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David Bautista v. State of Florida

THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE OF COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, EVERYONE. WELCOME TO THE FLORIDA SUPREME COURT. APPRECIATE COUNSEL BEING READY TO GO ON THE FIRST CASE. BAUTISTA VERSUS STATE. IF COUNSEL IS READY, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. DAVID McPHERRIN OF THE PUBLIC DEFENDERS OFFICE ON BEHALF OF DAVID BAUTISTA. A JURY FOUND MR. BAUTISTA GUILTY OF FIRST-DEGREE MANSLAUGHTER AND FIRST-DEGREE FELONIES, BASED UPON HIS FAILURE TO REMAIN AT THE SCENE OF THE MOTOR VEHICLE CRASH, TO COMPLY WITH THE REQUIREMENTS OF FLORIDA STATUTES. AS A RESULT OF THOSE CONVICTIONS, THE PETITIONER WAS SENTENCED TO CONCURRENT TERMS OF 28 3 AND-A-HALF MONTHS OF PRISON.

COULD YOU SPEAK UP JUST A LITTLE.

SURELY. THE EVIDENCE INTRODUCED AT TRIAL ESTABLISHED THAT THE PETITIONER, WHILE DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL, RAN A RED LIGHT, CRASHING INTO ANOTHER CAR AND KILLING BOTH OF ITS OCCUPANTS. ON APPEAL ON THE FOURTH DISTRICT, PETITIONER ARGUED THAT THE UNIT OF PROSECUTION FOR DUI MANSLAUGHTER PREVENTED HIM FROM BEING CONVICTED OF MULTIPLE COUNTS OF THAT OFFENSE. THE COURT DISAGREED BUT CERTIFIED A QUESTION OF PUBLIC IMPORTANCE TO THIS COURT AND ASKED WHAT IS THE PROSECUTION FOR DUI MANSLAUGHTER AND THAT BRINGS ME TO THE QUESTION BEFORE YOU THIS MORNING. IF I MIGHT FOR A MOMENT, I WILL LET THE COURT KNOW WHAT I AM NOT ASKING YOU TO DO IN THIS CASE. THERE ARE TWO THINGS I AM NOT ASKING YOU TO DO. ONE, I AM NOT ASKING YOU TO HOLD THAT THE FLORIDA LEGISLATURE IS POWERLESS TO MAKE EACH INDIVIDUAL DEATH A SEPARATE OFFENSE. CLEARLY THE FLORIDA LEGISLATURE CAN DO THAT. THE SECOND THING I AM NOT ASKING YOU TO DO IS TO MAKE PUBLIC POLICY OF THE RULE OF CONVICTIONS FOR DUI MANSLAUGHTER. WHAT I AM ASKING YOU TO DO IS TO HOLD THAT 316.1933, WHICH IS THE DUI MANSLAUGHTER STATUTE, AS CURRENTLY WORDED, DOES NOT AUTHORIZE MORE THAN A SINGLE CONVICTION FOR DUI MANSLAUGHTER, WHEN THE DEATHS OCCUR DURING A SINGLE EPISODE OF DRIVING UNDER THE INFLUENCE.

COUNCIL, YOU BASE YOUR -- COUNSEL, YOU BASE YOUR ARGUMENT ON WATTS? AND GRAPPIN?

SURE. I THINK GRAPPIN WAS THE FIRST CASE AND WATTS CAME SHORTLY AFTER AND THEN TWO OR THREE OR FOUR OR FIVE YEARS AGO, THERE WAS A RECESSING -- -- A RESISTING ARREST WITH VIOLENCE CASE, AND THE BOTTOM LINE OF THAT IS THERE IS A CRITICAL DIFFERENCE BETWEEN THE WORDS "A" AND "ANY". I AM NOT AN ENGLISH MAJOR, BUT "A" IS A DEFINITE ARTICLE, AND WHEN YOU USE THE WORD "A" YOU ARE TALKING ABOUT ONE SPECIFIC THING, WHETHER A FIREARM, ONE SPECIFIC THING, ONE SPECIFIC OFFICER OR ONE SPECIFIC HUMAN BEING, WHICH WOULD BE THE CASE IN DUI MANSLAUGHTER. "ANY" IS NOT DEFINITE. "ANY" DESCRIBES IT AS ONE OR MORE. IT IS ALSO DEFINED AS USED TO INDICATE AN UNDETERMINED AMOUNT OR NUMBER, SO ANY --

ALSO, IT DOES, IN FACT, THE DICTIONARY DEFINITION DOES, IN FACT, SAY "ONE", DOESN'T IT?

IT COULD BE ONE, BUT NO, IT IS ONE OR MORE, AND I THINK THAT IS TOGETHER.

THERE IS, AND ALSO A DEFINITION THAT JUST SAYS ONE, SO HOW DO WE DEAL WITH THE FACT THAT THE WORD "ANY" CAN MEAN ONE?

I THINK THAT THE PROBLEM WITH THAT IS THAT, BECAUSE IT CAN MEAN MORE THAN ONE, IT HAS MULTIPLE MEANINGS, AND THEREFORE, IN THIS SITUATION, WE WOULD HAVE TO DIVINE WHAT DOES IT MEAN. AND THIS COURT HAS PREVIOUSLY HELD, AND IN RELYING, ALSO, ON A CASE FROM THE UNITED STATES SUPREME COURT, LADNER, WHICH YOU RELIED ON HEAVILY IN WALLACE, THAT "ANY" GIVES RISE TO AMBIGUITY.

WHAT ABOUT THERE IS ANOTHER DICTIONARY DEFINITION FOR THE WORD "ANY" THAT SAYS "USED TO INDICATE ONE SELECTED WITHOUT RESTRICTION." SO THERE AGAIN, WE HAVE THE WORD "ONE" IN THE DEFINITION FOR ANY. I AM INTERESTED IN HOW WE GET AROUND THE FACT THAT THE DICTIONARY DEFINITION DOES, IN FACT, SAY ONE.

