JAMES HERARD v. STATE OF FLORIDA
CASE NO. SC15-0391

>> Marshal: THE FLORIDA SUPREME COURT IS BACK IN SESSION PLEASE BE SEATED.
>> Chief Justice Carlos Muniz: LAST CASE TODAY JAMES HERARD V. STATE OF FLORIDA CASE NO. SC15-0391.
>> Richard L. Rosenbaum,Appellant: MR. CHIEF JUSTICE MEMBERS OF THE COURT MY NAME IS RICHARD L. ROSENBAUM APPEARANCE FOR APPELLANT . IN THE APPEAL OF THE JUDGMENT CONVICTION AND SENTENCE OF DEATH. HE HAS RAISED SEVERAL ARGUMENTS ON APPEAL I'M GOING TO FOCUS ON JUST A COUPLE OF THOSE ARGUMENTS TODAY. PRIMARILY THE ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS MULTIPLE STATEMENTS THAT HE GAVE THE LAW ENFORCEMENT AS WELL AS THE DISALLOWANCE OF THE DEFENSE EXPERT CONCERNING FALSE CONFESSIONS.
DR. [LISTING NAMES].
BOTH WITH REGARD TO THE STATEMENTS. THE DEFENDANT WAS ORIGINALLY ARRESTED AFTER TRYING TO STEAL A DOG.
HE WAS TAKEN INTO CUSTODY.
THE ARRESTING OFFICER OR DETECTIVE CAME IN INTO THE FACILITY AND ASKED IF HE WANTED TO WEAVE HIS MIRANDA RIGHTS PRINT WITH A MIRANDA FORM AND HE SAID NO I DON'T AGREE TO THAT. UNEQUIVOCAL INDICATION OF HIS RIGHTS.
A LITTLE BIT OF TIME ELAPSED AND IT'S HARD TO TELL EXACTLY THE TIME . YOU GOT IN FRONT OF THE COURT NOT ONLY THE VIDEO OF THE CONFESSION BUT THROUGH A NUMBER OF SUPPLEMENTATION iS ACTUALLY THE TRANSCRIPT OF WHAT WAS GOING ON.
AT SOME POINT IT'S ALLEGED THE DEFENDANT SAYS HOW LONG IS IT GOING TO TAKE FOR ME TO HAVE A LAWYER COME SEE ME?
AND THEN THE STATE WOULD ARGUE HE JUST DIDN'T WANT TO WAIT HE BECAME ANXIOUS AND HE STARTED ASKING QUESTIONS AND TALKING ABOUT THE CASE.
WE CAN TEST THAT NUMBER ONE, LAW ENFORCEMENT HAD NO JUSTIFICATION FOR REINITIATING THEIR CONTACT WITH THE DEFENDANT AFTER HE'D ALREADY DEMANDED COUNSEL.
NUMBER TWO,
>> HE IS THE ONE THAT KEPT THIS CONVERSATION GOING.
IF YOU LOOK AT IT IN CONTEXT HE IS KERN CONCERNED ABOUT HAVING TO WAIT FOR WHATEVER REASON.
YOU WILL GET BOOKED THEY TELL HIM.
THEN HE SAYS HE WANTS HIS ATTORNEY SAYS I'M TOO SMART FOR THAT.
I'M GOOD NO. THEN THE OFFICER SAYS I DON'T UNDERSTAND WHAT YOU'RE SAYING SIR.

THEN DEFENDANT SAYS I DON'T WANT AN ATTORNEY.
IT SEEMS THIS IS THE EPISODE.
>> Richard L. Rosenbaum,Appellant: YOU ARE IN THE CORRECT PORTION BUT HE DID STATE I DON'T AGREE WITH THAT.
>> Justice Charles Canady: DID ORIGINALLY THEN HE CHANGED HIS MIND UNEQUIVOCALLY IT SEEMS LIKE TO ME.
HE SAID NO I DON'T WANT AN ATTORNEY AND THEY SAID YOU WANT ME TO TALK OR NOT THEN LET ME SIGN IT. I WANT TO SIGN YOUR PAPERWORK.
AND HE SAYS HE WANTS TO TALK TO HIM.
AND HE SIGNED IT APPARENTLY.
>> Richard L. Rosenbaum,Appellant: IF THAT'S A VALID REINITIATION THEN AT THAT POINT THE DEFENDANT HAS MADE HIS CHOICE NOW THAT'S A FAR CRY FROM THE STATEMENT AT THE END AND I HATE TO SWITCH BETWEEN STATEMENTS. BUT A STATEMENT AT THE END IS IS MADE AFTER HE GOES TO COURT HE HAS A PUBLIC DEFENDER.
>> Justice Charles Canady: WHEN YOU STATE THE STATEMENT YOU ARE NOT TALKING ABOUT THIS RELATED TO THIS PARTICULAR STATEMENT THAT YOU THINK IS INADMISSIBLE.
>> Richard L. Rosenbaum,Appellant: WE ARE TALKING ABOUT 22 HOURS OF STATEMENTS.
>> Justice Charles Canady: WHICH ONE IS IT ARE YOU TALKING ABOUT THE LAST ONE?
