

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> LAST CASE ON THE COURT'S
AGENDA IS STATE OF FLORIDA
VERSUS JOSEPH EUGENE MCFADDEN.

>> MY NAME IS HELENE C. HVIZD
AND WITH MY REFEREE I REPRESENT
THE PETITIONER, THE STATE OF
FLORIDA.

THE PETITION REQUESTS THIS COURT
QUASHED THE DECISION OF THE
FOURTH DISTRICT COURT OF APPEALS
WHICH IS AN EXPRESS CONFLICT
WITH THE OPINIONS OF THIS COURT
IN WATERS V. STATE AND OLSON V.
STATE AND THE OPINION OF THE
THIRD DISTRICT COURT OF APPEAL
IN JOHNSON V. STATE.

>> DID YOU ARGUE THIS CASE?

>> I DID NOT.

>> WAS THERE AN ORAL ARGUMENT?

>> THERE WAS AN ORAL ARGUMENT.

>> EVANS ARGUED THAT.

WAS EVANS NOTED IN THE BRIEF?

>> I AM NOT CERTAIN I UNDERSTAND
WHAT YOU MEAN BY EVIDENCE.

>> EVANS.

>> I DO HAVE THE ANSWER BRIEF
THAT WAS FILED WITH THE COURT.
I CAN LOOK AND SEE IF IT WAS
CITED.

I WAS NOT PRIVY TO IT.

>> NOWHERE WAS IT MENTIONED.

>> IT IS REMARKABLE.

>> THE FLORIDA SUPREME COURT HAS
RULED ON THE ISSUE.

>> THE ARGUMENT COULD BE MADE
THAT SOMEHOW FOURTH DISTRICT
COURT APPEALS DID NOT NEED TO

ADDRESS EVANS BUT WATKINS VERSUS
STATE, OLSON VERSUS STATE, STATE
WOULD EVEN CONTEND THE
FOURTH DISTRICT COURT OF
APPEALS OPINION BELOW IS IN
CONFLICT WITH THE FOURTH
DISTRICT COURT OF APPEALS IN
WHITFIELD V. STATE.

THESE RECOGNIZE THE FLORIDA
RULE OF CRIMINAL PROCEDURE
3.220 REQUIRES DISCLOSURE OF
A WITNESS'S WRITTEN
STATEMENT OR ORAL STATEMENT.
THERE IS NO REQUIREMENT THAT
A PROSECUTOR MUST DISCLOSE
AN ORAL STATEMENT UNLESS IT
HAS BEEN RECORDED.

THERE IS IN NARROW EXCEPTION
THAT APPLIES IN THE MOST
EGREGIOUS CASES.

THIS IS WHEN YOU TAKE
ACTIONS THAT ARE
REPREHENSIBLE HOLDING A
WITNESS TO THE SIDE BEFORE
TRIAL, ASKING THE WITNESS TO
LOOK AT A PHOTO, EXCLUDING
THE DEFENSE FROM THE
WITNESS'S CHANGED TESTIMONY
WHICH WAS CRUCIAL TO THE
DEFENSE THAT THERE WAS A GUN
UNDERNEATH THE VICTIM AS
OPPOSED TO A PAGER.

UNDER THOSE EGREGIOUS
CIRCUMSTANCES WHERE IT DOES
AMOUNT TO TRIAL BY AMBUSH,
SOMETHING WE RECOGNIZE WE
WANT TO AVOID OR ELIMINATE,
AND ORAL STATEMENT OF A
WITNESS THAT MATERIALLY
ALTERS THE WITNESS'S WRITTEN
STATEMENT SHOULD BE
DISCOVERABLE.

THAT SHOULD BE PROVIDED BY
THE PROSECUTOR.

WE DON'T HAVE THAT SITUATION
HERE.

WE HAVE THE STATE BEING
COMPLETELY SURPRISED BEQUEST
IN WHICH THE WITNESS WAS NOT
ASKED IN DEPOSITION.

THIS COURT HAS ASKED TO
SUPPLEMENT THE RECORD ON
APPEAL WITH A COPY OF BAKESA
MCFADDEN'S DEPOSITION.
SHE IS ASKED ONLY WHETHER OR
NOT SHE SAW HER BROTHER WITH
A SHOTGUN ON THE DAY OF THE
INCIDENT.

THAT IS ALL SHE IS ASKED.

AT TRIAL, AND FRANKLY THIS
IS A CLASSIC CASE OF ASKING
A QUESTION YOU DON'T KNOW
THE ANSWER TO, SHE IS ASKED
WHETHER OR NOT THERE WAS
EVER A SHOTGUN IN THE HOUSE,
WHETHER OR NOT HER MOTHER
HAS EVER SEEN A SHOTGUN.
DEFENSE COUNSEL WENT BEYOND
THE BOUNDARY OF THE
DEPOSITION AND SURPRISED THE
STATE.

HOW COULD THE STATE HAVE
IMAGINED THAT A WOMAN WHO
GAVE AN ORAL STATEMENT TO A
POLICE OFFICER THAT SHE WAS
CONCERNED BECAUSE THERE WAS
A SHOTGUN IN THE HOUSE.

>> THE SISTER CAME TO THE
POLICE DEPARTMENT TO TELL
THEM HER BROTHER HAD A
SHOTGUN AND SHE WAS
CONCERNED.

>> IT WAS THE JAIL.

SHE SPOKE WITH OFFICER RAY

WHO WAS AT THE COUNTY JAIL AND SHE SAID TO HIM THE DAY BEFORE THE INCIDENT, I AM CONCERNED BECAUSE THERE IS A SHOTGUN AND DRUGS IN THE HOUSE.

>> HOW DID SHE MAKE IT TO THE GEL?

>> I AM NOT SURE THE RECORD REVEALS THAT.

WE DON'T KNOW WHAT THE RELATIONSHIP WAS BETWEEN THE TWO OF THEM OR IF IT WAS SIMPLY A MATTER THAT SHE WENT BECAUSE SHE WAS CONCERNED.

