill Jacob Rivera by discharging a firearm at and toward Jacob Rivera, and in the course thereof there were carried firearms, to wit: shotguns in the actual possession of **JAMES HERARD AKA J-LOC**, who discharged said firearm, and **JAMES HERARD AKA J-LOC JONATHAN** and **JACKSON AKA BLU OR BLU-JAY** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT IX

AGGRAVATED BATTERY

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO,** on or about the 13th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully touch or strike Keith Williams against his will with a deadly weapon, to wit: a hot steam iron, and/or intentionally or knowingly cause the said Keith Williams great bodily harm, permanent disability, or permanent disfigurement by burning the said Keith Williams multiple times with said iron, and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 784.045(1)(a) and 874.04;

COUNT X

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Tremaine Williams, a human being, attempt to kill Tremaine Williams by discharging a firearm at and toward the said Tremaine Williams, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XI

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO**, on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Chazdin Edwards, a human being, attempt to kill Chazdin Edwards by discharging a firearm at and toward the said Chazdin Edwards, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO,** on the 19th day of October, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of James Mozie, a human being, attempt to kill James Mozie by discharging a firearm at and toward the said James Mozie, and in the course thereof there was carried a firearm, to wit: a shotgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04

COUNT XIII

ATTEMPTED FIRST DEGREE MURDER – FIREARM

JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO, and **THAROD BELL AKA SMOKE,** on the 15th day of November, A.D. 2008, in the county and state aforesaid, did unlawfully, feloniously, and from a premeditated design to effect the death of Demetrick Caldwell, a human being, attempt to kill Demetrick Caldwell, by discharging a firearm at and toward the said Demetrick Caldwell, and in the course thereof there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC** who did discharge said firearm, and **JAMES HERARD AKA J-LOC, CHARLES FAUSTIN AKA PSYCHO,** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 782.04(1), 777.04(1), 775.087(1), 775.087(2), and 874.04;

COUNT XIV

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of MD Miah, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive MD Miah of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said MD Miah, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and a handgun in the actual possession of **THAROD BELL AKA SMOKE,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XV

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Artie Edmonds, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Artie Edmonds of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Artie Edmonds, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and a handgun in the actual possession of **THAROD BELL AKA SMOKE,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XVI

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, and **CHARLES FAUSTIN AKA PSYCHO** on the 24th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Corey Marchand, certain property of value, to wit: U.S. currency and a cell phone, with the intent to temporarily or permanently deprive Corey Marchand of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Corey Marchand, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC,** and a handgun in the actual possession of **THAROD BELL AKA SMOKE, and JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE,** and **CHARLES FAUSTIN AKA PSYCHO** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a) 775.087(2), and 874.04;

COUNT XVII

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Deny Jean-Louis certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Deny Jean-Louis of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Deny Jean-Louis in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC,** and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 775.087(2), and 874.04;

COUNT XVIII

ATTEMPTED ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and **CALVIN WEATHERSPOON AKA SLICC** on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully attempt to take from the person or custody of Wilson Perez certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Wilson Perez of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Wilson Perez in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 777.04(1), 775.087(2) and 874.04;

COUNT XIX

ATTEMPTED ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO and CALVIN WEATHERSPOON AKA SLICC on the 26th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully attempt to take from the person or custody of Idelfonzo Sanchez, certain property of value, to wit: U.S. currency, with the intent to temporarily or permanently deprive Idelfonzo Sanchez, of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Idelfonzo, in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC, THAROD BELL AKA SMOKE, CHARLES FAUSTIN AKA PSYCHO** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang, contrary to F.S. 812.13(1), 812.13(2)(a), 777.04(1), 775.087(2) and 874;