>> Richard L. Rosenbaum,Appellant: THIS IS THE LAST ONE THAT OCCURS AFTER THE DEFENDANT HAS BEEN BROUGHT TO THE INITIAL APPEARANCE THE OFFICER WITH THE COME UP AND TALK TO HIM AGAIN ABOUT THE DOG CASE. HIS PUBLIC DEFENDER HAD BEEN APPOINTED FILED AN INDICATION OF RIGHT TO COUNSEL. UNDER THE FIFTH AND SIXTH AMENDMENTS AND THAT AFTERNOON AT 6 PM IN THE EVENING THE DETECTIVE WALKS IN AND SAYS YOU WANT TO GIVE IT A STATEMENT DEFENDANT SIGNED A MIRANDA. THAT GETS AROUND THE FACT THAT THE DEFENDANT HAD THE DEFENSE COUNSEL HAD INVOKED HIS RIGHT TO COUNSEL EARLIER IN THE DAY. THE ARGUMENT IS THAT THE DEFENDANT IS AT THE VERY LEAST ENTITLED TO HAVE HIS LAWYER CONSULTED OR.
>> Justice Charles Canady: WHAT WOULD BE THE CIRCUMSTANCES FOR INVOKING THE RIGHT TO COUNSEL.
>> Richard L. Rosenbaum,Appellant: THOSE CIRCUMSTANCES WHEN DEFENDANT WAS BORN IN FRONT OF THE COURT FOR HIS INITIAL APPEARANCE.
>> Justice Charles Canady: ON?
>> Richard L. Rosenbaum,Appellant: ON THE THEFT OF THE DELEGATES.
>> Justice Charles Canady: THIS STATEMENT HAS NOTHING TO DO WITH THAT THEY ARE TALKING TO HIM ABOUT SOME MATTER OF GREATER MOMENT.
THEN THE DOG CASE.
WHICH BRINGS US TO THIS COURT TODAY.
>> Richard L. Rosenbaum,Appellant: YES IT DOES UNFORTUNATELY IS IT IS A DEATH CASE. IT STARTS OFF WITH THE INITIAL ARREST FOR THE DOG IN THE THEFT OF THE

DOG AND THE DEFENDANT BEGINS BY READY TO TALK ABOUT THE DOG AND IT SAYS THAT HE DOES NOT AGREE TO WAIVE HIS MIRANDA RIGHTS.
THEN HE STARTS TALKING. HE TALKS ABOUT A NUMBER OF DIFFERENT DUNKIN' DONUTS ROBBERY BURGLARIES. HE SAYS IT MAKES INCONSISTENT STATEMENTS. AT CERTAIN POINTS HE CLAIMS THAT HE DIDN'T DO IT AT OTHER POINTS HE ADMITS THAT HE DID DO IT.
THIS IS SORT OF TIED IN WITH THE EXPERT WITNESS THAT THE DEFENSE WANTED TO USE DR. [LISTING NAMES] THAT WOULD TALK ABOUT THEIR TECHNIQUE WAS USED BY THE MAIN OFFICERS IN THIS CASE. THE PURPOSE OF THE TECHNIQUE IS TO TRY TO GET INCRIMINATING STATEMENTS OUT OF DEFENDANTS. AND DO SOMETHING THAT WAS.
>> Justice Charles Canady: 'STHAT THE PURPOSE OF ANY POLICE INTERROGATION? IF THEY ARE TALKING TO A SUSPECT.
>> Richard L. Rosenbaum,Appellant: THEY ARE TRYING TO GET THEM TO TALK ABOUT THE CRIME. BUT THESE ARE COERCIVE METHODS THAT ARE USED UNDER THE REID TECHNIQUE REALLY.
>> Justice Charles Canady: ONE CAN ACKNOWLEDGE THEY ARE MANIPULATIVE
>> Richard L. Rosenbaum,Appellant: THAT'S PROBABLY A VERY GOOD WORD FOR IT.
>> Justice Charles Canady: WE DON'T ALWAYS EQUATE IN THE LAW REGARDING THESE MATTERS MANIPULATION IS NOT EQUIVALENT TO COERCION.
IS IT?
>> Richard L. Rosenbaum,Appellant: NO IT IS NOT THE SAME THING ALTHOUGH IF THERE'VE BEEN PROMISES AND MORE THAN MISREPRESENTATIONS HERE I'M ASSUMING THAT YOU EITHER GO TO READ THE TRANSCRIPT OR YOU WILL WATCH THE ACTUAL VIDEOTAPE. YOU CAN SEE FROM THE BODY LANGUAGE THAT THERE WAS SOME PRESSURE WAS BEING EXERTED ON THE DEFENDANT. THE DEFENDANT CLAIMED THAT HE DIDN'T HAVE THE ABILITY TO GO TO THE RESTROOM DIDN'T HAVE ACCESS TO THE RESTROOM.
ON A COUPLE OF OCCASIONS WAS FORCED TO URINATE IN A McDONALD'S CUP.
THE LAW ENFORCEMENT'S PERSPECTIVE IS EVERYTHING WAS PERFECT WE LET HIM GO TO THE BATHROOM WE LET HIM REST. IN BETWEEN THESE TIMES OF INTERROGATION. AND THAT THIS STATEMENT WAS JUST LIKE ANY. IF ALL STATEMENTS ARE UNDER REALLY PROMISES OF LENIENCY THEN ALL OF THE STATEMENTS SHOULD BE SUPPRESSED.