WELL, BECAUSE IT, ALSO, AND I GUESS BECAUSE IT ALSO HAS MULTIPLE DEFINITIONS AND THAT IS WHERE THE AMBIGUITY ARISES, UNLESS WE ARE TOLD SOMEWHERE IN THE STATUTE SPECIFICALLY, THAT ONE OF THOSE DEFINITIONS IS BEING CHOSEN OVER THE OTHER, CERTAINLY I THINK IF THE STATUTE SAID, AND IT WOULDN'T EVEN HAVE TO SAY "A" HUMAN BEING, BUT IF THE STATUTE THAT WE INTENDED THAT EACH PERSON THAT WAS KILLED IS GOING TO BE A SEPARATE UNIT OF PROSECUTION, THEN THE FACT THAT THE LEGISLATURE WOULD HAVE USED "ANY" WOULD BE CLARIFIED IN THAT CONTEXT, SO WE WOULD KNOW WHAT DEFINITION THEY USED.

HAVEN'T WE, THOUGH, ONLY USED THIS "A" AND "ANY" AS ONE OF THE TOOLS TO TRY TO DETERMINE LEGISLATIVE INTENT? WHY ISN'T THIS A CASE OF, REALLY, SORT OF A GOOD SENSE LOOK AT THIS? TWO PEOPLE HAVE BEEN KILLED. MANSLAUGHTER IS THE OFFENSE THAT WE ARE TALKING ABOUT. IT SEEMS TO ME THAT, UNDER ANY LOOK AT THIS, YOU WOULD THINK THAT THERE IS TWO DEATHS, THERE ARE TWO MURDERS OR TWO MAN SLAUGHTERS, IN OTHER WORDS, THAT THIS IS THE GIST OF THE OFFENSE THAT IS BEING DESCRIBED IN THIS STATUTE, SO WOULDN'T THIS APPEAR TO BE A RELIANCE ON A VERY OVERLY TECHNICAL USE OF THE WAY THAT WE HAVE UTILIZED THOSE TESTS? I THINK APPROPRIATELY BEFORE, IN TERMS OF TRYING TO DETERMINE LEGISLATIVE INTENT. WHY ISN'T THIS JUST ONE OF THOSE GOOD SENSE, SURELY THE LEGISLATURE, IN DEN ONLY NATURING THIS AS A -- IN DENOMINATING THIS AS A MANSLAUGHTER OFFENSE, DETERMINED THAT EACH PERSON THAT YOU CALL, THAT IS A VICTIM, YOU ARE GOING TO BE RESPONSIBLE FOR VIOLATING THAT DEATH, FOR THIS MANSLAUGHTER LAW. I AM HAVING TROUBLE WITH CARRYING THIS AND IT BEING OVERLY TECHNICAL RELIANCE, WHEN ALL OTHER INDICATIONS IT APPEARS TO ME, WOULD BE THAT THE LEGISLATURE INTENDED THAT THIS BE TWO OFFENSES, IF YOU KILL TWO PEOPLE, BECAUSE THAT IS THE GIST OF THE OFFENSE.

I AGREE WITH YOU THAT THE DISTINCTION BETWEEN "A" AND "ANY" IS NOT DISPOSITIVE. I AM NOT SAYING IF YOU HAVE "A" AS OPPOSED TO "ANY" THAT YOU HAVE TO LOOK AT IT IN A DIFFERENT WAY. I ALSO AGREE WITH YOU WHEN YOU SAY DON'T WE LOOK AT THIS IN A COMMONSENSE WAY, AND I AM NOT SO NAIVE AS TO THINK THAT THERE AREN'T EYEBROWS RAISED WHEN THIS ARGUMENT WAS MADE. I THINK THAT IS A NATURAL REACTION TO THIS. HOWEVER, IN TERMS OF THIS STATUTE, DUI MANSLAUGHTER, USING THE TERM OF "ANY" HUMAN BEING -- HUMAN BEING, YOU ALSO HAVE THE MURDER AND THE HOMICIDE, IN EACH OF THOSE INSTANCES, THE LEGISLATURE HAS CLEARLY SAID THAT IT IS A CRIME TO KILL "A" HUMAN BEING.

IF YOU ARE SUGGESTING, I THINK, THE LEGISLATURE HAD INTRODUCED THE LANGUAGE, IF YOU

KILL ANY HUMAN BEING WITH PREMEDITATION AND MALICE AFORETHOUGHT AND ALL OF THOSE THINGS, THAT YOU WOULD BE GUILTY OF FIRST-DEGREE MURDER, AND THEN SOMEBODY COMES IN AND SAYS, WELL, I KILLED TWO PEOPLE, AND YOU KNOW, WHEN I SPRAYED THE CAR WITH THE MACHINE GUN, AND THE STATUTE SAYS THAT IF YOU KILL "ANY" HUMAN BEING, AND IT JUST SEEMS TO MAE THAT QUITE CANDIDLY THAT THAT WOULD BE PREPOSTEROUS, IS WHERE, SO HELP ME, HELP ME WITH THAT, IF THE LEGISLATURE SAID IF YOU KILL ANY HUMAN BEING WITH PREMEDITATION, MALISSA FORE THOUGHT, AND ALL OF THE OLD -- MALICE, AFORETHOUGHT, AND ALL OF THE OLD ENGLISH RULES FROM OUR MAJOR, THAT YOU WOULD BE GUILTY OF FIRST-DEGREE MURDER. I CAN'T IMAGINE A COURT SAYING THAT, WELL, BECAUSE THEY USED THE WORD "ANY", THAT THEY COULD HAVE KILLED A NUMBER OF PEOPLE IN THAT VEHICLE, AND THEY ARE STILL ONLY GOING TO BE GUILTY OF ONE OFFENSE.