SHE ULTIMATELY CALLED OFFICER RAY AGAIN TO ADVISE HIM THAT THE BOXES WITH THE STOLEN GOODS WERE BEHIND A FENCE BEHIND HER HOUSE.

>> DID OFFICER RAY PREPARE A REPORT CONCERNING HER VISIT TO THE JAIL TO INFORM HIM SHE WAS CONCERNED ABOUT HER BROTHER?

>> HE TESTIFIED DURING TRIAL AS A REBUTTAL WITNESS AND PROVIDED INFORMATION TO ANOTHER OFFICER WHO THEN WAS TO FOLLOW UP WITH IT BECAUSE HE WORKS AT THE JAIL. HE IS NOT AN INVESTIGATIVE OFFICER.

>> NOTHING WAS DONE PURSUANT TO HER VISIT TO THE JAIL.

>> THERE WAS NO FOLLOW-UP.

>> IS THERE ANYTHING -- THERE IS SOMETHING ILLEGAL ABOUT HAVING DRUGS, BUT IS THERE ANYTHING ILLEGAL ABOUT HAVING A SHOTGUN?

>> THE CIRCUMSTANCES OF THIS
CASE DON'T TELL US.
WHETHER OR NOT MR. MCFADDEN
WAS NOT TO POSSESS A
FIREARM.

HE IS SERVING A LIFE
SENTENCE AS AN OFFENDER SO
THERE MAY BE AN IMPLICATION.

>> WAS IT A SAWED-OFF
SHOTGUN?

>> I AM NOT SURE WE KNOW
THAT.

AT ONE POINT SOMEONE DID
MENTION --

>> DEPENDING ON THE LENGTH
OF THE BARREL IT COULD BE
ILLEGAL TO HAVE A SAWED-OFF
SHOTGUN.

>> CAN WE APPROACH
COMMON-SENSE?

>> PLEASE.

>> THIS CASE IS GOING TO
TRIAL ABOUT A GUY SUPPOSEDLY
HAVING A GUN, TAKING THAT
GUN AWAY FROM A
CONFRONTATION AT THE HOME.

>> IT WAS THAT HE USED THE
SHOTGUN TO BEAT THE VICTIM.

>> IT IS INVOLVED IN THAT
AND WE HAVE AT TRIAL ALL OF
A SUDDEN POLICE OFFICERS
TESTIFY IN.

WHETHER IT IS REBUTTAL OR
NOT TESTIFYING HE HAD A
SHOTGUN THE PERSONAL THE
LADY WAS SO CONCERNED SHE
WENT TO THE POLICE.

THAT IS WHAT WE HAVE?
SOME COMMON SENSE BEFORE A
COURT ROOM.

>> HOW DID THE PROSECUTOR
HAVE KNOWN?

>> IT IS NOT MITIGATING.
BUT THERE'S SOMETHING WRONG
WITH THE SYSTEM IN MY MIND
THAT ALLOWS THAT TO HAPPEN.
YOU MAY BE CORRECT ON THE
POOL.

YOU MAY BE ABSOLUTELY
CORRECT AND PARSED THESE
WORDS AND WE CAN PLAY THE
RULE GAME BUT THERE'S
SOMETHING WRONG WITH THIS
SYSTEM WHERE THE STATE CAN
HAVE EVIDENCE THAT IS SO
DAMNING AND IT IS NEVER
DISCLOSED.

>> IF YOU LOOK AT THE
CIRCUMSTANCES OF THIS CASE I
DON'T THINK YOU CAN
NECESSARILY SAY THIS IS THE
CASE THAT PRESENTS A
COMPELLING CASE TO CHANGE A
RULE --

>> I THINK IT DOES.
IF I AM ON TRIAL I NEED TO
KNOW IF A POLICE OFFICER
WILL SAY SOMEONE IS
CONCERNED ABOUT A SHOTGUN
AND I AM CHARGED WITH
SOMETHING ABOUT THAT
SHOTGUN.

>> HOW DID THE PROSECUTOR
KNOW THAT YOU DIDN'T KNOW
ABOUT THIS STATEMENT TO CALL
OFFICER RAY ABOUT THIS
SHOTGUN?

>> WE KNOW FROM THE RECORD
THAT THE PROSECUTOR WAS
AWARE OF THE PREVIOUS
STATEMENT THAT SHE WAS
CONCERNED BECAUSE THERE WAS
A SHOTGUN AND DRUGS IN THE
HOUSE BECAUSE AS BAKESA

MCFADDEN TESTIFIED THERE WAS NEVER A SHOTGUN IN THE HOUSE, THAT OPENED THE DOOR MEANING WE NOW HAVE SOME TESTIMONY AND I HAVE A STATEMENT WHICH I REALIZE IS CONTRARY TO THAT THAT SHE PREVIOUSLY MADE TO OFFICER RAY.

THE PROSECUTOR WAS AWARE OF THAT ORAL STATEMENT THAT BAKESA MCFADDEN MADE.

THIS IS THE SITUATION WE NEED TO UNDERSTAND AS WELL. WHEN THIS PARTICULAR STATEMENT WAS MADE DURING TRIAL IT CAME IN AFTER THE DEFENDANT AT STATEMENT WAS ADMITTED WITHOUT OBJECTION. NO ONE MOVED TO SUPPRESS THE DEFENDANT'S OWN STATEMENT. THE DEFENDANT SAYS IN HIS STATEMENT I DON'T HAVE A SHOTGUN IN THE HOUSE, OK, MY DAD HAS A .22 RIFLE. HE USED TO HAVE ONE THAT IS REALLY OLD.

THE DEFENSE WAS AWARE THERE WOULD BE A TESTIMONY THAT THERE WAS AT LEAST A .22 RIFLE IN THE HOUSE.

>> WHAT DISTRICT NOTED THE SPIRIT OF THE LAW WAS VIOLATED?

IS IT THE SPIRIT OF THE LAW, THE PURPOSE TO MAKE SURE NO ONE IS CAUGHT BY SURPRISE AND THERE IS A TRIAL BY AMBUSH?