I TALKED ABOUT THESE TWO STATEMENTS THE FIRST IS THE RE-INITIATION THE LAST ONE IS THE INDICATION OF THE RIGHTS AND THE FACT THAT THE DETECTIVES JUST GOES ON INTO TAKE THE STATEMENT REGARDING LIST OF WHAT IS GOING ON IN COURT THAT MORNING AND REGARDLESS OF HIS VOICE INDICATION. AND THE ONLY OTHER PORTION OF THE STATEMENTS THAT THE TRIAL COURT FAILED TO ADDRESS WHATSOEVER IN ITS OPINION IS AS THE DEFENDANT IS COMING OUT OF THE LAUDERHILL POLICE DEPARTMENT HE LOOKS AROUND AND SEES WHICH OFFICERS WERE THERE AND HE SAYS SOMETHING TO THE EFFECT OF WHERE IS THE SPEC AND WHERE IS SUNRISE I THINK I'M GETTING THE CITIES CORRECT. BUT LAW

ENFORCEMENT USED THAT AS PART OF THE LINK INSINUATING THAT THE DEFENDANT KNEW WHERE HE HAD COMMITTED CRIMES SO OFFICERS FROM ALL THESE DIFFERENT JURISDICTIONS WONDERED WHERE THOSE TWO WERE?
IT MIGHT BE AS SIMPLE AS A RHODE ISLAND VERSUS IN THIS SPONTANEOUS STATEMENT WHERE HE MAKES THE STATEMENTS AFTER HE'S LOOKING DOWN THE STAIRS, IT MAY BE THAT THIS IS A STATEMENT RIGHT AFTER THE RE-INITIATION HAD OCCURRED AND IT SHOULD BE PLUGGED IN WITH THAT SET OF STATEMENTS.
HE DEFENDANT'S CONTENTION IS ALL ALONG THAT NONE OF THE STATEMENTS WERE FAIRLY KNOWINGLY AND VOLUNTARILY MADE AND HONESTLY THE TRIAL COURT RULED TO THE CONTRARY.
>> ON LAST SET OF LAST ASPECT OF THE QUESTIONING AFTER THE INDICATION OF RIGHTS AT THE FIRST APPEARANCE THE STATES RESPONSE ON THAT WAS THAT THE INVOCATION OF COUNSEL IS CHARGE SPECIFIC.
I DIDN'T SEE YOU DISPUTE THAT LEGAL PREMISE IN YOUR REPLY BRIEF. DO YOU HAVE A RESPONSE TO THAT.
>> Richard L. Rosenbaum,Appellant: THE CASE LAW IT IS CASE SPECIFIC BUT THE DETECTIVE THAT WE NEED THAT LAST TIME WAS ASKING ABOUT THE DOG BURGLARY OR THEFT OF THE DOG.
IT WAS SPECIFIC WITH REGARDS TO THAT.
PORTION OF THE CASE.
THE DEFENSE LAWYERS TRIED TO MAKE A GOOD ARGUMENT THAT UNDER.
[LISTING NAMES] THE VERY FIRST TIME HE ASKED FOR LAWYER AND SAID I DON'T AGREE TO SIGN MIRANDA FORM IF THE COURT SEPARATES THE STATEMENTS INTO THE DIFFERENT INCIDENTS THEN THAT LAST STATEMENT WOULDN'T HAVE ANYTHING TO DO WITH THE STATEMENTS THAT WERE INCREMENTED TORY WITH REGARDS TO THE MURDERS.
FLEX SO REMIND ME ABOUT THAT.
WHERE HE FINALLY ACKNOWLEDGES ABOUT TELLING THE ACTUAL SHOOTER THAT'LL HAPPEN BEFORE THIS LAST CONVERSATION THAT YOU WERE TALKING ABOUT.
>> Richard L. Rosenbaum,Appellant: YES SIR.
>> Chief Justice Carlos Muniz: AS TO THAT PART OF IT YOUR ARGUMENT WOULD HINGE ON WHETHER WE AGREE WITH YOU ON THIS INITIAL ISSUE OF I DON'T AGREE TO THAT AND THEN WHETHER HE REINITIATED OR WHETHER THERE WAS A KNOWING WAIVER AND ALL THAT.
>> Richard L. Rosenbaum,Appellant: NOT ONLY THAT BUT THE ISSUE OF WHAT GOOD IS IT IF A LAWYER INDICATES THE CLIENTS RIGHTS OF COUNSEL AND THE DETECTIVE IS COMING BACK TO TALK TO THE DEFENDANT ABOUT THE VERY SAME THING THAT HAPPENED IN COURT. IS THAT COURAGEOUS.
>> Chief Justice Carlos Muniz: ARE YOU SWITCHING BACK TO THE LAST STATEMENT.
>> Richard L. Rosenbaum,Appellant: I AM THE QUESTION OF WHETHER IT BECOMES OUTRAGEOUS I WOULD ARGUE THAT IF IT SOME TYPE OF ARRANGES CONDUCT THEN AND IT SPELLS INTO NO LONGER BEING THE CASE SPECIFIC QUESTION AND ANSWER.

>> YOU THINK THE STATEMENT CAN STAND ON ITS OWN AS FAR AS CONSTITUTING REVERSIBLE ERROR DRIFT AGREE WITH DUKE THAT ALL FOUR OCCASIONS RATHER WERE A VIOLATION IN ORDER FOR ANY ONE OF THEM TO CONSTITUTE REVERSIBLE ERROR.
