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State of Florida v. Adam Sousa

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CHIEF JUSTICE E: THE NEXT CASE ON THE COURT'S DOCKET IS STATE OF FLORIDA VER SUS A DAM SO USA . ARE THE ATTORNEYS READY? ALL RIGHT. YOU MAY PROCEED.

CHIEF JUSTICE PARIENTE , JUSTICES OF THE COURT, GOOD MORNING.MY NAME IS SUZANNE BECHARD. I REPRESENT THE PETITIONER IN THIS CASE, THE STATE OF FLORIDA.I WOULD LIKE TO START WITH JUST A BRIEF FACTUAL SYNOPSIS OF THE BACKGROUND OF THIS CASE. THIS ARISES FROM A SITUATION THAT OCCURRED IN DECEMBER OF 1999, IN LEE COUNTY. THE RESPONDENT WENT TO THEFORT MYERS GREYHOUND TRACK , AND DURING THE COURSE OF THE EVENING , HE BECAME ANGRY AT SOME OF THE EMPLOYEES THERE. HE DID HAVE A LICENSE TO CARRY A CONCEALED WEAPON , AND WHEN HE GAVE ANGRY AT THE EMPLOYEES, HE PULLED THAT WEAPON , WHICH WAS A REVOLVER . HE POINTED IT FIRST AT THE HEAD OF MR . NAGLE. WHEN THE DIRECTOR OF SECURITY SOUGHT TO INTERVENE, THE RESPONDENT SHOT MR . BOHELLI IN THE STOMACH , AND THEN WHEN MR . VIRCHECK CAME ON THE SCENE , HE SHOT HIM IN THE GROIN. HE WAS CONVICTED OF TWOCOUNTS OF FIRST-DEGREE MURDER AS TO THE TWOINDIVIDUALS THAT HE SHOT, AND HE WAS CONVICTED AS CHARGED , OF AGGRAVATED ASSAULT, AS TO PULLING THE GUN AND POINTING IT AT MR . NAGLE'S HEAD.

NOW, WAS THE MANDATORY MINIMUM GIVEN ON ALL THREE OF THESE OFFENSES , CORRECT?

THAT'S CORRECT, YOUR HONOR.

ALL OF THEM RAN CONSECUTIVELY?

THAT'S CORRECT , YOURHONOR.HE WAS SENTENCED TO 50 YEARSWITH A 25-YEAR MINIMUM MANDATORY ON EACH OF THE ATTEMPTED SECOND-DEGREE MURDER COUNTS , AND TO A FIVE YEARS WITH THE THREE-YEAR MINIMUM MANDATORY ON THE AGGRAVATED ASSAULT COUNT.

IT SEEMS TO ME THAT PART OF YOUR ARGUMENT AT LEAST IS THAT, WHAT IS THE DISTINGUISHING FACT OR HERE , IS THE ACTUAL USE OF SHOOTING OF THE WEAPON.

THAT'S CORRECT, YOURHONOR. THE DISCHARGE OF THE WEAPON , IS THE IMPORTANT

SO IF THAT IS THE CASE,THEN, IS IT PROPER TO GIVE HIM A CONSECUTIVE SENTENCE FOR THE AGGRAVATED ASSAULT?

WELL - -

AS OPPOSED TO THE TWO WHERE HE ACTUALLY DISCHARGED THE WEAPON.

WELL , YOUR HONOR, IT IS THE STATE'S POSITION THAT , WITH THE REVISION OF 775.087, WHAT IS POPULARLY NOW CALLED 10-20-LIFE, THE DISPUTE IN THIS CASE ARISES AS TO THAT VERY LAST SENTENCE OF 775.0872-D, WHERE THE LEGISLATURE SAID THE COURT SHALL IMPOSE ANY TERM OF IMPRISONMENT PROVIDED FOR IN THIS SECTION , CONSECUTIVELY TO ANY OTHER TERM OF IMPRISONMENT FOR ANY OTHER FELONY OFFENSE, AND IT IS THE STATE'S POSITION HERE THAT, YES, NOT ONLY DO THE TWO COUNTS WHERE THE FIRM WAS DISC

HARGED , THAT I , AS FAR AS THIS COURT'S R U L I N G I N C H R I S T I A N , I D O N ' T R E A L L Y S E E H O W T H A T I S A Q U E S T I O N .

BUT CHRISTIAN WAS PRETHE AMENDMENT TO THE STATUTE - - PRE-THE AMENDMENT TO THE STATUTE?

THAT'S CORRECT , JUSTICE WELLS. HOWEVER , W I T H T H E A M E N D M E N T T O T H E S T A T U T E , W H A T Y O U H A V E I S T H E L E G I S L A T U R E C O M I N G O U T A N D P U T T I N G A V E R Y B I G P R E M I U M O N T H E D I S C H A R G E O F T H E F I R E A R M . T H E R E I S N O T H I N G I N T H I S R E V I S I O N O F T H E S T A T U T E T H A T W O U L D I N D I C A T E A T A L L , T H A T W I T H 10-20-LIFE , T H E L E G I S L A T U R E S O U G H T T O R E P U D I A T E T H I S C O U R T ' S R U L I N G I N C H R I S T I A N . I T I S T H E S T A T E ' S P O S I T I O N T H A T T H A T D E F I N I T E L Y S T I L L S T A N D S , T H A T W H E N Y O U H A V E T H E D I S C H A R G E O F T H E F I R E A R M A T M U L T I P L E I N D I V I D U A L S , M U L T I P L E V I C T I M S , T H A T T H A T L A N G U A G E I N C H R I S T I A N , W H I C H S A Y S T H A T , W H E T H E R T H E D E F E N D A N T S H O O T S A T M U L T I P L E V I C T I M S , T H E S T A C K I N G O F F I R E A R M M I N I M U M M A N D A T O R I E S I S A P P R O P R I A T E A N D P E R M I S S I B L E .