WELL, IF ALL OF THE STATUTES IN FLORIDA USED "ANY" WHEN THEY TALKED ABOUT KILLING A PERSON, FIRST-DEGREE MURDER SAID PREMEDITATION, ANY PERSON, I DON'T THINK I WOULD BE RAISING THIS ARGUMENT, BECAUSE THERE WOULDN'T BE ANY EVIDENCE OR ANY INDICATION THAT THE LEGISLATURE HAD A DIFFERENT VIEW FOR ONE CRIME AS OPPOSED TO THE OTHER. THEY WOULD HAVE USED THE SAME WORD IN EVERY INSTANCE, AND I THINK I WOULD PROBABLY AGREE WITH YOU THERE, BUT WE DO HAVE A DIFFERENT WORD IN THIS STATUTE, WHICH INDICATES THE LEGISLATURE MEANT SOMETHING DIFFERENT. SECONDLY, I THINK, YOU LOOK AT ONE OF THE OTHER TOOLS THAT YOU CAN TAKE, WHEN YOU LOOK AT WHAT THE UNIT OF PROSECUTION IS, AND SAY WHAT IS THE PURPOSE OF THIS STATUTE, AS OPPOSED TO STATUTES IN 782. I DON'T THINK WE HAVE ANY QUESTION THAT THOSE OFFENSES THAT APPEAR IN CHAPTER 782, THE PURPOSE OF THOSE IS TO PROTECT INDIVIDUAL INTEGRITY, BODY INTEGRITY FROM HARM FROM WRONGDOERS, FIRST-DEGREE MURDER, MANSLAUGHTER, VEHICULAR HOMICIDE. THE QUESTION HERE IS, IS THAT THE PURPOSE OF DUI MANSLAUGHTER? IF THAT IS THE ONLY PURPOSE THAT IS TO PROTECT A PERSON FROM HAD SOMEONE COMMITTING A ACT OF VIOLENCE AGAINST THEM, THEN EACH INDIVIDUAL WOULD BE THE SUBJECT OF VIOLENCE FOR PROSECUTION, BUT I THINK THERE IS ANOTHER PLAUSIBLE PURPOSE FOR THE DUI MANSLAUGHTER STATUTE, AND I AM NOT SAYING THAT PROTECTING PEOPLE IS NOT A PLAUSIBLE PURPOSE FOR IT. IT MAY HAVE MORE THAN ONE PURPOSE, BUT I THINK YOU COULD, ALSO, SAY THAT THE D UMPLT I MANSLAUGHTER -- THE DUI MANSLAUGHTER STATUTE IS THERE TO DETER PEOPLE DRIVING UNDER THE INFLUENCE OF ALCOHOL, AND WE HAVE ONE STATUTE THAT DEALS WITH IT, AND THE PENALTIES GET STIFFER, BASED ON WHAT THE CONSEQUENCES ARE OF YOUR DRIVING UNDER THE INFLUENCE. YOU HURT YOU DAMAGE PROPERTY IT IS A MISDEMEANOR, SERIOUS BODILY INJURY, IT IS A FELONY, MANSLAUGHTER IS A SECOND-DEGREE FELONY.

YOU ARE SAYING WHAT THE STATE SHOULD DO IS CHARGE ONE OF THESE DEATHS AS MANSLAUGHTER BY RECKLESS DRIVING, FOR INSTANCE, AND THEN JUST CHARGE ONE OF THEM AS THIS. I ASSUME, THEN, THAT THERE WOULD BE AN ARGUMENT ABOUT DOUBLE JEOPARDY, BUT WHY COULDN'T THE STATE JUST USE THE RECKLESS DRIVING?

I CAN THAT -- I THINK THAT IS SOMETHING THAT MIGHT POSSIBLY COME UP, IF YOU GET SUGGESTIVE REASONING HERE. WHY NOT DUI MANSLAUGHTER FOR THE ONE CRIMINAL ACT AND THEN WHAT CAN WE DO WITH THE OTHER?

DOES THAT POINT OUT THE SORT OF SERIOUSNESS THAT THE STATE, THAT THEY HAVE TO, THAT WE ARE GOING TO CONSTRUE THIS STATUTE IN SUCH AWAY THAT, TO INCLUDE TWO VICTIMS, YOU HAVE GOT TO MAKE AN END RUN. YOU HAVE GOT TO, YOU KNOW, TO DO SOMETHING ELSE HERE.

I AGREE WITH YOU FROM THE PERSPECTIVE OF THE LEGISLATURE, BUT I THINK THE COMMON SENSE RATIONALE HAS TO BE DONE CLEARLY AND IN AN UNAMBIGUOUS MANNER, AND IF IT DOESN'T DO SO, I THINK COMMON SENSE IS NICE BUT WE HAVE THIS DUE PROCESS CLAUSE THAT PEOPLE HAVE TO BE PUT ON NOTICE.

IT SEEMS TO ME THAT IT IS HARD TO COME TO THE CONCLUSION THAT, ANY OTHER CONCLUSION THAN THE ONE THAT JUDGE DELL CAME TO, AND THAT IS THAT WE CROSSED THIS BRIDGE IN MELBOURNE, AND IT WOULD BE INCONSISTENT WITH MELBOURNE, FOR US TO NOW COME AND GIVE THIS TYPE OF CONSTRUCTION THAT YOU ARE SEEKING, TO WITH THAT, BASED ON A COUPLE OF OBSERVATIONS IN MELBOURNE. WE HAD TWO VICTIM HAD, IN MELBOURNE, CONVICTED OF DUI MANSLAUGHTER, AND THE DOUBLE JEOPARDY CLAUSE INCLUDES MULTIPLE PUNISHMENTS, WHICH IS CLEARLY NOT ISSUE WE ARE RAISING HERE. CLEARLY, I AM SAYING IF THE LEGISLATURE MAKES MULTIPLE COUNTS MULTIPLE CRIMES THERE, IS NOTHING IN THE DOUBLE JEOPARDY CLAUSE TO PREVENT THAT. IN THIS COURT'S PRIOR HOLDING IN BALTWELL, IN WHICH THE STATUTE INVOLVES INJURY OR DEATH WHEN YOU ARE DRIVING WITH A SUSPENDED LICENSE, THAT YOU WOULD ONLY GET ONE CONVICTION, AND YOU DISTINGUISHED THIS, THE TWO SCENARIOS WITH WHAT I THINK IS A VERY WELL-REASONED PARAGRAPH, TALKING ABOUT THE DIFFERENT HARM THAT IS INVOLVED, AND HOW, WITH THE DUS INSTANCE, THE INJURY DOESN'T DIRECTLY CAUSE THE HARM TO THE INDIVIDUAL AND IN ONE CONVICTION WE WILL ALLOW FOR THE CRIMINAL EPISODE, BUT IN THE COUNT OF DUI, IT ACTUALLY HURTS EACH INDIVIDUAL ON, SO WE ARE GOING TO ALLOW MULTIPLE CONVICTIONS. THE PROBLEM I HAVE WITH MELBOURNE IS THAT I THINK THIS IS A TWO-PART, A TWO-STEP ANALYSIS, AND I THINK MELBOURNE WENT RIGHT TO STEP TWO, WHICH WOULD BE WHAT WOULD BE THE JUSTIFICATION FOR THE LEGISLATURE DECIDING TO TREAT THESE TWO CRIMES DIFFERENTLY? BUT MELBOURNE NEVER ASKED THE QUESTION DID THE LEGISLATURE TREAT THESE TWO CRIMES DIFFERENTLY. AND I THINK THE RATIONALE YOU HAVE IN MELBOURNE IS GOOD, AND IT EXPLAINS WHY THE LEGISLATURE MIGHT WANT TO DO SOMETHING DIFFERENT IN THESE TWO CRIMES, BUT IT DOESN'T ADDRESS THE QUESTION WHETHER THEY DID ARTICULATE THE UNIT OF PROSECUTION, IN DUI MANSLAUGHTER, CLEARLY, AS BEING EACH INDIVIDUAL THAT IS KILLED. SO I KNOW WE HAVE MELBOURNE OUT THERE. I KNOW THAT CREATES A VERY BIG HURDLE FOR ME, BUT I DON'T SEE THAT IT ADDRESSES THIS ISSUE SQUARELY, AND I DON'T THINK IT EVER TALKED ABOUT UNIT OF PROSECUTION, AND I MAY RESERVE THE REMAINDER OF MY TIME. THANK YOU.

