

Third District Court of Appeal

State of Florida

Opinion filed June 3, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-0013
Lower Tribunal No. 16-52-A-P

Jeremy Macauley,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Monroe County, Luis M. Garcia, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Jeffrey R. Geldens and Gabrielle Raemy Charest-Turken, Assistant Attorneys General, for appellee.

Before **SALTER, SCALES** and **HENDON, JJ.**

SALTER, J.

Jeremy Macauley appeals his convictions and sentences to consecutive terms of life imprisonment for the first-degree murders of Carlos Ortiz and his wife, Tara Rosado, in Key Largo in October 2015. Reversal and a new trial are compelled because of the exclusion of exculpatory evidence that another person confessed to committing the murders.

I. The Murders and the Crime Scene Investigation

In October 2015, neighbors of a home in Tavernier, Florida, noticed children from that home running down their street. The children told the neighbors that their parents were dead. One of the neighbors watched the children while another went into the home, confirmed that terrible report, and called the police.

The victims were Carlos Ortiz (“Ortiz”) and his wife, Tara Rosado (“Ms. Rosado”). Two Deputies with the Monroe County Sheriff’s Office, Frank Delgado and Barney Sajdak, responded to the call and went into the residence. The victims were in a bedroom lying in dried blood. They saw no sign of forced entry to the residence and no weapons near either victim. There were spent bullet casings on the floor. One cell phone was on the bed and another was lying on the floor near Ms. Rosado’s body.

Another nearby neighbor who lived on the same street as the victims, Mr. Hamilton, recalled hearing two gunshots at about 10:30 p.m. the previous evening. He also saw a car drive off toward U.S. Highway 1, the primary highway through

the Florida Keys, but was unable to identify the make or model. The medical examiner later testified that both victims were killed by gunshots to the head. Neither of the victims' bodies exhibited defensive wounds. The autopsies disclosed the presence of opioids and marijuana in both victims.

In the victims' home, the Deputies found drug paraphernalia, including an electric scale, baking soda, pills, and baggies. They found no firearms or other weapons in the home during that investigation.

II. The Defendant, Additional Suspects, and the Gun

Macauley was 32 years old at the time of the murders. The evidence at trial established that before the murders, he found a large quantity of cocaine while part of the crew on a fishing boat. He located persons known to distribute drugs in the area, including twin brothers Adrian and Kristian Demblans.¹ Both of the Demblans brothers sold cocaine and heroin, and one of the murder victims, Ortiz, owed Adrian money for heroin supplied to Ortiz. There was evidence at trial that Ortiz was both a user and a seller, to others, of the heroin supplied to him by Adrian.

Texts and cellphone records introduced at trial showed communications from Ortiz to Macauley threatening to report him, both of the Demblans brothers, and others to law enforcement unless Macauley would give him cash and drugs. The records also showed that some of these threats by Ortiz were relayed to Adrian. The

¹ We refer to the twin brothers by their first names to avoid confusion.

Demblans brothers had prior criminal records, and each of them knew that if they were to be convicted again for a drug offense, their prison time would be “a lot worse.”

The threatening text messages from Ortiz to Macauley continued through the day of the murders. One included a video of baggies, apparently drugs. Another stated that Ortiz would not wait “past today.” In response, messages from Macauley’s phone indicated that he would come to Ortiz’s house with “your half of the money,” and one such text included a photo of a \$100 bill. About an hour before the neighbor, Mr. Hamilton, heard two gunshots and looked at his watch, Ortiz texted Macauley they would meet at “my house.”

Adrian testified that Macauley asked him to drive him to Ortiz’s home that night. Because his own car often had trouble, Adrian borrowed a friend’s (Ms. Montenegro’s) car, promising \$100 worth of drugs in return. Adrian testified that he and Macauley arrived at Ortiz’s house at about 10:30 p.m. Ortiz was waiting for them in the driveway. He testified that Macauley carried the money and a Colt .45 handgun to meet Ortiz. Adrian testified that Macauley, wearing a dark hoodie, told Adrian to wait for him. A minute later, Adrian heard two gunshots, got out of the car, and saw Macauley motioning him to come into the house.