S O Y O U R A R G U M E N T , T H E N , I S T H A T T H E S T A T U T E A C T U A L L Y C H A N G E S T H E O T H E R L A N G U A G E I N C H R I S T I A N , W H I C H S A Y S T H A T Y O U C A N ' T S T A C K T H E M , I F T H E R E H A S B E E N N O A C T U A L D I S C H A R G E . B U T U N D E R T H I S L A N G U A G E T H A T Y O U J U S T Q U O T E D , Y O U C A N N O W S T A C K , E V E N I F T H E R E I S N O D I S C H A R G E O F T H E W E A P O N . I S T H A T Y O U R A R G U M E N T ?

T H A T W O U L D B E T H E R E S U L T T H A T T H E S T A T E W O U L D H E L P T O W O U L D H O P E T O A T T A I N H E R E , T H A T , W H E N Y O U R E A D T H A T L A N G U A G E T H E R E , T H A T T H E S E C O N D D I S T R I C T C O U R T O F A P P E A L G O T I T E A S Y E S S E N T I A L L Y W R O N G , W H E N T H E Y D E T E R M I N E D T H A T T H A T M E A N S T H A T Y O U C A N O N L Y S T A C K A F I R E A R M M I N I M U M M A N D A T O R Y W I T H S O M E T H I N G T H A T D O E S N ' T A R I S E U N D E R 775.087, A N D I T I S T H E S T A T E ' S P O S I T I O N T H A T T H E L A N G U A G E T H E R E O F A N Y O T H E R F E L O N Y , I S " A N Y " O T H E R F E L O N Y , N O T O T H E R F E L O N I E S T H A T A R I S E U N D E R 1 3 4 O T H E R S T A T U T E U N D E R S O M E O T H E R S T A T U T E B E S I D E S 10-20-LIFE.

S O I T I S Y O U R P O S I T I O N T H A T T H E L E G I S L A T U R E W A S A C T U A L L Y O V E R R U L I N G P A L M E R ? W I T H T H E S T A T U T E .

W E L L , T O A C E R T A I N D E G R E E , Y O U R H O N O R , A S I T C O N C E R N S T H E 10- 20-LIFE S T A T U T E O R T H E F I R E A R M M I N I M U M M A N D A T O R Y . I K N O W T H A T P A L M E R H A S B E E N A N A L Y Z E D T O , A S F A R A S T H E S E , S U C H A S T H E H A L E C A S E , W I T H T H E S E P R O C E D U R A L E N H A N C E M E N T S , A N D I T I S N O T O U R P O S I T I O N T H A T P A L M E R H A S B E E N O V E R R U L E D A S T O T H A T A N A L Y S I S . H O W E V E R , B U T , A S T O T H E L A N G U A G E T H A T S A Y S , W E L L , I F Y O U H A V E O N L Y G O T O N E P O S S E S S I O N , I F Y O U H A V E G O T , I F Y O U H A V E G O T T H E P O S S E S S I O N O F A F I R E A R M , A N D I N T H I S P A R T I C U L A R S I T U A T I O N , W H E R E Y O U H A V E G O T N O T O N L Y T H E P O S S E S S I O N O F T H E F I R E A R M B U T , A L S O , T H E D I S C H A R G E O F T H E F I R E A R M , T O T H A T E X T E N T , I W O U L D S U B M I T T H A T T H A T P A R T O F P A L M E R

H O W W O U L D P A L M E R W O R K U N D E R Y O U R A N A L Y S I S , A P P L Y I N G T H E P R E S E N T S T A T U T E ? W H E R E Y O U H A V E A R O B B E R Y . Y O U D O N ' T H A V E A D I S C H A R G E . A N D Y O U H A V E 13 S E P A R A T E P E O P L E T H A T A R E R O B B E D I N O N E E P I S O D E O F A R O B B E R Y . H O W W O U L D T H A T W O R K ? W O U L D I T B E T H E S A M E R E S U L T ?

W E L L , I W O U L D S U B M I T , Y O U R H O N O R , T H A T T H E L A N G U A G E O F 775.0872-D , W O U L D P E R M I T T H E T R I A L C O U R T T O H A V E D I S C R E T I O N T O S T A C K T H O S E M I N I M U M M A N D A T O R I E S , B E C A U S E T H E L A N G U A G E O F T H E S T A T U T E D O E S S A Y " A N Y O T H E R F E L O N Y " .

B U T T H E L A N G U A G E T H A T Y O U A R E Q U O T I N G , A C T U A L L Y D O E S N ' T E V E N G I V E D I S C R E T I O N . I T S A Y S T H E C O U R T S H A L L I M P O S E , S O I F W E A R E G O I N G T O R E L Y O N 775.08, T H A T W H A T Y O U A R E R E L Y I N G O N , 775.8762-D?

T H E F I N A L

IT DOESN'T SAY THERE IS DISCRETION. IT SAYS THAT THEY SHALL. S O IF YOU READ IT TO MEAN THAT IT HAS TO BE IN A S INGLE PROSE CUTION, THEN , AS JUSTICE WELLS IS SAYING , THAT YOU K NOW, ROBBERY WITH O NE , HOLDING THE FIREARM , WOULD BE 13 CONSEC UTIVE SENTENCES?

WELL , I THINK IF YOU LOOK AT THE SE SSION LAW , THERE , THE LANGUA GE THAT THE LEGISLATURE U SED , WHEN IT WAS ENACTING THE 10-2 0-LIFE LAW , THE , AND THE LOWER , THE DISTRICT COURTS HAVE LOOKED TO THAT LANGUAGE.

BUT, AGAIN , WHAT YOU SAID WAS, THIS GIVES A COURT DISCRETION TO DO SO , AND WHAT I AM AS KING YOU , IF WE RELY ON THAT SENTENCE , THEREIS NOT EVEN DISCRETION. IT IS MANDATORY TO MAKE THESE SENTENCES CONSECUTIVE FOR SEPARATE CRIMES ARISING OUT OF A SI NGLE FELONY , A SINGLE PROSEC UTION .

THAT IS WHAT THE LANGUAGE SAYS, YOUR HONOR , AND I WOULD ALSO SUBMIT THAT THE

THAT IS IF WE INTERPRET THAT LANGUAGE TO M EAN THAT IT INT ENDED TO OVERRULE CHRISTIAN IN PART, PALMER , AND ALL OF THIS COURT'S JURISPRUDENCE.