>> Richard L. Rosenbaum,Appellant: WE BELIEVE ANY ONE OF THEM ROSE TO THE REVERSIBLE ERROR.
BUT WE DO ACKNOWLEDGE THAT SOME OF THEM COULD BE CONSIDERED HARMLESS AT LEAST WITH REGARD TO THE THEFT OF THE DOG.
THE THEFT OF THE DOG WITH REGARD TO THE OF THE ONE NO WENT TO THE VERY HEART OF THE CASE AND THE DEFENDANT STATEMENTS WERE CONFLICTING BASICALLY DEPENDING ON WHICH OFFICER WALKED IN TO TAKE HIS QUESTIONS. WHILE HE DID AT SOME POINT ADMIT TO MOST OF THE ROBBERIES AND ALL BUT ONE OF THE MURDERS THERE WAS CONFLICTING EVIDENCE OUT OF HIS OWN MOUTH. NOW AT THE SAME TIME THE STATE IS PROVING THESE THINGS INDEPENDENTLY BY CALLING THE WITNESSES THE ARRESTING OFFICERS TRYING TO TIGHTEN THE SHOTGUN THE TALL MAN WHO BELIEVED TO BE JAMES HEARD WAS ACTUALLY SEEN USING AN IN EACH OF THE CRIMES WHERE THE SAWED-OFF SHOTGUN WAS USED IN THOSE WERE A DIRECT MATCH. AM I WILLING TO CONCEDE THAT IT WOULD ONLY BE HARMLESS ERROR NO WE BELIEVE THAT THERE WERE WENT TO THE VERY CRUX OF THE CASE.
THE STATEMENT WAS DEVASTATING.
WHEN THE STATEMENT CAME IN IT WAS VERY LITTLE LIKELIHOOD THAT THE DEFENDANT WOULD PREVAIL REGARDLESS OF ANY OF THE OTHER FORENSIC EVIDENCE OR PHYSICAL EVIDENCE. THE STATEMENT ITSELF WAS DEVASTATING I THINK THAT THE COURT SHOULD PAY SPECIAL ATTENTION DID THE STATE SCRUPULOUSLY HONOR THE DEFENDANT'S REQUEST TO HAVE A LAWYER WERE TO STOP THE QUESTIONING TO STOP THE BRENDA. BECAUSE "I DON'T AGREE WITH THAT"
>> WHICH ARE CALLING DEVASTATING IS NOT SUPPOSED FIRST APPEARANCE STATEMENT.
THE FOURTH OF THE FOUR STATEMENTS.
>> Richard L. Rosenbaum,Appellant: CORRECT I BELIEVE ON THE FOUR STATEMENTS THAT IS THE MOST INNOCUOUS OF THEM.
A MAJOR ISSUE THAT CAME UP IN THE TRIAL WAS WHETHER.
[LISTING NAMES] AND EXPERT DID COME IN AND TESTIFY UNDER 702 AND UNDER.
[LISTING NAMES] NOT WITH REGARD TO WHETHER JAMES HEARD WAS THE SUBJECT OF A FALSE CONFESSION HERE. BUT TO EXPLAIN THE REID TECHNIQUE IN THE WAYS THAT THE OFFICERS USE IT. THE COURT DENIED THE DEFENSE REQUEST TO USE THAT.
SAYING THAT SINCE THE DEFENDANT NEVER TOOK THE STAND AND SAID THAT HIS CONFESSION WAS FALSE THAT IT DIDN'T COME INTO PLAY AND THERE REALLY THAT THE REID TECHNIQUE WAS USED WAS RELEVANT TO THE SPECIFICS. WE ARGUE TO THE COUNTRY THAT THE WEIGHT THE OFFICERS WENT ABOUT THEIR QUESTIONING

TO TRY TO ELICIT AND INCREMENTED RESPONSE WAS SOMETHING WITHIN THE PURVIEW OF THE JURY AND THEY SHOULD HAVE BEEN ALLOWED TO HEAR ABOUT HOW THE TECHNIQUE WORKS. NOT THE ULTIMATE CONCLUSION OF JAMES HERARD DID YOU MAKE A FALSE CONFESSION OR NOT.
BUT LATEST JUDGMENT OF THE JURY THIS IS HOW THEIR REID TECHNIQUE IS UTILIZED THIS IS HOW DETECTIVE GOODWIN DID IT IN THIS CASE. THESE ARE THE QUESTIONS THAT WERE ASKED. THESE FALL WITHIN DIFFERENT NINE POINTS IN THEIR REID TECHNIQUE OF INTERROGATION.
HE BELIEVES THE DEFENDANT BELIEVES THAT THAT WOULD HAVE IMPACTED GREATLY THE JURIES LOOK AT HIS STATEMENTS MAY BE QUITE NOT AS DEVASTATING IT WOULD NOT HAVE CHANGED THE WORDS BUT IT IS SHOWING LAW ENFORCEMENT'S MOTIVATION AND THE PROCEDURE THAT THEY UTILIZED TO ELICIT THESE INCRIMINATING REMARKS WOULD HAVE SHED A BETTER LIGHT ON THE SITUATION. SO WE BELIEVE IT WAS IT THE JUSTICE REVERSIBLY ERRED IN ALLOWING THE DOCTOR TO TESTIFY THAT THE DOCTOR DID GIVE A FULL PROPER THAT IS PROPERLY PRESERVED FOR APPELLATE REVIEW.