IN THIS CASE WOULDN'T IT HAVE BEEN BETTER FOR THE PROSECUTOR AND DEFENSE

LAWYER, A VISIT FROM THE
SISTER THE NIGHT BEFORE AND
HAVE SOME PROBLEMS WITH THE
SHOTGUN?

THINKING ABOUT THE SPIRIT OF
THE RULE.

>> WE WOULDN'T BE HERE
TODAY.

>> STILL WOULD HAVE BEEN A
CONVICTION.

>> I UNDERSTAND WHAT YOU ARE
SAYING.

WE NEED TO RECOGNIZE THIS IS
NOT A SITUATION WHERE THE
DEFENSE DIDN'T HAVE BAKESA
MCFADDEN TO DEPOTS.

THEY DEPOSED HER.

>> IT IS NOT WITNESS THE
AVAILABILITY.

YOU MAY BE CORRECT ON THE
LAW AND THE READING -- I AM
NOT -- I UNDERSTAND YOUR
ARGUMENT.

BUT IT IS BEYOND THESE AT
THE STATE CAN SAY THERE'S
NOTHING WRONG WITH THIS
HAPPENING.

>> THE STATE WAS COMPLETELY
SURPRISED BY THE TESTIMONY.
HE ASKED A QUESTION HE
SHOULDN'T HAVE.

THIS BRINGS US TO THE PUBLIC
POLICY CONCERN.

TO WHAT EXTENT ARE WE GOING
TO TAKE THIS?

THE RULE SAYS INTERPRET
ACCORDING TO 18 U.S. C
SECTIONS 3100,
REINSTATEMENT.

PRIOR TO THE MOST RECENT
AMENDMENT OF THE RULE
WRITTEN STATEMENTS ARE

WRITTEN STATEMENTS OF A
WITNESS OR ELECTRONICALLY
RECORDED ORAL STATEMENTS.
WHEN THE RULE WAS AMENDED IN
1989 TO INCLUDE

INVESTIGATIVE REPORTS IT
EXPRESSLY PROVIDED AND WE
WOULD ARGUE THAT IS WHY THE
WORD MEANS WAS CHANGED TO
INCLUDE, WE HAVE WRITTEN
STATEMENT, RECORDED ORAL
STATEMENTS AND INVESTIGATIVE
REPORTS OF THE COMMITTEE
SAYS LET'S USE INCLUDE
INSTEAD OF THESE TWO.

PLAIN LANGUAGE OF THE LAW
SAYS INVESTIGATIVE REPORTS
BUT IT SAYS INVESTIGATIVE
REPORTS IN CONNECTION WITH
THE CASE.

IT IS IMPOSING A BURDEN ON A
PROSECUTOR TO TRY TO KNOW
WHAT WILL COME UP IN THE
CASE.

WE CAN ARGUE THE RULE AS
INTERPRETED BY THE FOURTH
DISTRICT COURT OF APPEAL
REQUIRE ORAL STATEMENTS THAT
MAY OR MAY NOT BECOME
RELEVANT AT SOME POINT BE
DISCLOSED DOES DAMAGE TO THE
CRIMINAL JUSTICE SYSTEM AND
AS A PROSECUTOR I DON'T KNOW
WHAT WILL COME OUT AT TRIAL.
I DON'T KNOW EVERYTHING THAT
WILL COME OUT.

AM I REQUIRED TO DISCLOSE
ORAL STATEMENTS WHEN I HAVE
NO IDEA WHAT THE THEORY OF
DEFENSE WILL BE?

NOW YOU ARE IMPOSING ON THE
DEFENDANT THE THE BURDEN TO

REVEAL HIS THEORY OF
DEFENSE.

OTHERWISE HOW THE LAW AS A
PROSECUTOR KNOW WHAT WILL
BECOME RELEVANT DURING
TRIAL?

THIS IS WHAT WE WOULD ARGUE
POLICY REASON WHY WE CANNOT
TAKE THIS EXPANSIVE READING
OF THE RULE.

>> THE EVIDENCE THAT WAS
GOING TO BE PRESENTED AT
TRIAL THAT THE VICTIM WAS
BEATEN WITH THE HANDLE OF A
SHOTGUN.

SO CERTAINLY ANY EVIDENCE AT
SOME POINT A SHOTGUN IN THE
HOUSE CERTAINLY SEEMS VERY
RELEVANT TO ME TO WHAT WAS
GOING ON IN THIS ENTIRE
CASE.

THE STATEMENT ABOUT DRUGS,
THERE MIGHT BE AN ISSUE
ABOUT WHETHER THAT SHOULD BE
EXCISED.

BUT THE PORTION ABOUT THERE
BEING A SHOTGUN IN THE HOUSE
BECOMES RELEVANT HERE.

>> NOT IF WE LOOK AT IT FROM
THE STANDPOINT OF SHOTGUN
AND DRUGS BEING RECORDED
TOGETHER DURING A PHONE CALL
THE DAY BEFORE THE INCIDENT
THAT GIVES RISE TO THE
CHARGES.

SHE REPORTED TO OFFICER RAY
THAT THERE WAS A SHOTGUN AND
DRUGS IN THE HOME.

OFFICER RAY WAS IN THE JAIL.

>> SHE DIDN'T PHYSICALLY GO
TO THE JAIL.

>> WE ARE NOT CERTAIN FROM

THE RECORD WHETHER SHE
PHYSICALLY WENT TO HIM TO
TELL HIM THAT.

>> WAS SHE A FRIEND OF
OFFICER RAY?

>> IT SEEMS THAT COULD HAVE
BEEN THE CASE BECAUSE SHE
REACHED OUT TO HIM
INDIVIDUALLY.

IF WE SAVE A SHOTGUN WAS
RELEVANT IN THIS CASE EVEN
THOUGH IT WAS REPORTED IN A
SEPARATE INCIDENT WE STILL
HAVE THE CIRCUMSTANCE OF THE
PROSECUTOR HAVING NO IDEA
THAT BAKESA MCFADDEN WOULD
SAY THERE WAS NEVER A
SHOTGUN IN THE HOUSE.
THAT WAS IRRELEVANT.