WELL , I THINK , I , HONESTLY, I DON'T BELI EVE THAT THE COURT , REALLY , EVEN NEEDS TO GET TO THE POINT OF DECIDING WHETHER PALMER IS SUPERSEDED AS TO THIS CASE , BECAUSE IN THIS CASE , WE DO HAVE THE MULT IPLE DISCHARGES OF THE FIREARMS , AND WE DO , WE HAVE A SITU ATION HERE, WHERE WE HAVE GOT A CASE OUT OF THE SECOND DISTRICT COURT OF APP EAL , THAT IS INTERPRETING THE LANGUAGE OF 775.0872-D, TO MEAN THAT YOU CAN'T STACK A FIREARM MINIMUM MANDATORY , W ITH ANOTHER FIREARM MINIMUM MANDATORY , UNDER ANY CIRCUMSTANCES.

YOU GO B ACK T O JUSTICE QUINCE'S QUESTION , WHICH , I DON'T HAVE A PRO BLEM WITH THE MULTIPLE DISCHARG ES OF THE FIREARM BEING CONSECUTIVE.

CORREC T.

BUT WHAT AB OUT, WHERE DOES THE AGGRAVATED AS SAULT COME IN?

I THINK, YOUR HONOR, IF YOU LO OK AT THE LANGUAGE OF THE STATUTE , AND IF YOU , ALSO , LOO K AT THE INTE NT OF THE LEGISLATURE

COULD YOU JUST, GOING BACK SGEN TO THE FAC TS OF GOING BACK AGAIN, TO THEFACTS OF THIS CASE, YOU MENTIONED THAT THE AGGRAVATED ASSAULT AROSE OUT OF,, WHICH ONE OF THE SAME CRIMES IN WHICH THE FIREARMWAS DISCHARGED ?

THIS IS ARGUABLY THE SAME CRIMINAL EP ISODE . WE DON'T HAVE A DISPUTE WITH THE FACT THAT THERE IS N O TEMPORAL OR GEOGRAPHICAL BREAK.

WHO I S THE AGGRAVATED ASSAULT AGAINST?

THERE WERE THREE DIFFERENT VE HICLE T IMSES , THREE DIFF ERENT DIF FERENT VICTIMS , HERE , SO YOU HAVE A DISCHARGE OF THE FIREARM , T WO DISCHARGES OF THE FIREARM AT VI CTIMS , AND YOU HAVE THE GUN POINTED AT A THIRD VICTIM, BUT THE THIRD VICTIM WAS NOT FIRE D AT , AND I WOULD SUBMIT THAT, UNDER THAT FACTUAL SCENARIO , EVEN UNDER CHRISTIAN , YOU WOULD HAVE, THE TRIAL COURT WOULD HAVE DISCRE TION TO STACK THOSE FIREARM MINIMUM MANDATORIES , BE CAUSE UNDER CHRISTIAN , THE FIREARM WAS DISCHARGED. NOW , ADMITTEDLY YOU DIDN'T HAVE AN AGGRAVATED ASSAULT SCENARIO THERE, BUT IF YOULOOK AT THE COURT'S DECISION, AND I THINK THAT EVEN UNDER A PRE, AGAIN, IT IS THE STATE'S POSITION THAT THE 10-20-LIFE HE ACTMENT DID NOT SE EK TO EN ACTMENT DID NOT SEEK TO

REPUDIATE CHRISTIAN IN ANY WAY AND IN FACT IT WAS, IF ANYTHING, AN ENDORSEMENT OF THE COURT'S

HOW CAN THAT BE TRUE, IF YOU SAY, CHRISTIAN SPECIFICALLY SAYS THAT YOU COULD NOT STACK IT. IT IS IMPERMISSIBLE WHERE THE DEFENDANT DOES NOT FIRE THE WEAPON, SO IT SEEMS TO ME UNDER A CLEAR READING OF CHRISTIAN, THAT YOU CAN ONLY STACK THE TWO, WHERE HE ACTUALLY FIRED THE WEAPON.

AND IN THIS SITUATION, YOU DO HAVE THE WEAPON FIRED. YOU HAVE IT FOR TWO OF THEM.

CORRECT.

BUT FOR THE THIRD ONE UNDER CHRISTIAN, YOU WOULD NOT BE ABLE TO STACK IT, SO YOU HAVE TO BE RELYING ON 775, IN ORDER TO STACK THE AGGRAVATED ASSAULT.

YOUR HONOR, I THINK THAT I WOULD DISAGREE, RESPECTFULLY, WITH THE COURT'S PHRASING THAT YOU WOULD NOT BE ABLE TO STACK THAT MINIMUM MANDATORY FOR THE AGGRAVATED ASSAULT UNDER CHRISTIAN. I THINK THAT YOU WOULD BE ABLE TO. I THINK

WHAT DOES THAT LANGUAGE IN CHRISTIAN SAY, MEAN, WHICH SAYS IMPERMISSIBLE?

IT IS IMPERMISSIBLE, IF THE WEAPON IS NOT FIRED. BUT HERE AND IN CHRISTIAN, YOU DIDN'T HAVE A SITUATION, YOU HAD A SITUATION WHERE IT WAS DISCHARGED TWICE AND TWO PEOPLE WERE SHOT. YOU DIDN'T HAVE A THIRD VICTIM AS WE DO HERE, AGAINST WHOM THE GUN WAS APPOINTED. BUT IF YOU LOOK AT

SO THAT LANGUAGE DOESN'T INCLUDE THE NOTION THAT WE ARE TALKING ABOUT THE FIRING OF THE WEAPON FOR THAT PARTICULAR CRIME. YOU ARE SAYING, IF YOU FIRE THE WEAPON IN, ANY TIME IN THE CRIMINAL EPISODE, THAT THAT IS SUFFICIENT TO BE ABLE TO STACK MULTIPLE OFFENSES, EVEN THOUGH ON SOME OF THEM, IT DID NOT ACTUALLY INVOLVE THE DISCHARGE OF THE WEAPON.