WITH REGARDS TO JAMES HERARD'S ARGUMENTS THAT SECTION 921.141 IS UNCONSTITUTIONAL THIS COURT HAS HEARD A NUMBER OF CHALLENGES TO THE CONSTITUTIONALITY KEEP IN MIND THIS WASN'T 8/4 DECISION.
AND WHEN THIS CASE STARTED IT WAS A TOTALLY DIFFERENT STANDARD.
I EXPECTED TO BE ARGUING HERE IN FRONT OF THE COURT. I THOUGHT I WOULD JUST COME IN AND ARGUE THAT BECAUSE OF HEARST WE OPERATED ON AN UNCONSTITUTIONAL STATUTORY SCHEME AND THAT DEATH PENALTY SHOULD NOT BE ENFORCED IN A CASE LIKE THIS AND THERE SHOULD BE A RESENTENCING PROCEEDING AT A VERY MINIMUM IF NOT THAT THE COURT SHOULD REIMPOSE OR IMPOSE A SENTENCE OF LIFE IMPRISONMENT AS A RESULT THE CHANGES IN THE LAW. WE'VE SET FORTH DIFFERENT GROUNDS FOR UNCONSTITUTIONALITY . I KNOW ALMOST EVERY SINGLE THURSDAY I SEE CASES BECOME OUT THE TALK ABOUT ONE ASPECT OR ANOTHER OF EITHER THE JURY INSTRUCTIONS OR THE NEW STATUTE OR THE EVEN NEWER STATUTE AND THE 8/4.
AT THIS POINT IN LIGHT OF THE STATE OF THE LAW I WILL STAND ON THE ARGUMENTS SET FORTH IN MY INITIAL BRIEF. AND THE REPLY BRIEF IN THE SUPPLEMENTAL BRIEF UNLESS THE COURT HAS ANY QUESTIONS?
>> Chief Justice Carlos Muniz: THANK YOU VERY MUCH.
>> Lisa-Marie Lerner,Appelle: APPEARANCE FOR APPELLEE
LISA-MARIE LERNER IN TERMS OF THE MOTION TO SUPPRESS AND GO TO DIVIDED INTO THREE INTERVIEWS. AND THEN HIS STATEMENTS IN THE STAIRWELL. THE FIRST INTERVIEW THAT JAMES HERARD IS CHALLENGING IS THE ONE TAKEN BY DETECTIVE WILLIAMS AT THE LAUDERHILL POLICE DEPARTMENT THAT WAS ABOUT THE ROBBERY OF THE DOG. LUCKILY WE HAVE IT ON VIDEO AND AUDIO TAPE AND IT TOOK THE LIBERTY OF GOING THROUGH THE TAPE AND WATCHING THE TIMESTAMP. AT EXACTLY 357 MINUTES INTO THE RECORDING NOT THE INTERVIEW BUT THE STARTING OF THE RECORDING MR HERARD SAYS HE DID NOT AGREE WITH THE WAIVER. THEY THEN GO

THROUGH A COLLOQUY WITH DETECTIVE WILLIAMS ASKING TWICE DURING THAT TIME DO YOU WANT AN ATTORNEY?
AT FOUR; 51 FOUR MINUTES AND 51 SECONDS MR HERARD SAYS HE WANTS TO SIGN THE PAPER AND TRIES TO GRAB THE RIGHT FORM AWAY FROM HER. THAT IS LESS THAN A MINUTE. IN LESS THAN A MINUTE MR HERARD SAID I DON'T AGREE WITH THAT.
THEN CHANGED HIS MIND AND SAID I WANT AN ATTORNEY TRIED TO GRAB THE RIGHT FORM FROM THE DETECTIVE.
WITH DETECTIVE ASKING TWICE YOU WANT AN ATTORNEY?
THAT IS A SITUATION WE HAVE HERE CLEARLY MR HERARD REINITIATED THE INTERVIEW. AFTER THE DETECTIVES HAVE MADE READY TO STAND UP THEY COLLECTED THEIR PAPERWORKS AND WERE READY TO GO.
HE REINITIATED THE INTERVIEW.
IF THIS COURT IS CONCERNED WITH THE RECENT ARGUMENT DONE IN THE PENNA CASE THE STATE SUBMITS THAT THE FACT THAT DETECTIVE WILLIAMS REMINDED HIM THAT HE DID NOT HAVE TO TALK TO HER REMINDED AND ASKED HIM SPECIFICALLY THE WANT AN ATTORNEY?
THEN HANDED HIM THE FORM FOR HIM TO REVIEW AND SIGN ESSENTIALLY NOT ONLY DID SHE GO THROUGH THE RIGHTS INITIALLY LESS THAN A MINUTE BEFORE. ESSENTIALLY SHE REMINDED HIM OF THE RIGHTS YOU JUST TOLD HIM AND GIVE HIM A CHANCE TO RECONSIDER EVEN THOUGH HE HAD REINITIATED THE CONVERSATION. NEXT NUMBER OF STATEMENTS COMING WHEN DETECTIVE GOODWIN AND ANOTHER DETECTIVE ARE SQUIRTING AND FIVE FROM THE LAUDERHILL INTERVIEW ROOM DOWN THIS GENERAL INTO THE PROCESSING CENTER. NAZ MR HERARD IS WALKING DOWN THE STAIRS HE SEES THE BROWARD SHERIFF'S DEPARTMENT AND HE ALSO THE POLICE OFFICERS AND ALSO SEES SUNRISE POLICE OFFICERS. AND MR HERARD SAYS SUMMARIZE WHAT IS SUNRISE DOING HERE BECAUSE OYEZ SUNRISE. THEN HE SAYS WHERE IS DELRAY?