THE FACT THAT THERE WAS A
SHOTGUN IN THE HOUSE WAS
IRRELEVANT TO THE
CIRCUMSTANCES OF HER
TESTIMONY BECAUSE SHE WAS
CALLED TO THE STAND TO SAYS
SHE DID IN HER DEPOSITION
VERY NARROW TESTIMONY, SHE
SAYS SEVERAL TIMES I WON'T
TALK ABOUT THAT.

ALL I AM GOING TO TELL YOU
IS I SAW MY BROTHER WALKING
TO THE HOUSE, THAT WOULD
HAVE BEEN ALLEGEDLY AFTER
THE BEATING.

HE DID NOT HAVE BOXES OR A
SHOTGUN AND HE WALKED INTO
THE HOUSE AND NEVER CAME
BACK OUT.

THAT WAS WHAT SHE SAID
DURING HER DEPOSITION.

IF THAT IS ALL WE HAVE, IF
DEFENSE COUNSEL DIDN'T BEGIN

ASKING ABOUT CIRCUMSTANCES,
THERE WOULD HAVE BEEN NO
REASON FOR THE PROSECUTOR TO
KNOW THAT THE CIRCUMSTANCES
OF A CALL TODAY BEFORE WOULD
BECOME IMPORTANT.

HOW COULD THE PROSECUTOR
HAVE KNOWN THAT?

NOT FROM THE DEPOSITION
TESTIMONY.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT,
I AM CHRISTINE GERAGHTY.

I REPRESENT THE RESPONDENT
PROPOSAL JOSEPH EUGENE
MCFADDEN.

WE ASK THIS COURT APPROVAL
OF THE DISTRICT'S DECISION
FOR A NEW TRIAL BECAUSE OF
THE DISCOVERY OF VIOLATION.
THE FOURTH DISTRICT
SPECIFICALLY HELD THE
STATE'S FAILURE TO DISCLOSE
THE SUBSTANCE OF DETECTIVE
RAY'S CONVERSATION WITH
BAKESA MCFADDEN WAS CONTRARY
TO THE PURPOSE AND SPIRIT OF
THE RULES OF DISCOVERY.

>> IT WAS NOT REDUCED TO
WRITING.

>> THE COURT RELIED ON
SCIPIO V. STATE.

THERE ARE TIMES WHEN AN ORAL
STATEMENT IS REQUIRED TO BE
DISCLOSED IF IT CHANGES THE
CONTEXT OF A PRIOR
STATEMENT.

THE ATTORNEY GENERAL HAS
SUPPLEMENTED THE RECORD.

>> PRIOR TO GETTING ON THE
STAND, EVER SAY SOMETHING
OPPOSITE OF WHAT SHE

REPORTED TO THE POLICE?
PRIOR TO GETTING ON THE
STAND DID SHE EVER SAY THERE
WAS NO SHOTGUN?
IN THE HOUSE SHE SHARED WITH
HER BROTHER?

>> KNOW BUT IN HER
DEPOSITION TESTIMONY SHE
SAID WHAT HER CONVERSATION
WITH DEPUTY RAY WAS ABOUT
AND AFOREMENTIONED DRUGS OR
A SHOTGUN.

SHE SAID SHE WENT TO THE
JAIL TO CONTACT WHOEVER WAS
AT THE JAIL WHO WAS DEPUTY
RAY AND SAID THAT IT JOSEPH
EUGENE MCFADDEN'S GIRLFRIEND
HAD AN OPEN WARRANT FOR HIM
AND WAS AFRAID THE FAMILY
WOULD GET IN TROUBLE.

BASED ON THAT STATEMENT IN
THE DEPOSITION THE DEFENSE
WAS ENTITLED TO RELY ON THAT
AS A DISCOVERY ABOUT WHAT
THIS PRIOR STATEMENT WAS
ABOUT.

>> IS THERE ANY EVIDENCE
ABOUT WHETHER THE DEFENSE
TALKED TO HER ABOUT THE
PRESENCE OF A GUN IN THE
HOUSE?

>> KNOW.

THAT GOES TO THE FIRST SUB
POINT THAT THE TRIAL COURT
ERRED BY NOT HAVING AN
INQUIRY TO BEGIN WITH.
SO WE DON'T HAVE ACTUALLY
KNOW THE PARAMETERS.

>> WE HAVE A DEFENSE
ATTORNEY ASKING THE QUESTION
WITH NO IDEA WHAT THE ANSWER
IS.

>> I DON'T KNOW IF THE ATTORNEY KNEW THE ANSWER OR NOT.

THERE WAS NO INQUIRY INTO THE ISSUE.

IT WAS NOT REFLECTED IN THE RECORD WHETHER THE DEFENSE ATTORNEY KNEW THE ANSWER OR NOT.

SPECIFICALLY, THE FOURTH DISTRICT'S DECISION IS NOT THAT ORAL STATEMENTS SHOULD BE DISCLOSED IN EVERY CASE.

IT IS SPECIFIC TO THIS CASE AND BASED ON THE COURT'S HOLDING THAT THE PURPOSE AND SPIRIT OF THE RULE IS TO PREVENT TRIAL BY AMBUSH AND SURPRISE.

THAT IS EXACTLY WHAT HAPPENED IN THIS CASE.

>> WHO WAS AMBUSHED?
THE STATE HAD THE AMBUSH BECAUSE WHAT HAPPENED BECAUSE THEY KNEW A GUN WAS AROUND BUT NO IDEA OF THE WITNESS WHO WAS GOING TO SAY THERE WAS NEVER ANY GUN AROUND.

>> I WOULD POINT OUT THAT BAKESA MCFADDEN NEVER AGREED SHE MADE THIS PRIOR STATEMENT ABOUT THE GUN. SHE DENIED MAKING A PRIOR STATEMENT.

>> BELIEVABILITY AND CREDIBILITY.

>> RIGHT.