YES, AND I THINK THAT, WHEN YOU LOOK AT SOME OF THE LANGUAGE IN CHRISTIAN THAT TALKS ABOUT THE FACT, AND I BELIEVE THAT THERE IS A FOOTNOTE IN CHRISTIAN THAT TALKS ABOUT JUST HAVING THE WEAPON THERE AND FIRING THE WEAPON, CREATES A SUBSTANTIAL DANGER, AND I BELIEVE THAT THAT IS EXACTLY WHAT THE LEGISLATURE WAS GETTING AT, WITH THE 10-20-LIFE, AND, ALSO, OTHER CASES OUT OF THIS COURT THAT HAVE INTERPRETED CHRISTIAN SUBSEQUENT TO OR NOT INTERPRETED CHRISTIAN NECESSARILY BUT HAVE INTERPRETED PALMER, IF YOU LOOK AT THE DOWNS CASE, THAT CAME OUT OF THIS COURT IN 1993, THAT WAS A MIXED CASE. YOU HAD A FIRST-DEGREE CAPITAL MURDER, AND YOU, ALSO, HAD A SITUATION WHERE THE GUN WAS APPOINTED AT SOMEBODY. IT WAS FIRST-DEGREE MURDER OF ONE VICTIM AND AGGRAVATED ASSAULT OF A SECOND VICTIM, SO YOU HAD THE GUN FIRED AND ONE VICTIM WAS KILLED BY THE GUN YOU HAD THE AGGRAVATED ASSAULT, AND THIS COURT RULED THAT DOWNS COMMITTED TWO DISTINCT AND SEPARATE CRIMES, AND THE TRIAL COURT IMPOSED DISTINCT AND SEPARATE PENALTIES, AND THAT WAS APPROPRIATE, UNDER DOWNS, AND I WOULD SUBMIT TO THIS COURT THAT THE SAME ANALYSIS APPLIES IN THIS SITUATION, BECAUSE YOU HAVE THE FIRING OF THE WEAPON AT TWO DIFFERENT INDIVIDUALS, AND YOU HAVE THE GUN POINTED AT A THIRD INDIVIDUAL.

CAN I ASK YOU SOMETHING? UNDER YOUR READING OF THE STATUTE, WAS THE COURT REQUIRED TO STACK NOT ONLY AS TO THE TWO ATTEMPTED MURDER CHARGES BUT ALSO AS TO THE AGGRAVATED ASSAULT CHARGE?

IT IS NOT OUR POSITION THAT THE COURT WAS REQUIRED TO.

DOESN'T THAT POSITION , T HEY BE , CONTRADICT THE PLAIN LANGUAGE OF THE STATUTE THAT SAYS THE COURTS SHALL? ISN'T THIS AN OTHER FELONY , SO WOULDN'T HE BE REQUIRED TO STACK?

WELL , WH EN YOU LOOK AT THE, AND OBVIOUSLY THERE HAS BEEN SOME CONFUSION IN THE DISTRICT COURTS OF APPEAL ABOUT THE LANGUAGE OF THE STATUTE, AND THEY HAVE LOOKED AT THE LEGISL ATIVE INTENT IN THE SESSION LAWS , AND IF YOU LOOK AT THE SESSION LAW , THE LEGISLATURE SAID, RI GHT A FTER THEY BASICALLY REITERATED WHAT THEY SAID IN 775.0872-D IN THAT V ERY LAST SENTENCE, THEY SORT OF REITERATED THAT, AND THEN THEY SAID THE COURTS IS REQU IRED, OR THEY SAID THIS PROVISION DOES NOT EXPLICITLY PROHIBIT A JUDGE FROM IMPOSING THE MINIMUM MANDATORY SENTENCES CONCURRENT TO EACH OTHER.

WHAT ARE YOU READING FROM?

THAT IS THE SESSION LAW .

WHAT CHAPTER IS THAT?

THAT IS WHAT BECAME CHAPTER 99-12 , AND THAT I S THE 10-20-LIFE LAW , FOR WHAT BECAME THE 10-2 0-LIFE LAW . AND THAT HAS BEEN UTILIZED BY THE SO USA COURT AND, ALSO , BY MONDESIER , WHICH THE SOUSA COURT FOLLOWED.

DOES THAT SESSION LAW, THEN , CONTRADICT THE STATUTE?

I DON'T BELIEVE SO , YOUR HONOR. I THINK , I DON'T SEE THAT THE LEGISLATURE WOULD SAY ONE THING AND THEN DIRECTLY CONTRA DISTRICT CONTRADICT ITSE LF IN THE VERY NEXT SENTENCE.

I DON'T, EITHER, BUT ISN'T THAT WHAT THEY DID?

IT WOULD APPEAR SO.

SO IT DOES SEEM CONTRADICTORY.

IT DOES SEEM CONTRADICTORY, YES.

SO WHE N WE HAVE A CONFLICT WITH THE SESSION LAW , WHICH ONE GOVERNS?

THE STAT UTE WOULD GOVERN.

SO UNDER THE PLAIN LANGUAGE OF THE STATUTE , THE J UDGE WOULD HAVE TO STACK THE AGGRAVATED ASSAULT CHARGE AS WELL?

WITH A LITERAL READIN G OF THAT STATUTORY PROVISION, YES, THE COURT WOULD . YES, THE CO URT WOULD. I WOULD LIKE T O ADDRESS ONE OTHER OR ANOTHER ISSUE THAT WAS R AISED BY THE DEFENSE , AND I SEE THAT I AM IN MY REBUTTAL TIME. THE FULL SENTENCES ISSUE. THIS HAS NEVER BEEN RA ISED BEFORE. IT IS INAPPROPRIATE TO BRING IT HERE NOW . THE DEFENSE I S CONTENDING THAT THE 50 YEARS AND THE FIVE YE ARS , SHOULD , THE FULL SENTENCES SHOULD NOT HAVE BEEN STACKED. HOWEVER , THIS GOES ALL THE WAY BACK TO 775.021, AND IT IS CLE ARLY APPROPRIATE TO STACK THOSE FULL SENTENCES . THE STATE WOULD ASK THAT THIS COURT QUASH THE ORIGINAL DISPOSITION AND REMAND FOR ORIGINAL SENTENCES.