Adrian testified that he went into the house and saw Ortiz and a woman dead on the floor, each with a wound to the head. He said that he told Macauley to leave,

but Macauley was looking for the “other phone.” When they couldn’t find it, they went down to the car and Adrian drove them both out of the driveway. Adrian said that he got out to kick the gravel in the driveway to remove the tire tracks left by the car. During his testimony, Adrian identified himself in the surveillance video. Neither that video, physical evidence from the crime scene, nor any eyewitness (other than Adrian, by his own testimony) identified Macauley with certainty as the other occupant of the vehicle or individual present at the crime scene that night.²

Adrian testified that, as he and Macauley drove away from the murders, Macauley told him, “It’s over now. It’s over.” Adrian said that Macauley had him drive to a bridge over a waterway, where Macauley threw a cell phone into the water and then a gun. Adrian identified a picture of the gun he said Macauley carried and threw into the water, a Colt .45 with distinctive wooden handles. Another witness testified at trial that Macauley tried to sell that same handgun to him 13 months

² The female friend of Adrian, who loaned her car to Adrian the night of the murders, testified at trial. She admitted that she was high on drugs that night, and that Adrian gave her more drugs for the use of the car. Months after the murders, she was questioned and picked Macauley out of a photo lineup, though she said Macauley did not come up and into her apartment when Adrian came to pick up the car. She testified, however, that she was “70-75%” sure that she saw Macauley with Adrian in the car they drove the night of the murders. In response to a juror’s question submitted to the court and read to her—whether she had seen Adrian’s brother, Kristian, on the date of the murders—she answered, “Not that I recall. I don’t remember.”

before the murders. The handgun was ultimately found in a canal by another person well after the murders.

On cross-examination, Adrian's testimony revealed several additional facts. Three months after the murders, as law enforcement's investigation continued, Adrian used his brother's underwater diving gear and a neighbor's metal detector to search for the Colt .45 in the waterway. He told the neighbor that he would be using the metal detector to try to find a bracelet that had been thrown into the water.

He confirmed that he and his twin brother, Kristian, were in the drug business, and that Kristian had served time in prison for selling drugs. Adrian also admitted that in the crime scene photos taken the afternoon after the murders, Ortiz's cell phone—with Ortiz's texts to and from Macauley—was in plain view in the bedroom. Adrian said that he would lie to protect his brother, but his brother was not involved in the murders. He testified that Ortiz had not threatened him, and he said that at the time of the murders Kristian was at home hosting a party. He said that if Kristian, and not Macauley, had been with him on the visit to Ortiz's house that night, he would not have let Kristian go into the house alone.

Macauley's case and defense included an alibi and, of central importance in this appeal, evidence that Kristian Demblans had confessed to the commission of the murders, also relating that his brother Adrian was going to serve ten years for him. Three months after the murders, Adrian was arrested on drug charges (at the

same time he was under investigation for the murders). The prosecution and Adrian's private defense counsel ultimately agreed on a plea deal for Adrian that would include his involvement in the murders. Adrian Demblans would serve ten years as an accessory after the fact and would testify against Macauley. Macauley was indicted as the sole defendant charged with the two homicides, and Adrian was the key witness against him.

A. Alleged Confession by Kristian Demblans; Lansford

There were two prospective defense witnesses regarding (1) a purported confession by Kristian Demblans, and (2) a supposed account of the murders by Adrian Demblans in which Adrian admitted that he shot Ortiz's wife, and that Adrian and Kristian set up Macauley for prosecution as the shooter. The first prospective witness was Eric Lansford, nicknamed "Bama." Kristian was in the Monroe County jail after the murders following his arrest on a drug charge unrelated to the murders. He allegedly confessed to his cellmate, Lansford, that he shot Ortiz and his wife, and that Adrian was "going up the river" for him for ten years.

Lansford's recollection of Kristian's confession included significant details: that the victims were demanding \$20,000 and a kilo of cocaine not to reveal the Demblans-Macauley drug trafficking; that Kristian shot both victims; that Kristian said he would also have shot the victims' children if they had come out of their room; and that he went to the crime scene with another person (Lansford thought the other

person was probably Adrian, but acknowledged that Kristian had not said that). Lansford also recalled Kristian's statement that after the murders, he threw the weapon into a canal.

Macauley's counsel learned of Lansford's account, and arranged for Lansford to be taken to the State Attorney's Office for an interview by the prosecutors and a Monroe County deputy sheriff in the presence of Macauley's counsel. The interview was recorded and transcribed. The Chief Assistant State Attorney for Monroe County read Lansford his rights under Miranda³ at the outset of the questioning and also conducted the deposition.