HE DIDN'T SEE ANY OFFICERS FROM DELRAY. IN THE SUNRISE BROWARD AND IS DELRAY THAT IS WHERE THE DUNKIN' DONUTS ARMED ROBBERIES OCCURRED. BUT THOSE STATEMENTS WHICH MR HERARD SAID SPONTANEOUSLY WITHOUT ANY COMMENTS MADE BY EITHER THE DETECTIVES LINKED HIMSELF TO THE STRENGTH OF ARMED DUNKIN' DONUTS ROBBERIES. HE KNEW WHY SUNRISE WAS THERE. AND WAS CONFUSED BY DUNKIN' DONUTS WHERE HE HAD SHOT THREE PEOPLE WHY THEY WEREN'T THERE AS WELL?
THAT IS CLEARLY ADMISSIBLE UNDER UNITED STATES AND THIS COURTS CASE LAW.
THE THIRD INTERVIEW WAS THE ONE THAT I SAY WAS ESSENTIALLY CONDUCTED BY DETECTIVE GOODWIN WITH OTHER INDIVIDUALS. THAT IS THE INTERVIEW WHICH LASTED APPROXIMATELY 12 TO 13 HOURS THE ENTIRE TIME MR HERARD WAS IN INTERVIEW ROOM WAS TAPED AND JUDGE BECKMAN REVIEWED THE ENTIRE AUDIO AND VIDEO TAPE. AND WATCHED AND MADE THE DETERMINATION THAT MR HERARD SLEPT ABOUT SIX HOURS WAS GIVEN FOOD WAS GIVEN THANKS TO DRINK WAS TAKEN TO THE BATHROOM MULTIPLE TIMES. FOUND THAT THERE WAS NO COURSE

OF BEHAVIOR.
JUDGE BECKMAN CLEARLY PUT THAT IN HIS ORDER DENYING THE MOTION TO SUPPRESS. AND THE RECORD CLEARLY SUPPORTS HIS FACTUAL FINDINGS AND I BELIEVE THAT HE CORRECTLY APPLIED THE LAW TO THOSE FACTS FINDING THAT THERE WAS NO COURSE OF BEHAVIOR. AND DENIED THE MOTION TO SUPPRESS.
THE THIRD INTERVIEW IS THE ONE WITH DETECTIVE.
[LISTING NAMES].
THAT OCCURRED IN THE EVENING AFTER MR HERARD WAS TAKEN TO HIS FIRST APPEARANCE FOR THE DOG ROBBERY. AT THE FIRST APPEARANCE AN INTERN WITH THE PUBLIC DEFENDER'S OFFICE NOT AN ATTORNEY AND INTERN FILLED OUT A PAPER SAYING THAT MR HERARD DEMANDS AN ATTORNEY FOR THIS DOG ROBBERY CHARGE. THAT HAPPENED ABOUT ONE IN THE AFTERNOON ABOUT SIX IN THE AFTERNOON DETECTIVE.
[LISTING NAMES] AND HIS PARTNER WENT TO INTERVIEW MR HERARD AT THE JAIL. AND IT WAS A JAIL INTERVIEW NOT A POLICE AGENCY INTERVIEW SO THERE WAS NO VIDEO EQUIPMENT AVAILABLE MR HERARD REFUSED TO ALLOW IT TO BE AUDIOTAPED.
[LISTING NAMES] WENT THROUGH A MIRANDA FORM AND HAD MR HERARD SIGN EACH LINE AND SAID THAT MR HERARD HAD NO QUESTIONS WAIVED EACH RIGHT.
[LISTING NAMES] READ IT MR HERARD RENTED OUT LOUD THEN MR HERARD READ IT AND SIGNED IT.
IT WAS A COMPLETE WAIVER OF MIRANDA.
THE SNAKE WAS A DETECTIVE FROM SUNRISE POLICE DEPARTMENT HE HAD NOTHING TO DO WITH THE LAUDERHILL DOG ROBBERY. HE WAS ONE OF THE DETECTIVES INTERESTED IN THE DUNKIN' DONUTS STRING OF ROBBERIES.
FROM MY REVIEW OF THE RECORD I WILL LET IT STAND FOR ITSELF THE DETECTIVE AT NO TIME ASKED ABOUT THE LAUDERHILL DOG ROBBERY.
HE ASKED EXTENSIVE QUESTIONS ABOUT THE SUNRISE DUNKIN' DONUTS ROBBERY. AND THEN WENT INTO THE OTHER DUNKIN' DONUTS ROBBERY MR HERARD VOLUNTEERED TO DRAW THE VARIOUS DUNKIN' DONUTS LOCATIONS.
THIS MIGHT GIVE HIM PAPER ALLOWED THEM TO DRAW THE ONE IN DELRAY ONE IN.
[LISTING NAMES] THE ONE IN SUNRISE. AND TO SAVE BY THE CHOSE THESE AND HOW THEY WENT IN AND HOW THEY WENT OUT AND HOW THEY PRACTICED AT HOME THE FOURTH HE DID THIS. SO HE COULD COME OUT. THAT IS THE INTERVIEW DETECTIVE.