CHIEF JUSTIC E: THANK YOU .

MAY IT PLEASE THE COURT . B RUNO DeZAYAS ON B E HALF OF THE RESPONDENT ADAM SOUSA IN THIS CASE.I WOULD LIKE TO START OFF BY GOING OVER STATE VE RSUS CHRISTIAN. I BELIEVE THAT THAT CASE IS DISTINGUISHABLE FROM THE CASE THAT WE ARE BE FORE THECOURT HERE R BT SOUSA CASE, THE REASON BEING I S , IN THE CHRISTIAN CASE, THERE WA S AN ACTUAL HOMICIDE. THERE WAS NO HOMICIDE IN THE SOUSA CASE.

DID THAT MAKE ANY DIFFERENT IN THE DIFFERENCE IN THE ANA LYSIS CHRISTIAN?

I BELIEVE IT DOES AND HERE IS WHY , THE REASON IBELIEVE IT IS THE ANALYSIS , IF YOU LOOK AT PALMER, IN THIS CASE WELL AWARE OF PALMER, BUT IN THE PALMER CASE BACK IN 1983 , THEREHAVE BEEN EXCEPTIONS CRAFTED THROUGH COURT CASES, INCLUDING DOWNS , THOMAS , EDMUNDS.IF YOU LOOK AT THE DOWNS , THOMAS AND EDMUNDS CASES, IN THOSE CASES SPECIFICALLY THERE WAS EXCEPTIONS TO THE PALMER RULE , WHEN YOU HAVE A HOMICIDE. THAT IS WHAT YOU HAVE INCHRISTIAN.A LSO IN THE THOMAS CASE

BUT CHRISTIAN DIDN'T TALK IN TER MS OF HOMI CIDE , DID IT? IT TALKED IN T ERMS OF SHOOTING AT SOMEBODY.

WHAT THEY DID WAS , MY UNDERSTANDING , THEY RELIEDON, IF YOU LO OK AT THE CASE , THEY RELIE D ON THE THOMAS , EDMUNDS AND DOWNS, AND IN MAKING, IN BASICALLY MAKING THE DECI SION THAT THEY MADEIN THAT CASE, TO STACK THEM R A THER THAN TO MAKE THE SENTENCES CONCURRENT , AND MY , WHAT MY AR GUMENT WOULD BE , THAT IF YOU LOOK AT ED MUNDS AND YOU LOOK AT DOWNS, THOSE ARE AL READY EXCEPTIONS TOTHE PALMER RULE. THEREFORE , THIS FALLS IN LINE WITH THAT BECAUSE THIS WAS A HOMICIDE JUST LIKE IN THOSE CASES.

WHAT ABOUT THE STAT UTE?IS THERE ANYTHING IN THE STATUTE THAT DISTINGUISHES BETWEEN HOMICIDE AND A SHOOTING?

NO. IN 775.087, NO , THERE IS NOT THAT I CAN , THAT I SEE .

CHIEF JUSTICE: YOUR ARGUMENT IS, LET'S JUST G O TO THE ACTUAL DISCHARGE OF THE FIREAR MS. IS THAT, IF THERE HAD BEEN ONE VICTIM WAS KILLED AND THE SECOND VICTIM WAS WOUNDED , BY TWO SEPARATE DISCHARGES OF THE FIREARM , THAT THERE WOULD BE CONSECUTIVE SENTENCES APPROPRIATELY IMPOSE ED ?

YES. I BE LIEVE THAT THE REASON CHRISTIAN

YES. I JUST WANT AS TO THAT.

YES.

BUT IF THERE IS A DISCHARGE WHERE SOMEONE IS NOT SHOT, I MEAN , IS SHOT BUT NOT KILLED, AND ANOTHER DISCHARGE SHOT AND NOT KILLED , THAT IT WOULD BE , IT WOULD BE , HAVE TO BE CONCURRENT?

YES. PALMER

WHERE DOES THAT , I AM TRYING, WHERE DOES THAT COME FROM?

WELL, IF YOU LOOK AT THE EXCEPTION TO SAY PALMER ANDIF YOU LOOK AT THE CHRISTIANCASE, THERE WAS EXCE PTIONS TO PALMER THAT HAVE COME OUT A FTER PALMER OBVIOUSLY. THERE WAS DOWNS AND EDMUNDS , AND THEY SPECIFICALLY SAID IN THOSE CASES THAT , EVEN THOUGH YOU HAD A SI NGL E EPISODE OR ACT , THE FACT OF IT IS WHERE THERE IS A HOMICIDE, GIVEN THE FACTS O F THOSE CASES, IF YOU READ THROUGH THE CASES THERE, THAT

IF FACT YOU CAN STACK THEM IN THAT CASE. THAT IS WHAT HAPPENED IN CHRISTIAN. CHRISTIAN IS AN EXCEPTION TO PALMER BECAUSE OF THAT.

BUT DOESN'T THE STATUTE CHANGE ALL OF THOSE CASES?

WELL , NOT NECESSARILY. I DON'T NECESSARILY AGREE WITH THAT. THE STATUTE, THEN , OBVIOUSLY CHANGED, IN THE PRE-1999 LANGUAGE OF 775.087 , THERE WAS NO MENTION AT ALL, OF ANY OTHER FELONY OFFENSES OR ANY MENTION OF ANY OTHER STACKING. WHEN THEY CHANGED THE AMENDMENT IN 1999 , THE AMENDMENT ADDED THIS LANGUAGE, THE COURT SHALL IMPOSE ANY TERM OF IMPRISONMENT PROVIDED FOR IN THIS SUB SECTION , CONSECUTIVE TO ANY OTHER TERM OF IMPRISONMENT IMPOSED FOR ANY OTHER FELONY OFFENSE. THE OTHER FELONY OFFENSE THAT THEY WERE TALK ABOUT IS LIKE IN THE MONDESIER CASE , WHERE YOU HAD A CASE THAT WAS A VIOLATION OF PROBATION AND THEN NEW CHARGES INVOLVING FIREARM CHARGES.