Lansford described the admissions by Kristian regarding the murders and his brother Adrian's plea deal. The confession by Kristian to Lansford included the details described above and Kristian's characterization of the victims as "snitches." Lansford later returned to his home state, Alabama. The prosecutors sent investigators to interview Lansford further. Defense counsel deposed the investigators, who said Lansford told them the same thing he had told the prosecutors in his earlier deposition.

Lansford had been in the county jail before and had several criminal convictions in Alabama and Florida, but he had managed to keep his clearances to work at the Turkey Point and St. Lucie nuclear facilities for much of the time

³ Miranda v. Arizona, 384 U.S. 436 (1966).

preceding his most recent arrest in Monroe County. None of his criminal charges involved murder, attempted murder, or weapons offenses. His sworn statement regarding Kristian Demblans' confession includes his shock at Kristian's manner of relating it:

Then he said so he went over there and he shot them. And he said if the kids would have come out of the room, he would have shot them too. And that's what really got me. Because that's just horrible.

And he even did the little "pow, pow," two shots. And I could see in his face, man, you know -- for me to be sitting here and driving in an uncomfortable van and stuff, telling you he -- I know he did it. I am just telling you, his face, the way he looked me dead in the eye and he was so -- gives me chills thinking about it.

A month before trial, the State moved to exclude Lansford's testimony on the grounds that the testimony regarding statements by Kristian Demblans was (1) inadmissible hearsay and (2) lacking corroboration. During the hearing on the motion, the State conceded that the statements attributed to Kristian were against penal interest and that they exculpated Macauley. The prosecutors also acknowledged that Kristian had been a person of interest during their investigation of the murders. The State claimed that Lansford's testimony was not trustworthy, as Kristian denied making the statements and the evidence strongly pointed to Macauley's guilt.

The trial court denied the pretrial motion to exclude Lansford's statements, observing that "what the State is asking me to do is, basically, exclude an alleged

confession by someone else, someone who was a person of interest during the murder investigation, and I think that would be reversible error.” The prosecution and defense agreed that the defense could not call Kristian Demblans in its case, because that would be done solely to impeach him. But it was also agreed that the State could call Kristian to rebut Lansford’s account of Kristian’s confession.

B. Adrian Demblans’ Account Related by Wollweber

The second source of exculpatory testimony was a four-time felon who was housed with Adrian Demblans after Adrian’s arrest, Anthony Wollweber. Wollweber testified at trial that he overheard Adrian admitting that he killed a woman and blew her eye out. He also testified that he heard Adrian say he “beat the case” and set Macauley up by pleading and testifying against Macauley.

III. The Motion in Limine; Lansford’s Non-Appearance at Trial

As the case moved toward trial, the State obtained an order for Kristian Demblans to be transported from a corrections facility in Indiantown, Florida to the Monroe County jail to testify at trial (presumably to rebut Lansford’s testimony, if Lansford was called as part of the defense case). The defense made arrangements, including providing Lansford an airline ticket, for Lansford to travel from Alabama to testify at trial. In opening statement, the defense described Lansford’s anticipated testimony regarding Kristian Demblans’ confession, Lansford’s sworn statement,

and his confirmation regarding the confession given to the State's investigators who visited him in Alabama.

Lansford was scheduled to be called as the third witness in the defense case. On the day he was to testify, however, defense counsel advised the trial court that Lansford was refusing to appear because of a fear for his life. Defense counsel proffered and moved for the admission of Lansford's prior sworn testimony based on his unavailability, section 90.804(2)(a) of the Florida Evidence Code, and the constitutional due process and confrontation rights as analyzed in Chambers v. Mississippi, 410 U.S. 284 (1973). With the jury excused for a lunch break, counsel for the parties examined and cross-examined the defense attorney who had the telephone and text communications to and from Lansford regarding his refusal to appear.

The testimony of that defense attorney established:

- He and his investigator had kept Lansford apprised of the progress of the trial and the timing of his anticipated testimony.
- When Lansford stopped taking those calls, the attorney "overnightened a subpoena to him, which he acknowledged he got, and he said he didn't care."
- In a text, Lansford told the defense attorney, "I don't want to testify at all. I've had people mess with me. I'm not going down there to be where people know I'm there and where I am," and "In fear of my life."
- On cross-examination, the defense attorney acknowledged that he had not had the subpoena formally served upon Lansford and had not applied to the court for an order compelling Lansford to appear. The attorney further acknowledged that the testimony of Lansford in Alabama and under oath in

Monroe County had not been taken as a deposition to perpetuate testimony pursuant to Florida Rule of Criminal Procedure 3.190(i).

