

SUPREME COURT OF FLORIDA
CASE NO. SC17-1391
Lower Tribunal Case No. 2016-70,106 (11J)

THE FLORIDA BAR,
Complainant,

versus

JONATHAN STEPHEN SCHWARTZ,
Respondent.

_____ /

ANSWER TO COMPLAINT AND AFFIRMATIVE
DEFENSES

Respondent Jonathan S. Schwartz answers the Complaint and submits these affirmative defenses.

1. Respondent admits Paragraph 1 of the Complaint.
2. Respondent admits Paragraph 2 of the Complaint.
3. Respondent admits Paragraph 3 of the Complaint.
4. Respondent admits Paragraph 4 of the Complaint.
5. Respondent admits Paragraph 5 of the Complaint. Respondent

further clarifies that the victim's police-prepared photographic line-up was unconstitutionally suggestive and unreliable. Respondent challenged the constitutionality of the photographic line-up.

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6. Respondent admits Paragraph 6 of the Complaint.
7. Respondent admits Paragraph 7 of the Complaint.
8. Respondent denies Paragraph 8 of the Complaint insofar as the inclusion of the phrase “nearly identical”.
9. Respondent admits Paragraph 9 of the Complaint.
10. Respondent denies Paragraph 10 of the Complaint insofar as no “actual photograph of Woodson” was included in the defense-created photographic line-up.
11. Respondent denies Paragraph 11 of the Complaint insofar as no disclosure was required and Respondent never represented that the defense-created photographic line-ups were presented as accurate representations of the suggestive police-created line-ups.
12. Respondent denies Paragraph 12 of the Complaint.
13. Respondent denies Paragraph 13 of the Complaint.

AFFIRMATIVE DEFENSES

14. Affirmative Defense 1. Respondent’s actions in his defense of Virgil Woodson in Circuit Case No. F13-012946 (Miami-Dade County) were expressly in conformance with the right to effective assistance of

counsel to criminal defendants guaranteed by the United States and Florida Constitutions.

15. Affirmative Defense 2. Respondent's actions in his defense of Virgil Woodson in Circuit Case No. F13-012946 (Miami-Dade County) were expressly in conformance with the right to effective cross-examination guaranteed to criminal defendants by the United States and Florida Constitutions.

16. Affirmative Defense 3. In view of the known history of inaccurate eyewitness identification in Florida criminal cases, including in Miami-Dade County, as well as the prosecutor's involvement in a prosecution of a misidentified defendant, Respondent's actions in his defense of Virgil Woodson in Circuit Case No. F13-012946 (Miami-Dade County) were expressly in conformance with the due process right to not be the subject of witness misidentification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY the foregoing was emailed August 21, 2017, to:

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