HOW MANY OFFENSES WAS HE CONVICTED OF?

THREE FELONY OFFENSES.

SO WOULDN'T THIS CASE REQUIRE STACKING FOR EACH THE FELONY OFFENSES?

NO. I WOULD RESPECTFULLY DISAGREE WITH THAT, THE REASONING THE REASON BEING I BELIEVE PALMER IS STILL IN PLACE AND WHEN YOU HAVE A SINGLE EPISODE OR ACT , LIKE IN THIS CASE

THE STATUTE DOESN'T TALK ABOUT A SINGLE EPISODE. IT TALKS ABOUT ANY OTHER FELONY, SO WHY DOESN'T THAT SUPERSEDE PALMER AND ANY OTHER CASES YOU ARE TALKING ABOUT?

I BELIEVE YOU HAVE TO LOOK AT THE HISTORY AND THE COMMITTEE NOTES THAT WERE INTENDED AND CITED IN THE SOUSA CASE, AND MY ARGUMENT WOULD BE THAT, WHEN THEY LOOKED AT THAT IT WAS CLEAR THAT IT WAS INTENDED FOR ANY OTHER FELONY.

TO LOOK AT THAT , YOU HAVE TO FIND THAT THE STATUTE IS SOMEHOW AMBIGUOUS , AND IN THE STATUTE, ISN'T THE STATUTE CLEAR? I MEAN, THE STATUTE LANGUAGE SAYS "COURT SHALL" , AND SO I DON'T SEE HOW YOU GET TO THAT LANGUAGE.

WELL , I AGREE WITH YOU THAT THE STATUTE TAKES PRECEDENCE OVER ANY LEGISLATIVE COMMITTEE NOTES OR THE INTENT THERE , BUT IN ORDER TO MAKE THE DECISION THAT THEY MADE IN THE MONDESIER CASE, THE COURT HAD TO LOOK AT THAT INTENT AND BASICALLY WITH THE INTENT, THEY WENT THE NOTION THAT HAS BEEN FOLLOWED BY ALL OF THE DCA'S THEREAFTER , AND I BELIEVE IT IS THE STAFFORD CASE , THE EAGLE'S R CASE, THEY HAVE ALL CONCLUDED THAT THAT IS THE INTENTION. THE INTENTION WAS BASED ON THE DECISION IN MONDESIER THAT, IN FACT THAT THE FELONY OFFENSES , IN ORDER TO STACK THEM, YOU HAVE TO HAVE ANOTHER FELONY OFFENSE NOT INVOLVING IN THE SAME PROSECUTION.

LET ME ASK, GOING BACK TO YOUR ANALYSIS OF CHRISTIAN , ISN'T IT CORRECT THAT IN CHRISTIAN , WE SAID EXPRESSLY , THAT THE STACKING OF FIREARM MANDATORY MINIMUM TERMS , THUS, IS PER MIFERBL, WHERE THE DEFENDANT SHOOTS AT MULTIPLE VICTIMS. NOW , I RECOGNIZE WE CITED TO THOMAS.

RIGHT.

BUT THEN WE APPROVED THE FOURTH DISTRICT'S CASE OF LIFERIT , CORRECT, AND THAT WAS NOT A DEATH CASE.

I AGREE WITH YOU. IN THE THOMAS CASE , THE WAY I UNDERSTOOD CHRISTIAN WAS THAT THEY RELIED ON THE THOMAS CASE BECAUSE THEY TOOK THE GENERAL PROPOSITION THAT THOMAS STANDS FOR. WHEN YOU HAVE MULTIPLE VICTIMS IN SEPARATE OFFENSES , THEN AS A MATTER , THE RULE IS THEN THERE IS AN EXCEPTION TO THE PALMER CASE. THE PROBLEM IS, IF YOU ANALYZE THOMAS AND THEY ANALYZED IT VERY CLOSELY IN THE GARDINER CASE. IN THE GARDINER CASE , THEY TALKED ABOUT WAIT A SECOND. IF YOU LOOK AT THE THOMAS CASE, THERE WAS A CUT IN TIME, A SEPARATE, A CUT IN TIME. THE VICTIMS WERE SHOT IN SEPARATE PLACES , AND THEREFORE , BECAUSE OF THAT , THAT IS WHERE BASICALLY , THEY CAME UP WITH THEIR RULING , SO

CHIEF JUSTICE: I JUST, WELL, IT IS , YOU KNOW , FIRST OF ALL , I THINK YOU HAVE A HARD TIME GETTING AROUND THE ACTUAL LANGUAGE OF THE STATUTE. SECOND OF ALL , CHRISTIAN CLEARLY WAS REFERRING TO SEPARATE VICTIMS AND DID NOT, THE ISSUE OF A SEPARATE TIME IN PLACE , WAS NOT A FACTOR , AND I AM JUST HAVING A VERY DIFFICULT TIME UNDERSTANDING HOW YOU COULD DISTINGUISH A HOMICIDE FROM A DISCHARGE, WHERE SOME ONE IS SEVERELY WOUNDED. I MEAN, WHERE DOES THAT COME FROM ?

WELL , AGAIN , MY POSITION , MY ANSWER TO THAT WOULD BE JUST FROM LOOKING AT THE CASE LAW AND EXCEPTIONS THAT HAVE COME FROM PALMER UNTIL PRESENT DAY.

PALMER REALLY RELIES , IT WAS A ROBBERY.

YES.

AND SO YOU HAVE REALLY GOT , VERSUS AN ATTEMPTED MURDER , YOU HAVE GOT A DIFFERENT ACT THAT IS GOING ON, WHERE IT IS DIRECTED AT A SPECIFIC VICTIM.