The prosecution argued that Lansford's prior testimony should be excluded because it was not a deposition to perpetuate testimony, and the trial court agreed. The court did find that the defense had established that Lansford's refusal to testify satisfied the requirement to establish his unavailability. The defense argued that Lansford's sworn testimony should be admitted nevertheless under Chambers, but that due process argument was also rejected by the trial court.

IV. Other Testimony Presented by the Defense at Trial

After the defense presented Wollweber's testimony that he heard Adrian Demblans admitting that he shot Ortiz's wife, the defense called Macauley's wife, Nicole Mansueto. She testified that Macauley worked on the day of the murders and was home around 10:15 or 10:30 p.m., when he left to walk to a friend's house down the block. She said that she had not seen Adrian at her home that night. She testified that the Colt .45 handgun was in the home at some point, and that Macauley and Adrian had talked about Adrian purchasing the gun. She said that the Colt .45 was gone from the home before the day of the murders.

Macauley testified as well. He denied that he went to Ortiz's house the night of the murders, and he denied that he committed the murders. He did admit that he was texting Adrian and Ortiz on the day of the murders. He admitted that he owned

the murder weapon at one time, but he said that he sold it to Adrian before the murders.

Following Lansford's non-appearance and the exclusion of his sworn statement, the defense did not call Kristian Demblans as a witness (doing so had been precluded by the hearing and stipulations on the State's pretrial motions in limine).

V. Convictions, Sentences, and Appeal

In closing argument, the prosecution highlighted the failure of the defense to establish any involvement in the murders by Kristian Demblans, despite defense counsel's emphatic inclusion of Lansford's anticipated testimony in his opening statement to the jury. The jury found Macauley guilty of both counts of first-degree murder and the remaining count of armed robbery. Macauley was sentenced to consecutive life terms on the murder counts, and to a further consecutive term of 30 years on the armed robbery conviction. This appeal followed.

VI. Analysis

Ordinarily, the standard of review for a disputed evidentiary ruling by the trial court is for an abuse of discretion. An erroneous interpretation of the applicable evidence code provisions or controlling case law, however, is subject to our de novo review. Bearden v. State, 161 So. 3d 1257, 1263 (Fla. 2015).

The question presented in this appeal is whether Chambers, and later cases applying the analysis in that decision, required the trial court to allow Lansford's prior sworn testimony regarding the alleged confession by Kristian Demblans to be presented to the jury. In addressing this question, we can first dispense with the State's argument that the Lansford transcript was not properly proffered. Defense counsel described Lansford's anticipated testimony based on his statements under oath in the transcript, and the trial court had previously reviewed the exculpatory elements of that testimony in considering and ruling on the State's motion in limine. The applicability of Chambers to the specific testimony of Lansford was discussed in counsel's colloquy with the trial court, and Macauley's counsel had described the exculpatory nature of that testimony to the jury in the defense's opening statement.

The traditional purpose of a proffer, or offer of proof, is to demonstrate to an appellate court a real error, not an imaginary or speculative one Although the safest practice would be to proffer the actual evidence, an oral proffer may be sufficient, particularly if there is no dispute as to what the evidence would have been.

Holmes v. Bridgestone/Firestone, Inc., 891 So. 2d 1188, 1191 n.1 (Fla. 4th DCA 2005) (internal citations omitted). The lack of formality for a proffer regarding excluded evidence was also addressed in Jenkins v. State, 189 So. 3d 866, 868 n.1 (Fla. 4th DCA 2015) (defendant's failure to make a proffer of the precise testimony excluded as hearsay evidence did not preclude appellate review, where the substance of the excluded evidence was made known during defendant's opening statement

and confirmed during sidebar; the appellate court did not have to speculate as to what the statement would have been).

We can also observe at the outset that the State, commendably, has not attempted to make a harmless error argument under State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986). The significance of Kristian Demblans' alleged confession, if credited by the jury, is obvious. All three prospective perpetrators—the Demblans twin brothers and Macauley—shared a motive for silencing Ortiz and his threats to expose their extensive drug dealings.

In the record before us, the nighttime identification of Kristian Demblans or Macauley (or both of them) as a passenger in the car driven by Adrian Demblans, as a visitor to the victims' residence on the night of the murders, or as a shooter, was in dispute. If Macauley was at the crime scene, why would he have left Ortiz's cellphone (in plain view in the crime scene photographs) containing the texts to and from Macauley? Anticipating Lansford's live testimony during the trial, the State had arranged for Kristian Demblans' availability as a rebuttal witness. The potential significance of Lansford's testimony and the indicia of reliability regarding the alleged confession thus inform our analysis under Chambers and the cases which have followed it.