>> TAKING ALL THE PROBLEMS WITH WHAT WE HAVE, ISN'T THERE A RISK THAT IF WE START DOWN THIS PATH, WE ARE

NOT GOING TO KNOW WHAT WE
HAVE TO PRODUCE AND WHEN AND
ALL THOSE CIRCUMSTANCES IN
LIGHT OF ALL THE CASES THAT
SAY THIS IS APPLICABLE.

THAT RULE MAY LEAD PEOPLE
NEVER TO PUT ANYTHING IN
WRITING.

AND WE MAY NEED TO REWORK
IT.

ISN'T THE STATE CORRECT IN
THEIR ANALYSIS WITH REGARD
TO WHAT THIS RULE IS AND
WHAT IT WAS DESIGNED FOR AND
HOW IT HAS BEEN INTERPRETED
IN THE PAST?

>> I DISAGREE WITH THAT.

>> EXPLAIN WHY.

>> THE FOURTH DISTRICT'S
DECISION IS THE CORRECT
LEGAL MEANING AND RELIES ON
THE TERM INCLUDES WHICH IS A
BROADER OR MORE ENCOMPASSING

--

>> NO ONE HAS TAKEN THAT
APPROACH.

>> THAT IS CORRECT.

I WOULD SUBMIT THE HOLDING
WE ARE ASKING THIS COURT TO
HOLD IN THIS CASE IS NOT
THAT ALL ORAL STATEMENTS
SHOULD BE DISCLOSED PURSUANT
TO THIS RULE.

>> THAT WOULD BE THE RESULT
IF WE USED THAT
INTERPRETATION.

>> I DISAGREE.

BASED ON THE READING OF THE
FOURTH DISTRICT'S DECISION
THE FOURTH DISTRICT WAS VERY
PARTICULAR IN HOLDING ITS
DECISION TO THE FACTS OF

THIS CASE.

BASED ON THIS COURT'S RULING
IN SCIPIO V. STATE.

>> WE ARE NOT DISCUSSING THE
RULE.

IF WE INTERPRET THAT RULE TO
INCLUDE ORAL STATEMENTS IT
MEANS ALL OF THEM.

IT IS NOT JUST LIMITED.

IT DOESN'T SAY THE FACTUAL
SITUATION, IT SAYS WHAT IT
SAYS AND IF YOU INTERPRET
THAT ONE WORD TO PLACE ORAL
STATEMENTS WITHIN THE RULE
THAT WOULD MEAN ALL ORAL
STATEMENTS, WOULDN'T IT?

>> I DON'T THINK THE COURT
HAS TO READ IN THAT WAY.

>> HOW WOULD WE LIMIT IT?
WHAT WILL DO YOU PROPOSE IF
THAT IS NOT THE RULE THAT
JUSTICE LEWIS HAS BEEN
SUGGESTING?

HOW WOULD IT BE LIMITED?

>> THE RULE I PROPOSE THIS
COURT ADOPT OR HOLD IN THIS
CASE IS IF THE STATE INTENDS
TO USE AN ORAL STATEMENT OR
KNOWS THERE IS A POSSIBILITY
OF USING IT THEN IT IS
REQUIRED TO DISCLOSE IT
ACCORDING TO THE PRINCIPLES
RECOGNIZED IN SCIPIO V.

STATE TO AVOID SURPRISE OR
TRIAL BY AMBUSH.

>> IF THE STATE ASKED THE
QUESTION I SEE THAT BUT THE
STATE DIDN'T ASK THE
QUESTION.

THE DEFENSE ASKED THE
QUESTION.

I CAN GET INTO THE MIND BUT

HAD THE STATE ASKED THE QUESTION I WOULD AGREE.

BUT THE DEFENSE DID.

>> IT WAS STILL WITHIN REASONABLE PROBABILITY OR POSSIBILITY THAT BAKESA MCFADDEN WOULD BE TALKING ABOUT THIS PRIOR CONVERSATION GIVEN THAT SHE TALKED ABOUT IT IN HER DEPOSITION THAT HER VERSION OF THE STATEMENT DIFFERS SUBSTANTIALLY --

>> WHAT DID SHE SAY ABOUT THAT IN HER DEPOSITION?

>> HER VERSION IS THAT JOSEPH EUGENE MCFADDEN'S GIRLFRIEND WAS LIVING IN AND THE HOUSE WITH THEM WITH A WARRANT TO OPEN FOR HER ARREST AND SHE WAS AFRAID THEY WOULD GET IN TROUBLE FOR ALLOWING HER TO SAVE. THERE WAS NO MENTION OF DRUGS OR SHOTGUN.

>> THE DEPOSITION THAT WAS GIVEN --

>> THAT IS THE DEPOSITION IN THIS CASE.

>> THAT WAS NOT THE EARLIER DEPOSITION.

>> I DON'T UNDERSTAND.

>> THAT STATEMENT I TALKED TO DEPUTY RAY ABOUT, THE GIRLFRIEND, MIGHT HAPPEN TO HER, DOES INCLUDE THE FACT THAT THERE WERE OTHER THINGS SAID.

>> NOT DEFINITELY BUT LATER IN THE DEPOSITION THE LAST THING BAKESA MCFADDEN SAYS IS SHE REFERS TO AN

UNDERSTANDING THESE ALLEGATIONS ABOUT A SHOTGUN. SHE IS REFERRING TO THE ALLEGATIONS OF THIS CRIME BUT SHE IS REFERENCING NOT UNDERSTANDING WHY A SHOTGUN IS ALLEGED TO BE INVOLVED. THAT IS THE ONLY STATEMENT IN HER DEPOSITION WHEN SHE TALKS ABOUT A SHOTGUN.

>> THE COURT LOOKED AT A SIMILAR SITUATION.

WHAT YOU ARE PROPOSING AS A RULE FOR THE DISCLOSURE WOULD REQUIRE THE PROSECUTOR TO REPORT AND DISCLOSE VIRTUALLY ANY CASE RELATED CONVERSATION WITH AN INVESTIGATOR.

THE ARGUMENT THAT EVERYTHING -- NEVER HAD A CONVERSATION WITH ANYBODY, WOULD HAVE TO BE SOMEHOW DISCLOSED BECAUSE YOU NEVER KNOW WHAT MAY COME UP IN THE COURSE OF A TRIAL.