COUNT XX

ARMED ROBBERY – FIREARM

JAMES HERARD AKA J-LOC and **THAROD BELL AKA SMOKE** on the 27th day of November, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Chao Le Kim, certain property of value, to wit: U.S. currency, a purse and its contents, with the intent to temporarily or permanently deprive Chao Le Kim of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Chao Le Kim in fear, and in the course thereof, there was carried a firearm, to wit: a shotgun, which was in the actual possession of **JAMES HERARD AKA J-LOC**, and **JAMES HERARD AKA J-LOC** and **THAROD BELL AKA SMOKE** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary, to F.S. 812.13(1), 812.13(2)(a), 775.087(2), and 874.04;

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COUNT XXI

ARMED ROBBERY -- FIREARM

19

JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY and **CALVIN WEATHERSPOON AKA SLICC** on the 3rd day of December, A.D. 2008, in the County and State aforesaid, did unlawfully take from the person or custody of Richard Sills and/or Taiwan Gayee, certain property of value, to wit: a Canine, with the intent to temporarily or permanently deprive Richard Sills and/or Taiwan Gayee of a right to that property or a benefit therefrom, by the use of force, violence, assault or putting the said Richard Sills and/or Taiwan Gayee in fear and in the course thereof, there was carried a firearm, to wit: a handgun which was in the actual possession of **JAMES HERARD AKA J-LOC** and **JAMES HERARD AKA J-LOC, JONATHAN JACKSON AKA BLU OR BLU-JAY** and **CALVIN WEATHERSPOON AKA SLICC** committed the offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang contrary, to F.S. 812.13(1) and 874.04;

of the Florida Statutes, made and provided to the evil example of all others in the like case offending, and against the peace and dignity of the State of Florida.

A TRUE BILL:

FOREPERSON

I HEREBY CERTIFY that I have advised the Grand Jury returning the Indictment, as authorized and required by law.

CIRCUIT COURT 17th JUDICIAL CIRCUIT BROWARD COUNTY, FLORIDA

Assistant State Attorney for the Seventeenth Judicial Circuit of the State of Florida, Prosecuting for said State

James Herard
B/M DOB: 08/12/1989
SS# 594-86-7755

Jonathan Jackson
B/M DOB: 03/15/1986
SS# 590-40-2607

Tharod Bell
B/M DOB: 08/27/1987
SS# 589-40-7653

Charles Faustin
B/M DOB: 06/08/1990
SS# 593-98-4601

Calvin Weatherspoon
B/M DOB: 10/08/1988
SS# 589-37-6049

IN THE CIRCUIT COURT
Seventeenth Judicial Circuit
County of Broward
STATE OF FLORIDA
vs.

JAMES HERARD,
JONATHAN JACKSON,
THAROD BELL,
CHARLES FAUSTIN, &
CALVIN WEATHERSPOON

INDICTMENT

For
I. 1ST DEGREE MURDER (FIREARM)
II. 1ST DEGREE MURDER (FIREARM)
III. RACKETEERING (R.I.C.O.)
IV. CONSPIRACY TO COMMIT R.I.C.O.
V. DIRECTING ACTIVITIES OF A GANG
VI. – VII. ROBBERY (FIREARM)
VIII. ATT. 1ST DEGREE MURDER
IX. AGGRAVATED BATTERY
X. – XIII. ATT. 1st DEGREE MURDER (FIREARM)
XIV. – XVII. ROBBERY (FIREARM)
XVIII. – XIX. ATT. ROBBERY (FIREARM)
XX --XXI. ROBBERY (FIREARM)

Found Fall Term, A.D. 2008

A TRUE BILL
B Lan
FOREPERSON

Filed MAR 04 2009
HOWARD C. FORMAN Clerk
By D.C.

ASSISTANT STATE ATTORNEY

Order

THE COURT ORDERS that the Defendant is to be admitted to bail upon posting bond in the sum of
$_____

DATED_____

CIRCUIT JUDGE

* * * *

Order

THE COURT ORDERS that the Defendant is to be held without bond.

DATED March 4, 2009
CIRCUIT JUDGE

APR 0 1 2009 M/g Rec entered
Keller D/C

RECEIVED
CLERK, CIRCUIT COURT
BROWARD COUNTY, FL
2009 MAR -4 PM 4:25
FELONY