A. Chambers

In Chambers, the Supreme Court of the United States determined that the trial court's exclusion of witness testimony regarding a third-party confession, together with the refusal to allow the defendant to cross-examine the purported confessor, violated the defendant's constitutional rights to due process and confrontation. The Court carefully articulated the predicates for overriding otherwise-applicable evidentiary and procedural rules. The critical question is whether the hearsay evidence of a third-party confession bears considerable assurance of reliability. Chambers, 410 U.S. at 301-02.

Reliability may be demonstrated and "persuasive assurances of trustworthiness" assessed under Chambers, by considering four factors: whether (1) the statement is made spontaneously to a close acquaintance shortly after the events; (2) the statement is corroborated by some other evidence in the case; (3) the statement is in a very real sense self-incriminatory and unquestionably against the purported confessor's penal interest; and (4) if the veracity of the hearsay statement is in dispute, the purported confessor is present at trial to testify and be cross-examined. Id. at 300-01.

Evaluating these factors in the record before us, Kristian Demblans' statement was "spontaneous" in the sense that it does not bear indicia of coercion. See Curtis v. State, 876 So. 2d 13, 21 (Fla. 1st DCA 2004) ("By this, the Court did not mean

that the statements had been blurted out, but rather that they were made without any compulsion and without any apparent motive to lie.”).

Other evidence of corroboration, the second factor, is found in: Kristian Demblans’ criminal history and his twin brother’s alleged statements that he would lie to protect his brother; the details preceding, and occurring during, the crime and at the crime scene, purportedly related by Kristian to Lansford; Wollweber’s testimony that Adrian told him that the brothers were framing Macauley; and Macauley’s own testimony denying that he shot the victims.⁴

The third Chambers factor is evident in the present case: Kristian Demblans’ statements were unquestionably self-incriminatory and against his penal interest. Kristian, like the alleged confessor McDonald in Chambers, “stood to benefit nothing by disclosing his role in the shooting,” “and he must have been aware of the possibility that disclosure would lead to criminal prosecution.” Chambers, 410 U.S. at 301.

The fourth and final factor was also satisfied, although the trial court misapplied the test by considering Lansford’s unavailability to testify in court and be cross-examined. The proper test is whether the alleged declarant/confessor, Kristian Demblans in this case, was available to testify in court and be cross-

⁴ The amount or weight of the corroboration required by this factor does not go beyond “some other evidence in the case.” Chambers, 410 U.S. at 300.

examined. And Kristian was available. The State anticipated that Lansford would testify and had transported Kristian to rebut that testimony with his own in-court denial.⁵

B. Florida Cases

Florida has applied Chambers in similar scenarios. In Bearden, the Florida Supreme Court cited and followed the “compelling discussion of the rationale for the constitutional analysis in Chambers” found in Curtis v. State, 876 So. 2d 13 (Fla. 1st DCA 2004). Bearden, 161 So. 3d at 1265-66. And more recently, the Second District applied Chambers and Bearden to reverse a conviction in which hearsay evidence of an alleged confession had been excluded. Larry v. State, 241 So. 3d 246 (Fla. 2d DCA 2018).

C. The State’s Arguments

In its answer brief and at oral argument in this case, the State has raised a number of arguments. Most of the cited cases and evidentiary rules are a variety of objections to the introduction of evidence—the very rules, such as those requiring a motion for a deposition to perpetuate testimony rather than a sworn statement taken by the State with comparable formalities and detail—that Chambers subordinates to

⁵ Kristian Demblans’ availability to testify also prevented Lansford’s hearsay testimony regarding the alleged confession from being admitted under the hearsay exception in section 90.804(2)(c) of the Florida Evidence Code (the exception for statements against penal interest), absent the application and controlling effect of Chambers and the subsequent Florida decisions reliant upon that decision.

the defendant's constitutional rights of due process and confrontation. These arguments, though important features of our rules restricting the admissibility of hearsay and limiting depositions in criminal cases, must give way in this case to Macauley's fundamental rights. Chambers, 410 U.S. at 300-02; Holmes v. South Carolina, 547 U.S. 319, 321 (2006) (defendant's right to present "proof of third-party guilt" to the trier of fact implicates federal constitutional rights to a fair trial, which may require admissibility, though contrary to a state procedural predicate).