>> THE DISTINCTION BETWEEN THAT STATEMENT AND THIS CASE IS THE QUESTION WHETHER THE STATE INTENDS TO USE IT AT TRIAL OR KNOWS THAT IT COULD BE USED AT TRIAL.

I AGREE IT IS NOT REALISTIC TO THINK PROSECUTOR COULD DISCLOSE EVERY POSSIBLE ORAL STATEMENT EVERY WITNESS MAKES WITH REGARD TO A CASE BUT IF THE PROSECUTOR KNOWS ABOUT THE ORAL STATEMENTS AND THE POSSIBILITY IT WILL COME UP AT TRIAL IT SHOULD BE REQUIRED TO BE DISCLOSED BECAUSE OF THE PURPOSE OF --

>> HOW DO YOU DETERMINE
PROBABILITY?

>> THE EFFECT OF THIS CASE
ILLUSTRATES THE PROSECUTOR
KNEW AHEAD OF TIME THAT
BAKESA MCFADDEN'S VERSION
DIFFERED FROM DEPUTY RAY'S
VERSION.

>> BUT YOU AGREE WHAT SHE
SAID DOES NOT MEAN THERE
WERE OTHER PARTS TO THE
CONVERSATION.

I AM STRUGGLING, IF WE
ACCEPT THAT THERE SHOULD BE
AN EXCEPTION TO THE FACT
THAT YOU DON'T HAVE TO DO
ORAL STATEMENTS.

HOW DO YOU DETERMINE NOT
JUST THIS CASE BUT ANY CASE,
WHETHER OR NOT AS A
POSSIBILITY TO USE THE
STATEMENT?

>> THAT WOULD HAVE TO BE ON
A CASE BY CASE BASIS.

AND IT WOULD DEPEND ON THE
FACTS OF EACH CASE.

HERE I ARGUE THAT IT IS
FAIRLY CLEAR THE PROSECUTOR
KNEW ABOUT THIS STATEMENT.

THEY HAD IT AT THE
FINGERTIPS AS SOON AS BAKESA
MCFADDEN TESTIFIED.

THE PROSECUTOR IMMEDIATELY
KNEW WHAT WITNESS THEY HAD
TO CALL WHEN THE PROSECUTION
WAS MADE.

>> THERE WAS A POSSIBILITY.

[LAUGHTER]

>> OF THE PROSECUTOR DIDN'T
KNOW ABOUT IT AHEAD OF TIME,
LET'S SAY BAKESA MCFADDEN
TESTIFIED AND THERE WAS A

LUNCH BREAK AND THE PROSECUTOR BUMPS INTO THE OFFICER IN THE COFFEE SHOP AND BAKESA MCFADDEN JUST SAID THIS, SHE CAME TO MY OFFICE LAST NIGHT AND TOLD ME TO GET RID OF THIS GUN AND THEN HE CALLS THE OFFICER.

WOULD THAT MAKE A DIFFERENCE?

>> I DON'T THINK IT WOULD.

>> THAT IS WHAT HAPPENED IN BURKES V. STATE.

>> NOT EXACTLY.

>> THE OFFICER WENT OUT TO LOOK AT PAINT MARKS ON THE ROAD AND FOUND THAT THEY WEREN'T THERE.

HOW IS THAT DIFFERENT?

>> IN BURKES V. STATE IT WAS A CONTINUING INVESTIGATION. THE FACTS THAT LED TO THAT STATEMENT AROSE AFTER THE DEFENSE WITNESS TESTIFIED.

THERE'S A FACTUAL DISTINCTION IN OUR CASE WHERE THE CONVERSATION WAS OUT THERE AND DEPUTY RAY AT LEAST KNEW ABOUT IT.

>> THE PROSECUTOR DID NOT KNOW THAT RAY KNEW ABOUT IT. I THINK IT WOULD BE A DIFFERENCE UNDER YOUR ARGUMENT.

>> THAT COULD POSSIBLY BE A DIFFERENCE.

BUT I EMPHASIZE THAT WAS NOT THE SITUATION WE HAD HERE OR THE BASIS OF THE DISTRICT'S RULE.

WHAT THIS BOILS DOWN TO IS

THERE IS A CHOICE BETWEEN
REQUIRING DISCLOSURE OR
ALLOWING THE DEFENSE TO BE
SURPRISED AT TRIAL.

THIS COURT HAS SAID THAT
WHEN FACED WITH THAT CHOICE
THE DECISION IS CLEAR THAT
IT MUST BE DISCLOSURE IN
ORDER TO AVOID PRIVATE
TRIAL.

>> YOU SAY THE PROSECUTOR
SAID ANTICIPATE THE
DEFENDANT, ONE EXTRA
QUESTION HE SHOULD HAVE
ASKED HAD HE NOT ASK THE
QUESTION THAT CAME UP.
HOW DO YOU ANTICIPATE THAT?

>> I DON'T AGREE NECESSARILY
THAT THAT IS WHAT HAPPENED.
WE HAVE NO IDEA FROM THE
RECORD -- ASSUMING THAT IS
WHAT HAPPENED, I STILL THINK
THE FACTS OF THIS CASE, THAT
THAT WAS A REASONABLE
POSSIBILITY.

MAYBE NOT IN THE CONTEXT OF
WHETHER OR NOT THERE WAS A
SHOTGUN IN THE HOUSE BUT
CERTAINLY THE FACT OF WHAT
THE PRIOR CONVERSATION WAS
ABOUT.

>> THE FACT OF THAT PRIOR
CONVERSATION HAVE EVER COME
UP --

>> QUITE FRANKLY, I COULD
SEE A SITUATION WHERE THE
PROSECUTOR WOULD HAVE ASKED
BAKESA MCFADDEN ON
CROSS-EXAMINATION --

>> WHOSE WITNESS?

>> SHE WAS LISTED AS STATE'S
WITNESS ON THE INITIAL

DISCOVERY AND WAS ALSO LISTED AS A DEFENSE WITNESS AND CALLED BY THE DEFENSE.