[LISTING NAMES] SURE DID. HE ALSO ASKED MR HERARD ABOUT HIS GANG MEMBERSHIP AND MR HERARD WAS VERY PROUD OF IT AND THROUGHOUT VARIOUS GANG INSIGNIAS AND INFORMATION VOLUNTARILY AND GAVE IT TO THE DETECTIVE INDICATING THAT HE WAS A MEMBER OF THE BACK STREET CRYPTS CORRELATED WITH THE WEST COAST WHAT CRYPTS I BELIEVE.
THAT IS THE THIRD OFFICIAL INTERVIEW.
IT DOES NOT VIOLATE MIRANDA OR ANY OF THIS COURTS LAW AND WAS PROBABLY NOT SUPPRESSED.

>> IS THAT BECAUSE OF WHAT DEFENSES SPECIFIC ASPECT OR IS THAT RELEVANT IN YOUR VIEW BECAUSE OF THE GIVING THE MIRANDA AND SIGNING THE FORM AND ALL THAT.
>> Lisa-Marie Lerner,Appelle: BUT SPECIFICALLY BECAUSE IT IS CASE SPECIFIC. THE INVOCATION FOR AN ATTORNEY AS THIS COURT AND THE US SUPREME COURT HAS SAID THE FIFTH AMENDMENT RIGHTS IN THE SIXTH AMENDMENT RIGHTS WHILE THEY COORDINATE THEY DO SEPARATE.
WHEN SOMEONE CLAIMS HIS SIXTH AMENDMENT RIGHT TO HAVE AN ATTORNEY ON A PARTICULAR CASE, THAT IS CASE SPECIFIC. WHEN DETECTIVE WENT IN THERE TO INTERVIEW MR HERARD ON A SEPARATE CASE THAT INDICATION OF HIS RIGHT TO AN ATTORNEY DID NOT GO TO THE SUNRISE DUNKIN' DONUTS AND WHEN THE DETECTIVE GAVE HIM A COMPLETELY NEW MIRANDA ADVISEMENT THAT MR HERARD WAIVED ANY ENSUING INFORMATION DURING THAT INTERVIEW WAS ADMISSIBLE. THE COURT DID NOT ABUSE ITS DISCRETION BY DENYING THE MOTION TO SUPPRESS. THAT STATEMENT.
IN TERMS OF THE FALSE CONFESSION EXPERT THE COURT BELOW JUDGE BECKMAN SAID ESSENTIALLY TO HAVE THIS EXPERT COMMITTED AND TESTIFY ABOUT THE REID TECHNIQUE JUST OUT IN THE AIR WITHOUT ANY SOLIDIFYING IT ON THE FACTS OF THIS CASE, IS ESSENTIALLY HAVING THE DEFENSE OFFER AN OPINION TO THE JURY THAT THE REID TECHNIQUE CREATES FALSE CONFESSIONS. AND HAVE THAT IDEA PUT IN BY AN EXPERT. THE COURT FOUND THAT ONE IT WAS MORE PREJUDICIAL THAN PROBATIVE BECAUSE IT WAS NOT TIED TO THE CASE AND IT WOULD GIVE THE JURY THE FALSE IMPRESSION THAT THIS EXPERT WAS SAYING THAT THIS INTERVIEW BECAUSE DETECTIVE GOODWIN HAD USED THE REID TECHNIQUE WAS FALSE. THE COURT ALSO SAID THAT THIS TYPE OF EXPERT TESTIMONY DID NOT MEET THE DEBORD STANDARD JUDGE BECKMAN SPECIFICALLY WENT THROUGH IN SEVERAL DIFFERENT ARGUMENTS DURING THE COURSE OF THIS TRIAL SAYING WHY IT WAS NOT ADMISSIBLE UNDER NUMBER TWO. BECAUSE THE THEORY COULD NOT BE PEER REVIEWED AND IT CANNOT BE TESTED THERE WAS NO HYPOTHESIS . THE EXPERTS TESTIFIED HIMSELF THAT HE DID NOT KNOW HOW MANY TIMES THE REID TECHNIQUE PRODUCED FALSE CONFESSIONS OR TRUE CONFESSIONS HE ADMITTED THAT IT WAS VERY RARE THAT A FALSE CONFESSION CAME OUT AND COULD NOT SPECIFY WHY IT OCCURRED AND IN SPECIFIC INSTANCES AND NOT OTHERS.
BASED ON THE LACK OF RELEVANCE TO THIS CASE AND THE FACTS IN THIS CASE GIVEN THAT MR HERARD DID NOT TESTIFY SAYING IT WAS COERCED. AND THE FACT IT DID NOT MEET THE DEBORD STANDARDS THE COURT DID NOT ALLOW IT UNDER RELEVANCY AND IT WAS MORE PREJUDICIAL THAN PROBATIVE.
I DID WANT TO COMMENT ON ONE OTHER THING.
IN THE FIRST ISSUE THE DEFENSE INDICATES THAT THE COURT SHOULD HAVE GRANTED THE MOTION TO DISMISS BECAUSE IT HAD PREVIOUSLY STRICKEN THE JURY DALLAS. I JUST WANTED TO NOTE THAT THE MOTION TO DISMISS THAT. [LISTING NAMES] FILED WAS WAS BASELESS. IF THE COURT GOES BACK AND REVIEWS IN THE SUPPLEMENTAL RECORDS IT WAS THE DEFENSE WITH THE COURT

TO DISMISS THE JURY PANEL. IT WAS NOT THE STATE. IT WAS THE DEFENSE. AND GIVEN THAT THE MOTION TO DISMISS THE CHARGES WERE BASELESS.