RIGHT. BUT IN THE , IN THIS THOMAS CASE, THERE WAS ALSO A SHOOTING IN THAT CASE, BUT IN THAT CASE, I BELIEVE IF I RECALL CORRECTLY , NO ONE WAS KILLED. THERE WAS NO HOMICIDE IN THAT CASE, BUT THE REASON THEY MADE AN EXCEPTION TO PALMER WAS BECAUSE THEY SAID THERE WAS DIFFERENT PLACES AND DIFFERENT TIMES. THERE WAS A BREAK, UNLIKE IN THIS CASE, WHERE THE STATE HAS ADMITTED THERE WAS NO BREAK , AND THAT IS HOW THEY BASICALLY , SO WHAT THE CHRISTIAN COURT DID OR WHAT THE COURT, I UNDERSTAND THIS COURT DID IN CHRISTIAN OR THE WAY I INTERPRETED IT, WOULD BE IF THEY JUST TOOK THE GENERAL PROPOSITION THAT IF YOU HAVE TWO VICTIMS, THEN YOU HAVE GOT TWO SEPARATE OFFENSES. THAT IN AND OF ITSELF IS AN EXCEPTION TO PALMER , AND I AM SAYING I DON'T AGREE WITH THAT. THAT I AM SIGH SAYING THAT YOU REALLY HAVE TO I AM SAYING THAT YOU REALLY HAVE TO LOOK AT THE FACTS OF THOMAS, AND IN THOMAS THERE WAS A BREAK , SO THEREFORE THE COURT IN MY OPINION , JUST BROADLY INTERPRETED CHRISTIAN AND QUITE FRANKLY , I BELIEVE THAT , THAT PALMER IS BASICALLY THE RULE OF LAW IN THIS CASE.

DOES THE LEGISLATURE HAVE THE AUTHORITY TO MANDATE THAT THERE BE CONSECUTIVE OFFENSES , EXCEPT ME , CONSECUTIVE MANDATORY MINIMUMS, FOR SEPARATE CRIMES ARISING OUT OF A SINGLE EPISODE?

I BELIEVE THE LEGISLATURE COULD PUT THAT IN THE STATUTE , YES.

AND I AM STILL, THEREFORE , HAVING TROUBLE WITH UNDERSTANDING HOW WE GET AROUND THE ACTUAL LANGUAGE THAT JUSTICE CANTERO REFERRED TO THAT I REFERRED TO EARLIER , WHICH DOESN'T EVEN SEEM TO ALLOW FOR ANY DISCRETION IN IMPOSING OF A CONSECUTIVE TERM OF IMPRISONMENT.

I THINK IT IS A MATTER OF INTERPRETATION. I BELIEVE THAT THE COURT IN MONDESIEP AND ALL OF THE COURTS THAT HAVE INTERPRETED MONDESIEP THEREAFTER, HAVE INTERPRETED THAT THE LANGUAGE OF ANY OTHER FELONY OFFENSE WOULD BE ONE NOT ARISING FROM THE SAME

SINGLE PROSECUTION . COULD IT

BUT TO ARRIVE AT STATUTORY INTERPRETATION, IF THE LANGUAGE OF THE STATUTE IS CLEAR ON ITS FACE , WE DON'T NEED TO RESORT TO ANY KIND OF RULES OF INTERPRETATION, DO WE?

I AGREE , AND I THINK IT IS CLEAR ON ITS FACE .

ISN'T IT CLEAR THAT IT SAYS "SHALL IMPOSE "?

FOR ANY OTHER FELONY OFFENSE.

AND ANY OTHER FELONY OFFENSE WOULD BE THE AGGRAVATED ASSAULT , THE OTHER SHOOTING, THOSE ARE ALL OTHER FELONY OFFENSES,CORRECT?

WELL , IT COULD BE INTERPRETED THAT WAY. I WOULD INTERPRET IT THE WAY THE MONDESIER COURT INTERPRETED IT. IT MEANS THAT ANY OTHER FELONY OFFENSE WOULD MEAN A FELONY OFFENSE THAT DID NOT OCCUR WITHIN THAT SINGLE PROSECUTION, LIKE IN MONDESIER , WHERE THEY HAD A SINGLE PROSECUTION.

BUT AREN'T YOU ADDING SOMETHING TO THE STATUTE , WHEN YOU ADD ON THE LANGUAGE "ANY OTHER FELONY THAT IS NOT A PART OF THIS CRIMINAL EPISODE"? I MEAN, BASICALLY THAT IS WHAT YOU ARE SAYING, SO AREN'T YOU ADDING LANGUAGE TO THE STATUTE THAT ISN'T THERE?

I RESPECTFULLY DISAGREE. I AM JUST TAKING THE LANGUAGE THAT IS THERE AND INTERPRETING IT. THERE IS JUST A MATTER OF DIFFERENCE OF OPINION. THEY ARE INTERPRETING ONE WAY , THE STATE, AND I AM INTERPRETING IT AN OTHER WAY , AND I THINK IT CAN BE INTERPRETED EITHER WAY , QUITE FRANKLY, BUT WHEN YOU INTERPRET THAT, YOU LOOK AT ALL OF THE CASES THAT HAVE LED UP TO THIS POINT , WHICH WOULD BE THE PALMER CASE AND ALL OF THE EXCEPTIONS THAT HAVE COME FORWARD AND ALL OF THE CASE LAW THAT HAS DERIVED FROM THAT , AND THEREFORE BASED ON THAT, I WOULD ASK THE , BASICALLY THE COURT TO FOLLOW THE RULING OF MONDESIER AND TO AFFIRM. ONE OTHER POINT I WOULD LIKE TO MAKE JUST BRIEFLY. I BELIEVE THAT THE INSTRUCTION TO SAY THE TRIAL COURT IN THIS CASE , AT THE TIME OF SENTENCING, WERE THAT THE TRIAL COURT DID NOT HAVE A CHOICE BUT HAD TO MAKE IT MANDATORY STACKING. I WOULD REQUEST THAT , IN THE EVENT THAT THIS COURT FEELS THAT THE STATE'S POSITION IS CORRECT THAT, IN FACT , THAT YOU CAN STACK IN THIS CASE , THEN I WOULD REQUEST THAT IT AT LEAST BE REMANDED BACK TO THE LOWER COURT, TO DETERMINE WHETHER OR NOT THEY ACTUALLY HAD TO STACK OR THAT THEY HAD THE DISCRETION NOT TO STACK , BECAUSE I FELT , IF YOU LOOK AT THE TRANSCRIPTS , FROM THE CASE, THE TRIAL COURT FELT THAT IT WAS MANDATORY FOR THEM TO STACK! I DON'T BELIEVE THAT WAS THE CASE.