>> THEY CALLED HER BECAUSE THEY KNEW FROM HER DEPOSITION THAT SHE WOULD SAY HE DIDN'T HAVE THE GUN. THE DEFENSE CALLED HER AS A WITNESS.

>> THEY CALL HER AS A FACT WITNESS.

>> TO RELAY THE FACT OF WHAT HAPPENED DURING THE ALTERCATION.

>> SHE SAW MR. MCFADDEN GOING BACK TO THE HOUSE AND DID NOT HAVE A SHOTGUN IN HIS HAND OR STEREO SPEAKERS.

>> IN A DEPOSITION.

SO THE STATE KNEW THAT SHE WAS GOING TO GET ON THE STAND WHETHER THEY CALL HER OR SOMEONE ELSE CALLED HER AND SAY HE DID NOT HAVE A SHOTGUN IN HIS HANDS WHEN HE CAME BACK TO THE HOUSE.

>> WHAT POINT WAS THE KNOWLEDGE OF SELF-DEFENSE IN THE CASE?

>> THAT WAS BROUGHT UP FROM THE BEGINNING BECAUSE --

>> BEGINNING OF WHAT?

>> THE BEGINNING OF THE INVESTIGATION.

>> IT SEEMS TO ME THIS GOES TO THE ISSUE OF SELF-DEFENSE AND THAT IS THE QUESTION OF HAVING A GUN AND BEING CONCERNED ABOUT THE GUN. THAT GOES TO WHETHER SOMEONE IS BEING OFFENSIVE WITH A WEAPON.

IT SEEMS THIS IS PART OF THE STORY FROM DAY ONE.

>> THE PRIOR CONVERSATION REFERENCED THE SAWED-OFF SHOTGUN AS REFERRED TO BY THE WITNESSES.

THAT GUN WAS NEVER FOUND AND NEVER INTRODUCED AT TRIAL.

>> THIS WAS IN MARTIN COUNTY.

A DEPUTY SHERIFF.

ANY QUESTION ABOUT WHY HE HAPPENED TO FIND THE CORRECT PROSECUTOR AND A TOTALLY DIFFERENT CASE WITH THIS INFORMATION?

>> DEPUTY RAY HAD SOME INVOLVEMENT THE DAY AFTER THE CRIME.

>> HE WAS INVOLVED THOSE DAYS.

>> THE DAY BEFORE THE CRIME, BAKESA MCFADDEN WENT TO THE JAIL, HAPPENED TO SPEAK TO DEPUTY RAY.

HE WAS THE PERSON AT THE DESK AND THERE WAS PERHAPS ONE OTHER PERSON ALSO.

SHE GAVE HIM THIS INFORMATION ABOUT THE WOMAN IN THE HOUSE OR THE SAWED-OFF SHOTGUN.

THE FOLLOWING DAY -- THE FOLLOWING DAY WHEN THE CRIME HAPPENED SHE BECAME AWARE OF THE FACT THAT STEREO SPEAKERS WERE IN A NEIGHBOR'S YARD.

SHE CALLED DEPUTY RAY --

>> THIS DEPUTY IS INVOLVED IN THIS CASE.

>> THE CHIEF ASKED HIS

INVOLVEMENT THE DAY AFTER.
IT WAS NEVER BROUGHT UP THAT
HE HAD INTERACTION THE DAY
BEFORE.

>> LET ME ASK A QUESTION.
I AM CURIOUS ABOUT
SOMETHING.

IT LOOKS LIKE THIS ENTIRE
INCIDENT OCCURRED IN THE
FRONT YARD OF YOUR CLIENT'S
HOME.

AM I CORRECT?

>> IN THE GENERAL AREA.

>> WAS IT BURGLARY?

>> THE VICTIM'S CAR.

HE WAS ALLEGED TO HAVE TAKEN
STEREO SPEAKERS OUT OF THE
CAR.

I BELIEVE IT WAS A FIREARM.

>> BURGLARIZE HIS OWN
PROPERTY?

>> HOW MUCH TIME THAT WE
HAVE BEEN TALKING ABOUT, SHE
CAN SEE HER BROTHER WITH ANY
KIND OF WEAPON COMING BACK
TO THE HOUSE.

HOW MUCH TIME -- WHAT KIND
OF TIME HAD ELAPSED BETWEEN
THE BEATING AND HIM COMING
BACK TO THE HOUSE?

>> SHE IS NOT VERY SPECIFIC.
JUST A GENERAL TIME FRAME.
SHE WAS SITTING IN THE YARD
AND FROM THE VICTIM'S
TESTIMONY WAS THE SAME
GENERAL TIME FRAME BUT IT IS
NOT SPECIFIC.

>> I AM TRYING TO VISUALIZE,
WAS THE VICTIM STILL ON THE
PREMISES AT THIS POINT?
DID THE VICTIM DRIVE OFF AT
SOME POINT?

>> THE VICTIM AND HIS FRIEND
GOT BACK INTO THE TRUCK AND
DROVE AWAY.

THE FIGHT OCCURRED --

>> WE DON'T KNOW HOW MUCH
TIME AND WHETHER THERE WAS
TIME TO DESTROY A WEAPON.

>> WE HAVE NO IDEA HOW MUCH
TIME ELAPSED.

I WOULD LIKE BRIEFLY TO
ADDRESS THE FIRST ISSUE THAT
I RAISED -- THE TRIAL COURT
-- THE FOURTH DISTRICT WAS
CORRECT TO REVERSE THIS FOR
A NEW TRIAL.

SPECIFICALLY DEPUTY RAY --

>> ON THE BASIS OF THIS
REVERSAL HERE?