CHIEF JUSTICE: ABSOLUTELY. THANK YOU. GOOD MORNING.

GOOD MORNING, MR. CHIEF JUSTICE. MAY IT PLEASE THE COURT. OPPOSING COUNSEL. I AM ASSISTANT ATTORNEY GENERAL DANIEL HYNDMAN ON BEHALF OF THE STALE. THE -- OF THE STATE OF FLORIDA. THE FACTS OF THIS CASE ARE NOT IN CONFLICT. WHILE UNDER INTOXICATION IN BOCA RATON IN FEBRUARY 2000, THE DEFENDANT RAN A RED LIGHT AND KILLED EVELYN AND DAVID SHAPIRO. DAVID SHAPIRO DIED AT THE SCENE AND EVELYN SHAPIRO DIED LATER AT THE HOSPITAL. HE ALSO HAD A NUMBER OF BYSTANDERS THAT TRIED TO GET HIM TO STOP, TO LEAVE INFORMATION, AS HE FLED THE SCENE ON FOOT, AND HE WAS ULTIMATELY APPREHENDED BY A POLICE DOG ABOUT A QUARTER MILE FROM THE SCENE.

YOUR OPPONENT IS CORRECT, IS HE NOT, THAT WE HAVE USED THIS "A"/"ANY" ANALYSIS, IN SOME CASES TO DETERMINE THE INTENT OF THE LEGISLATURE, SO WHY SHOULDN'T IT BE APPLIED HERE?

MR. JUSTICE, IT HAS BEEN APPLIED IN A COUPLE OF CASES, BUT IT HAS ONLY BEEN APPLIED WHERE THE MEANING OF THE STATUTE WAS SOMEHOW VAGUE. IT IS THE TOOL, IF YOU WILL, OF STATUTORY CONSTRUCTION -- STATUTORY CONSTRUCTION, AND STATUTORY CONSTRUCTION, THOSE TYPES OF TOOLS, SUCH AS THE A SLASH ANY TEST, AND THOSE CASES -- SUCH AS THE A OR ANY TEST, AND THOSE CASES ARE WITHOUT A DOUBT, SUCH AS IN GRAPPIN.

IS THERE ANY CASE, DESPITE OF THE USE OF THE WORD "ANY", WE DON'T FIND THAT AMBIGUOUS, AND THEREFORE WE ARE NOT GOING TO APPLY THE RULE OF LINITY?

ACTUALLY IN MELBOURNE IT WASN'T ARTICULATED.

IN MELBOURNE, DO YOU AGREE WITH YOUR OPPONENT'S STATEMENT THAT MELBOURNE DID NOT CONCERN THIS A OR ANY DISTINCTION AND HELD DOUBLE JEOPARDY WOULD APPLY TO ANY PROSECUTIONS?

I WOULD ATTEST THAT THE ANALYSIS WASN'T ADDRESSED IN THE MELBOURNE DECISION, ITSELF, BUT REALLY I WOULD SAY THAT IS THE SAME QUESTION THAT IS BEING ASKED TODAY. THE UNIT OF PROSECUTION IS THE SAME ARGUMENT AS DOUBLE JEOPARDY, BECAUSE IN ORDER TO DO OUR DOUBLE JEOPARDY ANALYSIS UNDER MELBOURNE, OBVIOUSLY THE STATUTE NEEDS TO BE LOOKED AT, NEEDS TO BE CONSTRUED, AND THIS COURT DID REVIEW THE LANGUAGE OF THE STATUTE, SO, REALLY, IT IS A DIFFERENT WAY, THE QUESTION IS PUT A DIFFERENT WAY, BUT IT IS THE SAME QUESTION.

BUT WOULD YOU AGREE DOUBLE JEOPARDY IS A CONSTITUTIONAL CONSTRAINT, WHEREAS THE A/ANY DISTINCTION IS SIMPLY A METHOD OF STATUTORY CONSTRUCTION?

I WOULD AGREE, BUT TO DETERMINE DOUBLE JEOPARDY, IT ALSO TAKES AN ANALYSIS OF THE STATUTE, ITSELF, THE WORDING OF THE STATUTE TO DETERMINE IF IT IS DOUBLE JEOPARDY IN ANY OTHER WAY.

IF WE HELD DOUBLE JEOPARDY, WOULD WE HAVE TO RECEDE FROM GRAB I KNOW AND SAY THAT -- FROM GRIPPIN AND SAY THAT THAT DISTINCTION IS NO LONGER USEFUL BUT HELPFUL?

IT IS NOT NECESSARY TO DO THAT, BUT GRAPPIN AND WATTS DON'T REALLY GET IN THE WAY OF THE STATE'S POSITION, BECAUSE THEY SHOULD BE LIMITED TO THOSE CASES WHERE THERE IS DOUBT NOT TO CREATE DOUBT WHERE NONE EXISTS, SO THIS COURT MIGHT VERY WELL FIND THAT IT IS TIME TO RECEDE FROM THE A/ANY TEST, AND YOUR HONOR MENTIONED THAT THERE IS, IT IS VERY YOU TO -- IS VERY TOUGH TO SEE THE DISTINCTION BETWEEN THEM, SO YOU MIGHT HAVE TO GET RID OF THE A/ANY TEST, BUT THAT WOULD NOT BE ENOUGH TO SUSTAIN THE CONVICTIONS IN ANY CASE.