IF WE HOLD THAT IT WAS MANDATORY FOR THEM TO STACK, WHY WOULD WE REMAND?

WELL , AGAIN, THAT IS A GOOD QUESTION, A GOOD POINT . YOU KNOW , IT IS BECAUSE IF IT WAS MANDATORY FOR THEM, IF IT IS HELD THAT IT IS MANDATORY, THEN THERE WOULD PROBABLY BE NO REASON TO REMAND. I WOULD AGREE WITH THAT, SO BASED ON IF THERE IS ANY MORE QUESTIONS. IF NOT, I WOULD ASK THE COURT TO AFFIRM THE LOWER COURT'S DECISION. THANK YOU .

CHIEF JUSTICE: THANK YOU VERY MUCH . REBUTTAL .

THANK YOU. A FEW POINTS VERY BRIEFLY. AS TO THE MANDATORY , THE ISSUE THAT MR . DeZAYAS JUST RAISED THAT THE ASSISTANT STATE ATTORNEY ARGUED THAT IT WAS MANDATORY, IF , I WOULD DIRECT THE COURT'S ATTENTION TO PAGES 77 AND 76 OF THE RECORD OF THE

SENTENCING HEARING, AND IF YOU READ THAT, YOU WILL SEE THAT WHAT THE ASSISTANT STATE ATTORNEY DID WAS READ 775.0872-D TO THE TRIAL JUDGE, AND THEN THEREAFTER, SHE SAID, IT IS APPROPRIATE THAT THIS COURT STACK THE SENTENCES, AND THE TRIAL COURT STACKED THE SENTENCES WITHOUT GIVING ANY INDICATION THAT IT FELT CONSTRAINED BY THE STATUTE, BUT IT SAID NOTHING ONE WAY OR THE OTHER. JUST STACKED THE SENTENCES.

ALL THREE SENTENCES?

THAT'S CORRECT, YOUR HONOR. THAT'S CORRECT. A COUPLE OF OTHER ISSUES AND I KNOW I AM RUNNING OUT OF TIME. AS TO THE HOMICIDE ISSUE THAT WAS BROUGHT OUT, THERE IS NOTHING IN EITHER THE STATUTE OR THE CHRISTIAN OPINION THAT DIFFERENTIATES HOMICIDE. HOMICIDE IS NOT THE DECIDING FACTOR HERE. IT IS THE INJURIES TO SEPARATE VICTIMS.

CHIEF JUSTICE: NOW, AGAIN, IF WE INTERPRET THE STATUTE LITERALLY, IF WHAT HAD HAPPENED WAS, FIRST, THEY, HE TOOK THE FIRST VICTIM, AND HE ROBBED HIM, AND THEN WITH THE SAME GUN, DISCHARGED THE FIREARM, THERE WOULD BE A ROBBERY AND AN ATTEMPTED MURDER. WHAT WE WOULD, ARE YOU ASKING US TO STATE THAT THAT WOULD BE IN ACCORDANCE WITH THE PLAIN LANGUAGE OF THE STATUTE, THERE WOULD HAVE TO BE CONSECUTIVE SENTENCES AND CONSECUTIVE MANDATORY MINIMUMS?

CORRECT. CORRECT, YOUR HONOR, AND I THINK

I THOUGHT THAT YOU WERE, OKAY, BECAUSE EARLIER I THOUGHT THAT YOU WERE SAYING THAT WE DIDN'T NEED TO REACH THAT BECAUSE THIS WAS A DIFFERENT SITUATION AND THAT IT WAS DISCRETION BUT NOW YOU ARE SAYING THAT THERE REALLY ISN'T DISCRETION SO WE WOULD HAVE TO OVERTURN MONDESIER, DISAPPROVE OF MONDESIER.

YOUR HONOR, AS TO, I GUESS MY POSITION IS, IF THE COURT FINDS THAT THE LANGUAGE OF THE STATUTE IS UNCLEAR, THEN IT WOULD HAVE TO LOOK AT LEGISLATIVE INTENT, AND IF YOU DO LOOK AT LEGISLATIVE INTENT, YOU WOULD BE LOOKING AT THAT SESSION LAW THAT SAYS, AND IT DOES SEEM TO CONTRADICT ITSELF, IN ONE SENTENCE IT SAYS IT IS MANDATORY. IN THE NEXT SENTENCE, IT SAYS THIS DOESN'T, WE DON'T INTEND TO RESTRICT THE TRIAL JUDGES' DISCRETION TO SENTENCE CONSECUTIVELY.

IF YOU FIND IT IS UNCLEAR, WHY WOULDN'T THE RULE OF LENIENCY APPLY?

BECAUSE, YOUR HONOR, I THINK, I DON'T BELIEVE THAT THAT APPLY TO THIS SITUATION BECAUSE YOU WOULD BE LOOKING AT THE LANGUAGE OF THE STATUTE THAT SAYS THAT, YOU KNOW, YOU CAN STACK THESE, AND FURTHERMORE, YOU GO ALL OF THE WAY BACK, AGAIN, TO THE CHRISTIAN ANALYSIS, THAT SAYS WHEN YOU HAVE GOT MULTIPLE DISCHARGES OF FIREARMS, YOU HAVE THE ABILITY TO STACK THESE MINIMUM MANDATORIES, AND, AGAIN, THERE IS NOTHING IN THERE ABOUT HOMICIDE OR ANYTHING LIKE THAT. IT IS THE DISCHARGE OF THE FIREARM THAT TRIGGERS THAT ABILITY TO STACK THESE MINIMUM MANDATORIES, IF YOU WILL, SO YOU HAVE GOT THE LANGUAGE THERE IN CHRISTIAN. THE STATE WOULD ASK THAT THE COURT QUASH THE DECISION BELOW AND REMAND IT TO THE TRIAL COURT FOR IMPOSITION OF THE ORIGINAL SENTENCES. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH, TO BOTH SIDES. ALL RIGHT.