I ASKED THIS COURT TO AFFIRM BOTH THE SENTENCE AND THE CONVICTION.
>> Richard L. Rosenbaum,Appellant: MADE PLEASE THE COURT FOR THE REASONS I SET FORTH THE DEFENDANT BELIEVES IN GOOD FAITH THAT HE HAS FIFTH SIXTH AMENDMENT ISSUE WITH REGARD TO THE STATEMENTS I'M SURE AT THIS COURT WILL GO THROUGH EACH OF THE STATEMENTS.
NOTICEABLY ABSENT FROM JUDGE BECKMAN'S ORDER ON THE MOTION TO SUPPRESS WAS ANYTHING ABOUT THE STATEMENT WAS MADE AS MR HERARD WAS WALKING OUT OF THE POLICE STATION WHERE ARE THE OTHER TWO AGENCIES.
SINCE THE STATE HAS ADDRESSED THAT AND IT IS AN OPEN ISSUE SOMETHING THAT THE DEFENSE MOVED FOR SUPPRESSION OF THE TRIAL COURT LEVEL IT WAS JUST SOMETHING THAT THE JUDGE NEVER ADDRESSED. WE WOULD ASK THE COURT TO ADDRESS THAT TO THE EXTENT THAT THE COURT CAN WITHOUT HAVING TO SEND IT BACK FOR A RULING.
>> ADDRESS WHAT ABOUT IT IT'S A SPONTANEOUS STATEMENT WITHOUT ANY COERCION FROM THE DEFENDANT.
>> Richard L. Rosenbaum,Appellant: IF YOU'RE MAKING A FINDING THAT IT'S A VOLUNTARY STATEMENT BUT
>I'M NOT MAKING A FINDING THING ON THE RECORD BEFORE US THE DEFENDANT MADE THE STATEMENT.
IS YOUR ARGUMENT HE MADE IT UNDER SOME FORM OF COERCION ARE YOU MAKING AND ORDERING MEANT THAT THE REID TECHNIQUE CONTINUED IN THE HALLWAY BUT IS YOUR BEEF WITH IT.
>> Richard L. Rosenbaum,Appellant: I CAN'T MAKE THAT ARGUMENT IN GOOD FAITH.
I THINK THAT THE PROBLEM WITH IT IS IT'S A STATEMENT THAT THE DEFENSE SOUGHT TO SUPPRESS. WHETHER IT DID SO PROPERLY OR IMPROPERLY.
>> Justice Charles Canady: YOU HAVE TO HAVE A CUSTODIAL INTERROGATION WE GOT CUSTODY.
NO QUESTION ABOUT THAT.
THEY'VE GOT HIM. THERE IS NO INTERROGATION.
HE JUST SAYS IT.
MY COLLEAGUE HAS INDICATED THERE IS NO TO IT.
THERE WAS NO INTERROGATION IT'S ON THE FACE. I CAN UNDERSTAND WHY THE JUDGE MIGHT JUST THINK THAT IS KIND OF RIDICULOUS IT SPEAKS FOR ITSELF.
>> Richard L. Rosenbaum,Appellant: UNDERSTAND THE COURT SAYING THAT.
OBVIOUSLY I TAKE A DIFFERENT POSITION THE DEFENDANT TRULY IS IN CUSTODY AND ANY STATEMENT THAT HE MAKES IS A CUSTODIAL INTERROGATION.
BUT THERE MAY NOT BE A SPECIFIC QUESTION.
>> Justice Charles Canady: IT MIGHT BE A CUSTODIAL INTERROGATION IS NOT JUSTICE THE SAME AS A STATEMENT MANY CUSTODY YOU CAN HAVE THE GUY IN CUSTODY IN THE BACK OF CAR AFTER AN INTERROGATION GOING TO THE HOSPITAL OR SOMETHING LIKE THAT OR GO INTO THE ANOTHER LOCATION.

AND WHO JUST POPS UP AND SAYS I DID IT. I KILLED THEM ALL.
JUST OUT OF THE THIN BLUE NOBODY ASKS HIM ANYTHING. THAT DOES HAPPEN THAT HAS HAPPENED.
BUT THAT DOES NOT GET SUPPRESSED.
>> Richard L. Rosenbaum,Appellant: IT DOESN'T THAT'S WHY I BROUGHT UP [LISTING NAMES] IN THIS WHICH I THINK IS PROBABLY CONTROLLING ALL OF THOSE LIMITS EARLY EXECUTIVE FOR MY CLIENT.
BASED UPON THE UNLAWFUL STATEMENT AT LEAST FROM OUR PERSPECTIVE THE COURT'S FAILURE TO ALLOW THE DEFENSE EXPERT TO TESTIFY AND THE UNCONSTITUTIONALITY OF THE FORD DEFINITELY SCHEDULE WE URGE THIS COURT TO OVERTURN THE 8/4 RECOGNITION AND SUBSEQUENT SENTENCE OF DEATH THAT WAS IMPOSED.
AND WE THANK YOU FOR YOUR TIME.
>> Chief Justice Carlos Muniz: THANK YOU WE ARE ADJOURNED.