THIS ARISES OUT OF A SINGLE EPISODE, SO THERE ARE CONCURRENT SENTENCES, CORRECT?

YES.

HOW DOES IT DIFFER IF THERE WERE TWO PROSECUTIONS OR IF THERE WAS ONLY ONE PROSECUTION BUT TWO VICTIMS, AS FAR AS THE ACTUAL SENTENCE THAT THE DEFENDANT GETS?

THAT PART, AS FAR AS VICTIM INJURY POINTS, REMAIN THE SAME, BUT THE ADDITIONAL COUNT OF DUI WOULD BE DROPPED, AND BASED ON THE REVIEW OF THE SCORE SHEET IN THIS CASE, THERE WAS 46 POINTS OF THE ADDITIONAL COUNTS OF DUI MANSLAUGHTER.

IF THERE WASN'T THAT ADDITIONAL COUNT, WOULD THERE BE ADDITIONAL VICTIMS INJURIES? THE LEGISLATURE, IN TERMS OF HOW THEY LOOK AT THIS, AS TO WHETHER THE FACT THAT THIS IS WORSE BECAUSE TWO PEOPLE ARE KILLED OR THREE PEOPLE, THE SENTENCING, WHATEVER, THE CRIMINAL PUNISHMENT CODE, TAKES INTO ACCOUNT HOW MANY VICTIMS, IN TERMS OF THE ACTUAL SENTENCE THAT SOMEONE SERVES?

THAT WOULD BE REFLECTED, JUSTICE PARIENTE, BUT IN THAT CASE YOU WOULD GET INTO ABSURD RESULTS.

HOW WOULD THAT BE AN ABSURD RESULT?

IN THIS CASE THERE WERE TWO VICTIMS KILLED AS A RESULT OF INTOXICATED DRIVING. IF THIS CASE RECEDED FROM MELBOURNE, THERE COULD BE A CASE WHERE 20 VICTIMS WERE KILLED,

CHILDREN IN A VAN OR SOMETHING. IN A SINGLE CRASH, 20 VICTIMS, AND A SINGLE COUNT OF DUI MANSLAUGHTER. THAT IS WHAT I MEAN BY THE PETITIONER'S ARGUMENT WOULD LEAD TO ABSURD RESULTS.

IN TERMS OF SCORE, WOULD THERE BE, BECAUSE THERE WERE THAT MANY VICTIMS, THAT MANY MORE VICTIM INJURY POINTS?

THAT PART OF IT WOULD BE REFLECTED ON THE SCORE SHEET, BUT THE POINTS ON THE SCORE SHEET WOULD DIMINISH CONSIDERABLY BECAUSE WE WOULDN'T HAVE ADDITIONAL COUNTS, AND THE LEGISLATURE ALSO WORKED THE ADDITIONAL COUNT INTO THE SCORE SHEET, TOO, SO IT WOULD DIMINISH THE SCORE SHEET, NOT ON THE VICTIM INJURY POINT BUT ON THE NUMBER OF COUNTS, SO I SUBMIT THERE WOULD BE AN EFFECT ON THAT.

A LESSER SENTENCE. ARE YOU SAYING YOU WOULD END UP WITH A LESSER SENTENCE, EVEN WITH MULTIPLE VICTIMS?

THE SECOND COUNT OF DUI WOULD DROP OUT. RIGHT NOW WE HAVE TWO COUNTS OF DUI, AND IF THIS COURT FINDS THAT ONLY ONE COUNT OF DUI IS SUSTAINED AND THAT COUNT IS DROPPED FROM THE SCORE SHEET, I WOULD SUBMIT THAT IT WOULD BE REFLECTED IN THE SCORE SHEET.

WOULD YOU ADDRESS THE DOUBLE JEOPARDY ISSUE AS TO THE ENHANCEMENT.

IT WAS, REALLY, IT IS AN ELEMENT OF THE CRIME ITSELF. HE FLED THE SCENE INVOLVING TWO VICTIMS, SO, REALLY ONE ARGUMENT RISES AND FALSE WITH THE OTHER. THERE IS NO DOUBLE JEOPARDY VIOLATION FOR DUI MANSLAUGHTER. BOTH CRIMES ARE ENHANCED, SO BECAUSE THEY ARE ENHANCED, THERE IS NO DOUBLE JEOPARDY VIOLATION. IT IS AN ENHANCEMENT OF TWO SEPARATE CRIMES AND THEREFORE IT DOESN'T GIVE RISE TO A DOUBLE JEOPARDY CONCERN.

WHAT IS THE PURPOSE OF THIS ENHANCEMENT STATUTE? IS IT TO PUNISH THE DEFENDANT FOR FLEEING THE SCENE, OR IS IT TO PUNISH THE DEFENDANT FOR FAILING TO RENDER AID TO EACH VICTIM?

EARNING I THINK IT IS FOR FAILURE -- I THINK IT IS FOR FAILURE TO RENDER AID TO EACH VICTIM, AND IN THIS CASE WE HAVE AN EXAMPLE VERY TRACKLY REFLECTED, WHERE, IF THE VICTIM HAD REMAINED AT THE SCENE, THE FINAL OUTCOME MIGHT HAVE BEEN DIFFERENT. IN THIS CASE, ONE VICTIM APPARENTLY WAS LOST IMMEDIATELY. DAVID SHAPIRO. MS. EVELYN SHAPIRO WAS AT THE SCENE, AND IT THEN BECAME THE PETITIONER'S LEGAL DUTY TO REMAIN AT THE SCENE IN THAT CASE, THE LADY BEING ALIVE FOR TWELVE HOURS, RECEIVING MEDICAL CARE, BUT I THINK IT GOES TO PROTECTING THE VICTIMS OF A DUI CRASH SUCH AS THIS.

IF THAT WERE THE CASE WITH A VICTIM THAT WOULD DIE INSTANTANEOUSLY, HOW DOES THAT ENHANCEMENT OF THAT PARTICULAR OFFENSE, FURTHER THE PURPOSE OF ENHANCEMENT STATUTE?