>> THE COURT ACKNOWLEDGED
THERE WAS NO RICHARDSON
INQUIRY BUT IT SPECIFICALLY
FOUND THIS ORAL STATEMENT IF
IT WAS AN ORAL STATEMENT
SHOULD HAVE BEEN DISCLOSED.
WE ARE NOT SURE IF IT WAS
PURELY AN ORAL STATEMENT OR
IF IT WAS WRITTEN IN A
REPORT BECAUSE THERE WAS NO
RICHARDSON INQUIRY DEPUTY
RAY SAID HE HIMSELF DID NOT
WRITE A REPORT ABOUT IT BUT
PASS THE INFORMATION TO
ANOTHER OFFICER AND WE DON'T
KNOW IF THE OTHER OFFICER
WROTE A REPORT ABOUT IT.
IF THAT OFFICER DID WRITE A
REPORT IT WOULD FALL INTO
THE STANDARD GENERALLY
ACCEPTED DEFINITION OF A
STATEMENT THAT NEEDS TO BE
TURNED INTO THE DEFENSE.
BASED ON THOSE ARGUMENTS I

ASK THIS COURT TO APPROVE
THE FOURTH DISTRICT'S
REQUEST FOR A NEW TRIAL.

>> MAY IT PLEASE THE COURT.
THREE QUICK POINTS.

IT WOULD NOT FALL WITHIN
THAT INVESTIGATIVE REPORT.
THAT SECTION STATES IT WOULD
BE INVESTIGATIVE REPORTS IN
CONNECTION WITH THE CASE.

>> THAT WAS SO CLOSE IN TIME
ABOUT THE SAME DEFENDANT,
THE SAME HOUSE, THE SAME
GUN.

IT SEEMS TO ME IT CERTAINLY
FITS, THIS HAD TO DO WITH
THE CRIME.

>> I AM NOT SURE WE CAN SAY
ALLEGEDLY THE SAME GUN.

THE TESTIMONY OF A SAWED-OFF
SHOTGUN, THERE IS TESTIMONY
THAT HE HAD A .22 RIFLE THAT
HIS FATHER DID.

I DON'T THINK WE CAN SAY
THAT THE GUN SHE SAYS TO
OFFICER RAY SHE SAW IN THE
HOUSE IS THE GUN THAT HE
USED TO BEAT MR. RITTER.

SLIPPERY SLOPE ARGUMENT.

THIS IS A BIG CONCERN.

WHERE DO YOU STOP?

IF YOU SAY THE WORD INCLUDES
THE FIRST TIME IT IS SAID

MEANS ANY ORAL STATEMENT,
NOW WE REQUIRE THE DEFENSE
TO TELL US THERE'S THEORY OF
DEFENSE SO WE KNOW ANY ORAL
STATEMENT BECOMES RELEVANT

DO WE STOP WITH ORAL
STATEMENTS?

>> WHY IS THIS ARGUMENT WITH
REGARD DURING THE RICHARDSON

HEARING TO DETERMINE IF THE STATEMENT WAS REDUCED TO WRITING IN A REPORT SOME PLACE?

IF YOU ACCEPT PRETTY CLOSE, THE PREMISE -- YOU MAY NOT, BUT IF YOU ACCEPT THE PREMISE THAT YOU TALK ABOUT A SHOTGUN, SAME HOUSE, SAME PERSON, DAY BEFORE AND CONCERN, WHY WOULD YOU NOT -- WHAT ARE THEY WRONG THAT YOU SHOULD HAVE CONDUCTED A RICHARDSON HEARING TO FIND OUT THESE THINGS?

HAS THERE BEEN A VIOLATION?

>> THAT WOULD HAVE SAID THIS IS NOT A DISCOVERY VIOLATION.

>> WHY IS THAT?

>> BECAUSE --

>> I AM NOT REMEMBERING IT.

>> I WILL BE SHOWING YOU IN THAT.

>> YOU DON'T REMEMBER EITHER AND YOU THOUGHT YOU CAUGHT ME.

>> I HAVE TO FIND MY CHEAT SHEET AND IT ISN'T HELPING ME A LOT AT THIS MOMENT. THIS WAS A CASE OF THEY WHY MANSLAUGHTER.

BURKES V. STATE THE INVESTIGATOR SAW MARKS ON THE ROAD AND PUT PAINT ON THE ROAD AND WAS ASKED THE DAY OF THE TRIAL TO GO BACK OUT BECAUSE A DEFENSE WITNESS WAS GOING TO TESTIFY THAT HE WENT TO THE SCENE 12 MONTHS AFTER THE INCIDENT AND COULD SEE THE PINK.

THE INVESTIGATOR WAS CALLED
BACK TO TESTIFY THE PAINT HE
USED WAS TEMPORARY AND
DISSOLVED WITHIN THREE
MONTHS.

HE WENT TO THE SCENE TO LOOK
AT IT AND THE COURT HELD THE
PROSECUTOR WAS NOT REQUIRED
UNDER RULE 3.220 TO REVEAL
THE INVESTIGATOR'S ORAL
STATEMENT TO HIM THAT HE HAD
GONE TO THE SCENE AND THE
PAINT WASN'T --

>> TO MAKE THAT
DETERMINATION?

>> NOT REQUIRED TO CONDUCT A
RICHARDSON HEARING BECAUSE
IT WAS NOT A VIOLATION OF
THE RULE.

>> YOU DON'T KNOW UNTIL YOU
KNOW IF IT IS WRITTEN DOWN.

>> THIS IS THE POINT.

WHERE DO WE STOP?

AT GESTURES OR SIGN LANGUAGE
OR MINDS?

HOW FAR DO WE GO?

>> THIS PARTICULAR ASPECT IS
IF THERE WAS A REPORT THAT
WAS GENERATED IN CONNECTION
WITH THE CONTACT MADE THE
DAY BEFORE THE CRIME
OCCURRED, THAT IS NOT
FOLLOWED IN THE SCOPE OF THE
WRITTEN STATEMENTS UNDER THE
RULE BECAUSE IT WAS NOT A
STATEMENT PREPARED FOR IN
CONNECTION WITH THE CASE.

>> EXACTLY.

THE STATE RESPECTFULLY URGES
THE COURT TO QUASH THE
DECISION OF THE COURT BELOW.

>> THANK YOU FOR YOUR

ARGUMENTS TODAY.
COURT WILL BE IN RECESS
UNTIL TOMORROW MORNING.
>> PLEASE RISE.