We focus, then, on the State's attempts to distinguish Chambers on the basis of the record in the case, and cases cited by the State which addressed Chambers but affirmed the exclusion of hearsay evidence regarding alleged confessions by a third party.⁶ While the State correctly notes that the sworn, written confession in Chambers seems more reliable than Lansford's sworn statement regarding an alleged oral confession by Kristian Demblans, the case law does not differentiate in this way. The indicia of reliability in Lansford's sworn statement, treated above in the discussion of the facts and record, are significant.

Repeatedly questioned by the State during his sworn statement about any benefit he stood to derive or had been promised by anyone for his testimony,

⁶ The State's brief pushed Chambers back to its fifth of five arguments, beginning this analysis after contentions that: the proffer of Lansford's testimony was inadequate; the abuse of discretion standard of review should control; Lansford's testimony regarding the alleged confession by Kristian Demblans was inadmissible hearsay; and there was no abuse of discretion by the trial court.

Lansford testified that, “There was nothing offered to me,” and that he was “not using any of this for anything. I just want what’s right is right.” Asked again what his purpose was for coming forward with the alleged confession, he said he was doing so because Macauley “is an innocent man, you know.”

Of the four Florida cases that have denied claims of error based on Chambers and the exclusion of proffered exculpatory testimony not properly perpetuated under Florida Rule of Criminal Procedure 3.190(i), the records in those cases did not establish a real admission against penal interest (see Ducas v. State, 84 So. 3d 1212, 1216 (Fla. 3d DCA 2012), and Gardner v. State, 194 So. 3d 385, 390 (Fla. 2d DCA 2016)), and the reliability of the statements could not be tested in the absence of the declarant (see Ducas, at 1216; Gardner, at 391; Leighty v. State, 981 So. 2d 484, 493 (Fla. 4th DCA 2008); and Jones v. State, 189 So. 3d 853, 857 (Fla. 4th DCA 2015)).

On this record, however, Kristian Demblans’ alleged confession was indisputably against his penal interest and the reliability of Lansford’s testimony about the confession was tested thoroughly by the Chief Assistant State Attorney, assisted by an Assistant State Attorney and Sheriff’s Department investigator. Although the testimony was not taken following a motion to perpetuate testimony, the prosecution had every opportunity to question Lansford, and did so, after learning that Lansford had information that could damage the State’s case against Macauley. And when Lansford failed to appear and counsel argued the applicability

of Chambers, the State did not suggest any line of inquiry it would have pursued if Lansford's sworn testimony had been provided to the State after a motion to perpetuate rather than in the form of an extensive pretrial deposition taken by the State.

The State's arguments and citations fail to overcome the significance of the alleged exculpatory evidence and the applicability of Chambers. The four aspects of reliability required to invoke Chambers were established in this record.

VII. Conclusion

In 2015, the Florida Supreme Court relied on a "compelling discussion of the rationale for the constitutional analysis in Chambers," quoting extensively from the First District's opinion in Curtis v. State, 876 So. 2d 13, 20-21 (Fla. 1st DCA 2004). Bearden, 161 So. 3d at 1265-66. Bearden and Curtis both applied Chambers to address the paradox and constitutional due process problem seen here: (1) the confessor may be available, but cannot be impeached "merely as a device to place the impeaching testimony before the jury," id., and (2) the sworn statement of the third party declarant who heard the confession could not be admitted, despite the unavailability and declaration against penal interest exceptions, unless the deposition of the declarant was taken pursuant to a motion to perpetuate testimony.

The "compelling discussion" regarding Chambers quoted by the Florida Supreme Court from Curtis included this conclusion: "If a confession by a third party

is critical evidence that should have been admitted in evidence to protect the constitutional rights of the accused, the particular reason for excluding it under state law will make little difference.” Id. at 1265 (quoting Curtis, 876 So. 2d at 20).

Lansford’s testimony taken under oath by a lead prosecutor for the State was potentially exculpatory and was promised by defense counsel in his summary presentation of the defense evidence in opening statement. Trial lawyers well know the effect on jurors of an unfulfilled promise to deliver a material element of proof, and the State hammered home that unfulfilled promise as it delivered its closing argument against Macauley.

We are constrained, under Chambers, the due process clause, and Macauley’s right to a fair trial, to reverse his convictions and vacate his sentences, and to remand the case for a new trial.

Reversed and remanded for new trial.