THE HORRIBLE ACT OCCURRED. IT IS INCUMBENT FOR THE DEFENDANT TO REMAIN AT THE SCENE UNTIL THE POLICE ARRIVE, SO THEY CAN FOLLOW THROUGH WITH THE INVESTIGATION.

WOULDN'T THAT BE TAKEN CARE OF BY ENHANCING THE OFFENSE OF THE ONE VICTIM WHO DID NOT DIE INSTANTANEOUSLY? I MEAN, YOU STILL GET, THE PURPOSE OF THE STATUTE WOULD STILL BE SERVED.

I SEE WHAT YOU ARE SAYING, JUSTICE QUINCE. I THINK WE ARE SERVING TWO PURPOSES WITH THE STATUTE, REALLY, PROTECTING THE VICTIMS AND ALSO TO ASSIST THE POLICE, AND SINCE THEIR ENHANCEMENT PORTION OF THE TWO SEPARATE COUNTS, I DON'T THINK YOU FALL INTO A

DOUBLE JEOPARDY CONCERN. WE ARE SAYING THAT BOTH COUNTS WERE PROPERLY ENHANCED IN THIS CASE.

SO IF WE TAKE THE ABSURD ARGUMENT THAT YOU GAVE EARLIER, WHERE 25 CHILDREN IN A BUS, UNDER THE STATE'S ARGUMENT IN THIS CASE, ONE LEAVING, FAILING TO REMAIN AT THE SCENE AND RENDER AID OR INFORMATION, COULD RESULT IN AN ENHANCEMENT OF 25 DUI MAN SLAUGHTERS.

THAT'S CORRECT.

FIRST-DEGREE.

THAT IS THE STATE'S POSITION.

LET ME ASK YOU SOMETHING. AFTER OUR DECISION IN GRAPPIN, THE LEGISLATURE AMENDED THE STATUTE, AND THERE IS SECTION 775.021, WHICH IS ENTITLED RULES OF CONSTRUCTION, AND 4-B SAYS THE INTENT OF THE LEGISLATURE IS TO CONVICT AND SENTENCE FOR EACH CRIMINAL OFFENSE COMMITTED IN THE COURSE OF ONE CRIMINAL EPISODE OR TRANSACTION, AND NOT TO ALLOW THE PRINCIPLE OF LIVITY, AS SET FORTH IN SUBSECTION ONE, TO DETERMINE LEGISLATIVE INTENT. COULD THAT AMENDMENT TO THE STATUTE BE INTERPRETED TO OVERRULE GRAPPIN AND INTEND THAT EACH DEATH BE SEPARATELY PROSECUTED?

I BELIEVE IT COULD, AND IN A NUMBER OF CASES, BECAUSE THE COURT CLEARLY SET OUT THE CASES, WHEN THE PRINCIPLE OF LIVITY APPLIES. I THINK IT ISOLATED THREE DIFFERENT CASES IN THE DOUBLE JEOPARDY ANALYSIS.

AND THE STATUTE SAYS THAT EXCEPTION TO THE RULE OF LIVITY WOULD NOT APPLY, WHEN OFFENSES REQUIRE IDENTICAL ELEMENTS OF PROOF. SO IN THE CASE SUCH AS THIS ONE, WHERE THERE WAS A DUI AND TWO DEATHS, WOULD THOSE TWO OFFENSES REQUIRE IDENTICAL ELEMENTS OF PROOF?

NO. THEY ARE DIFFERENT ELEMENTS OF PROOF, AS FAR AS THE VICTIMS ARE CONCERNED.

SO THE VERY LAST ELEMENT IS A DIFFERENT ELEMENT FOR EACH?

YES. THE VICTIM WOULD BE DIFFERENT. EACH VICTIM WOULD BE A DIFFERENT COUNT, A DIFFERENT SEPARATE OFFENSE. AND AS I WAS SAYING, THIS ISSUE, WE REALLY HAVE ADDRESSED THIS ISSUE IN MELBOURNE AND SALAZAR. THE QUESTION WAS ASKED MAY THERE BE MULTIPLE CONDITIONS OF DUI MANSLAUGHTER WHEN FROM ARE MULTIPLE VICTIMS OF A CRASH, AND THIS COURT ANSWERED IT IN MELBOURNE AND SALAZAR. THE COURT IS ASKING THAT WE LOOK AT IT ON AN UNIT OF PROSECUTION ANALYSIS, BUT AS I SAY IT IS A DIFFERENT WAY OF POSING THE QUESTION. IT WAS LOOKED AT WITH DOUBLE JEOPARDY ANALYSIS AND WE HAVE TO LOOK AT THE ISSUE, ITSELF,, SO THE ISSUE HAS BEEN RESOLVED IN MELBOURNE AND SALAZAR, AND THIS COURT FOUND THE DIRECT LINK BETWEEN THE DEFENDANT'S DRIVING WHILE INTOXICATED AND THE HARM THAT FELL TO EACH THE VICTIMS. SECONDLY, THE A/ANY TEST SHOULD NOT BE APPLIED, BECAUSE THERE IS NO AMBIGUITY IN THE DUI MANSLAUGHTER STATUTE, ONLY WHEN IS THERE A VAGUENESS IN THE LAW SHOULD WE APPLY ANY TEST SUCH AS THE A/ANY TEST, SUCH AS RULES OF CONSTRUCTION SHOULD BE USED ONLY IN CASES WHERE THERE IS ANY DOUBT AND NOT TO CREATE DOUBT, SUCH AS IN A CASE LIKE THIS. IN HAUSER, THIS COURT ADDRESSED THE DUI MANSLAUGHTER STATUTE AND IT COURT HOUND FOUPOD IT IS A -- THIS COURT FOUND IT IS A DUI STATUTE, AND THEREFORE IT IS TO PROTECT THE VICTIMS, IT TO PROTECT LIFE. THEREFORE EACH LIFE THAT IS LOST IS A DIFFERENT COUNT OF HOMICIDE.

IF THERE IS A DUI WHERE THERE IS NOT A PERSON THAT IS KILLED OR INJURED BUT PROPERTY, HOW DOES THAT, AND THERE IS MULTIPLE PIECES OF PROPERTY THAT AREED DAMAGED, ARE

THOSE, ARE THOSE PROSECUTED SEPARATE.

YES, AND UNDER SAL IS A CZAR, APPLIED TO THIS COURT, YOU HAVE DUI WITH PROPERTY DAMAGE, INJURY, PERSONAL INJURY, AND DEATH ACTION MANSLAUGHTER, AND YOU CAN HAVE MULTIPLE CONVICTIONS FOR EACH OF THOSE. IN SALAZAR, THIS COURT WENT AHEAD AND DIRECTLY APPLIED MELBOURNE TO THAT, SO YOU CAN'T, AND THIS IS ALSO VERY CONSISTENT WITH A LONG LINE OF DISTRICT COURT CASES AS WELL. FINALLY, THE AA, THE ARTICLE A/ANY ARE SYNONYMOUS IN THIS PARTICULAR STATUTE, AND JUSTICE QUINCE YOU BROUGHT OUT THE POINT WHERE ANY MEANS ONE WITHOUT RESTRICTION, AND THERE ARE VARIOUS DEFINITIONS, DEPENDING ON WHICH DICTIONARY YOU USE, BUT IT KEEPS COMING BACK TO ONE AND ANY IS SYNONYMOUS TO A, AND I POINTED OUT STATUTES, AN ELDERLY PERSON OR ADULT, WHEN A PERSON CAUSES DEATH OF ANY ELDERLY PERSON OR DISABLED ADULT, SO WE DO HAVE THE USE OF "ANY" WITH THE HOMICIDE STATUTE, AND AGGRAVATED MANSLAUGHTER OF A CHILD, WE DO HAVE THAT USE, WHEN A PERSON CAUSE THE DEATH OF ANY PERSON UNDER THE AGE OF 18, SO IT HAS BEEN USED BEFORE IN HOMICIDE STATUTES, TAN REALLY COMES DOWN TO THIS IS THE CLEAR INTENT OF THE LEGISLATURE. IT IS THE COMMON SENSE INTERPRETATION OF THE STATUTE. WHAT IT MEANS, WE HAVE TWO VICTIMS. WE HAVE TWO COUNTS OF DUI MANSLAUGHTER. AND RESPECTFULLY I ASK THIS COURT TO AFFIRM THE PETITIONER'S TWO CONVICTIONS FOR DUI MANSLAUGHTER AND I THANK THIS COURT.

CHIEF JUSTICE: THANK YOU VERY MUCH. COUNSEL, HOW MUCH TIME DOES COUNSEL HAVE? FIVE MINUTES.

JUSTICE CANTERO, IN RESPONSE TO YOUR QUESTION ABOUT 775.021, AND THE AMENDMENT TO IT, THAT CAME ABOUT, IT DOES NOT APPLY IN THIS CASE. THAT AMENDMENT TO THAT STATUTE WAS A RESPONSE TO A CASE FROM THIS COURT CALLED CAROAIN, WHICH WAS A DOUBLE JEOPARDY CASE, WHERE IT WAS DETERMINED IF YOU HAD TWO DIFFERENT CRIMES THAT AROSE DURING A SINGLE EPISODE YOU, MIGHT NOT BE ABLE TO GET MULTIPLE PUNISHMENTS FOR THOSE BECAUSE WE DIDN'T HAVE CLEAR LEGISLATIVE INTENT, AND THE LEGISLATURE, I THINK IT WAS IN 1987, THEN AMENDED THAT STATUTE TO MAKE IT CLEAR THAT, WHEN IT IS TWO SEPARATE CRIMES, WHEN I SAY SEPARATE, I MEAN, LIKE MURDER AND BATTERY AS OPPOSED TO TWO UNITS OF THE SAME TYPE OF CRIME, THAT YOU COULD GET MULTIPLE PUNISHMENTS THERE, SO THAT AMENDMENT WAS NEVER MEANT TO APPLY IN A SITUATION WHERE YOU HAVE MULTIPLE COUNTS OF THE SAME CRIME. IT IS IN EITHER MY INITIAL BRIEF OR MY REPLY BRIEF, I CITED THE CASE HILL, WHICH I THINK IS FROM THE FIRST DCA, AND IT ADDRESSES THE FOURTH DISTRICT'S MISAPPLICATION OF THAT AMENDMENT IN WALLACE, THAN IS A VERY WELL WRITTEN OPINION IN THERE THAT EXPLAINS WHY THAT AMENDMENT DOESN'T APPLY TO THIS SITUATION. JUSTICE PARIENTE, YOU MENTIONED ABOUT THE VICTIM INJURY POINTS AND HOW THEY WOULD 57 PLY HERE. -- HOW THEY WOULD APPLY HERE. IT IS MY CONTENTION THAT, IF YOU HAD MULTIPLE DEATHS, ALTHOUGH YOU WOULD ONLY GET A SINGLE CONVICTION FOR DUI MANSLAUGHTER, YOU WOULD GET INJURY POINTS FOR EACH AND EVERY PERSON WHO DIED, AND JUST TO GIVE YOU AN EXAMPLE OF HOW THAT WOULD WORK, AND I THINK THIS, ALSO, HELPS TO SHOW WHERE CAN, IF YOU WERE TO RULE IN MY FAVOR YOU WOULDN'T COME UP WITH AN ABSURD RESULT, IS IF YOU HAD ONE COUNT OF DUI, NOT THE AGGRAVATED VERSION BUT ONE COUNT OF DUI MANSLAUGHTER WITH ONE DEATH, THE LOWEST PERMISSIBLE SENTENCE YOU COULD GET UNDER THE CRIMINAL PUNISHMENT CODE THAT WE NOW HAVE IN FORCE, WOULD BE 10.4 YEARS. IF YOU HAD ONE COUNT OF DUI MAUN SLAUGHTER WITH TWO -- MANSLAUGHTER WITH TWO DEATHS, THE LOWEST PERMISSIBLE SENTENCE YOU COULD GET WOULD BE 17.9 YEARS. IF YOU HAD ONE COUNT OF --

BASED ON VICTIM INJURY SNOINTS.

EXACTLY.

HOW MANY VICTIM INJURY POINTS DO YOU GET FOR EACH?

120 FOR EACH DEATH, AND THEN IF YOU HAD THREE DEATHS, THE LOWEST PERMISSIBLE SENTENCE WOULD BE 25.4 YEARS. SO WITH EACH ADDITIONAL DEATH, THE LOWEST PERMISSIBLE SENTENCE YOU CAN GET INCREASES BY 7.5 YEARS.

HOW MUCH DOES THE ADDITION OF THE, IN THIS CASE THE SCORING WAS NOT ONLY THE VICTIM INJURY POINTS, BUT THE ADDITIONAL COUNT, HOW MANY POINTS ARE ADDED BECAUSE OF THE ADDITIONAL COUNT?

THE ADDITIONAL COUNT IN THIS CASE PROVIDED FOR 46 POINTS. AND THAT WAS AS THE ENHANCED VERSION OF DUI MANSLAUGHTER.

DO YOU KNOW WHAT IT WOULD BE IF IT IS NOT ENHANCED?

I THINK IT IS 37.

SO IN OTHER WORDS THE LEGISLATURE, NOT, STILL GOING BACK TO THE FACT THAT "ANY" HAS BEEN THE WAY THIS STATUTE HAS READ SINCE, FOR THE LAST, ALMOST CENTURY, BUT BESIDES THAT, THAT THE COMPENSATION FOR HOW THE PUNISHMENT IS GOING TO BE IS DIRECTLY, IT IS DIRECTLY, THE CRIMINAL PUNISHMENT CODE RECOGNIZES THAT THE NUMBER OF VICTIMS' COUNTS, IN TERMS OF THE SEVERITY OF THE SENTENCE.

YES.

SO THIS DEFENDANT, WHETHER HE WAS GOING TO GET ONE COUNT OR TWO COUNTS, WHAT WAS THE SENTENCE HE GOT?

THE SENTENCE, THEY WERE CONCURRENT TERMS OF 28 3 AND-A-HALF MONTHS. IF WE TOOK AWAY THE ONE, IT WOULD --

HOW MANY YEARS?

IT WOULD HAVE BEEN 263 WOULD HAVE BEEN THE LEAST HE COULD HAVE GOTTEN, SO HE WOULD HAVE HAD ONE SENTENCE BUT YOUR SENTENCE COULD GET LONGER WITH EACH DEATH, SO I DON'T THINK IT WOULD BE AN ABSURD RESULT, IF YOU WERE TO RULE IN MY FAVOR. DUI PROPERTY DAMAGE, YOU MENTIONED, ALSO, YOU ASKED A QUESTION ABOUT HOW DOES THIS PLAY OUT, WHETHER DAMAGE TO PROPERTY OR OTHER PERSONAL INJURY THAT IS LESS THAN DEATH. THOSE STATUTES SAY THAT IT IS A CRIME OR, TO CAUSE DAMAGE TO THE PROPERTY OF ANOTHER OR TO CAUSE SERIOUS BODILY INJURY TO ANOTHER, AND, AGAIN, "ANOTHER" IS DEFINED OR AT LEAST ONE DEFINITION OF THAT, IS ONE OF A GROUP OF UNSPECIFIED OR INDEFINITE THINGS, SO AGAIN WE HAVE A DIFFERENT WORD THAT IS BEING USED. WE HAVE "A", "ANOTHER", "ANY".

YOU ARE SUGGESTING THAT THE PROSECUTION, IF IT CAUSES PERSONAL INJURY OR PROPERTY, THAT IT IS DIFFERENT, IN OTHER WORDS, THAT THERE WOULD BE MULTIPLE COUNTS FOR THOSE BUT NOT IF IT RUTS IN DEATH?

TP IT APPEARS ON THE -- IT APPEARS, FROM THE WAY THE LEGISLATURE HAS WRITTEN THAT STATUTE THAT, THAT MAY WELL BE THE CASE, AND I KNOW THAT YOU SIT THERE AND SAY HOW CAN THAT BE, SINCE THAT IS LESS SEVERE THAN DEATH, BUT UNFORTUNATELY THIS STATUTE IS NOT WRITTEN WITH THE CLARITY THAT IS NECESSARY, SO THAT IS WHERE WE STAND WITH IT.

MAY I ASK WOULD YOU ADDRESS THE DOUBLE JEOPARDY ISSUE AS TO THE ENHANCEMENT.

SURE. THERE ARE A NUMBER OF CASES THAT HAVE HELD THAT, WHEN YOU LEAVE THE SCENE OF THE ACCIDENT, YOU DON'T COMPLY WITH THIS REQUIREMENT TO GIVE INFORMATION --

THOSE ARE SEPARATE CRIMES. I AM TALKING ABOUT HERE, INTERNALLY, IT IS ENHANCEMENT. IF WE ACCEPT THE STATE'S ARGUMENT AS TO THE FIRST ISSUE THAT YOU CAN CHARGE TWO SEPARATE DUI'S, WHAT IS YOUR POSITION AS TO THE DOUBLE JEOPARDY, NOT AS TO CHARGE AGO PUNISHING FOR A SEPARATE CRIME, BUT CERTAINLY ENHANCING SEPARATE CRIMES, IF WE FIND THERE ARE SEPARATE CRIMES? DOES ONE FALL WITH THE OTHER, AS STATE CRIMES?

DOUBLE JEOPARDY IS A MATTER OF LEGISLATIVE INTENT. IF YOU RULE THAT YOU CAN HAVE SEPARATE COUNTS IN THIS CASE, UNFORTUNATELY, I WOULD HAVE TO SAY, IF THE LEGISLATURE INTENDED THAT EACH SHOULD BE ENHANCED, THEN YOU LOOK AT THE LEGISLATIVE INTENT AND YOU ARE NOT GOING TO HAVE, YOU ARE NOT GOING TO DEAL WITH THE PROBLEM OF MULTIPLE PUNISHMENT, SO I THINK IF YOU RULE AGAINST ME ON POINT ONE, I THINK YOU PROBABLY HAVE TO RULE AGAINST ME ON THE OTHER POINT, TOO, ALTHOUGH IT SEEMS IN YOUR DECISION IN BALTWELL, WHERE YOU WOULD ONLY GET ONE ENHANCEMENT, IT WOULD SEEM TO ME THAT YOU WOULD HAVE ENHANCEMENT IN BALTWELL.

ALL RIGHT. THANK YOU, BOTH, VERY MUCH.