

>>> THE NEXT CASE IS WILLIAMS VERSUS  
STATE OF FLORIDA.

>> YOU MAY PROCEED.

>> THANK YOU, JUSTICE.

MAY IT PLEASE THE COURT, MY NAME  
IS JONATHAN KAPLAN.

I'M HERE ON BEHALF OF PETITIONER  
RONALD WILLIAMS.

MR. WILLIAMS IS CURRENTLY  
INCARCERATED IN THE OKEECHOBEE  
CORRECTIONAL INSTITUTION SERVING  
A 80-YEAR SENTENCE.

WE ARE HERE TODAY FROM AN  
QUESTION THAT CERTIFIED AN ISSUE  
OF PUBLIC IMPORTANCE.

DOES SECTION 775.082(2) STATEMENT  
THAT THE COURT SHALL IMPOSE ANY  
TERM OF IMPRISONMENT PROVIDED  
FOR IN THIS SUBSECTION  
CONSECUTIVELY TO ANY OTHER TERM  
OF IMPRISONMENT IMPOSED FOR ANY  
OTHER FELONY OFFENSE REQUIRE  
CONSECUTIVE SENTENCES WHEN THEY  
ARISE FROM ONE CRIMINAL EPISODE.

>> FIRST OF ALL, YOU'VE CONCEDED  
-- OR I HATE TO USE THAT WORD.

YOU'VE AGREED THAT IT CAN -- THE  
ISSUE IS NOT WHETHER IT'S A  
DIFFERENT CRIMINAL EPISODE, THAT  
THIS COULD BE IMPOSED AS A  
SENTENCE BY THE JUDGE BASED ON  
OUR PRIOR CASE LAW, CORRECT?

>> YES.

>> OKAY.

NOW, MY PROBLEM IS -- AND --  
FIRST OF ALL, OF COURSE, HE HAD  
THE OPPORTUNITY TO PLEAD OF FIVE  
YEARS AND WAS TOLD AT THE TIME  
OF THE PLEA YOU'RE GOING TO FACE  
80 YEARS.

BUT THAT MAY BE POSTCONVICTION.  
IT SAYS THE COURT SHALL IMPOSE  
ANY TERM OF IMPRISONMENT  
PROVIDED FOR IN THIS SUBSECTION.  
YOU HAVEN'T FOCUSED ON SHALL.  
I AM TRYING HARD TO SEE HOW  
SHALL MEANS MAY IN THIS CONTEXT.  
IT SEEMS -- THERE'S NO QUESTION  
THAT THIS SEEMS GROSSLY  
DISPROPORTIONATE TO WHAT

HAPPENED, MORE THAN HE WOULD --  
I DON'T KNOW -- WHAT IS HIS  
MINIMUM THAT HE HAS TO SERVE  
WITH 80 YEARS?

>> 80 YEARS.

>> HE HAS TO SERVE 80 YEARS.  
SO HE HAS MORE THAN A  
FIRST-DEGREE MURDER WHERE  
THERE'S PAROLE IF THERE WAS--

>> IF IT'S A SINGLE EPISODE,  
RIGHT, ONE MURDER.  
THAT'S RIGHT.

>> AND IT MAY NOT HAVE BEEN WHAT  
THE LEGISLATURE ACTUALLY  
INTENDED WHEN IT WAS DOING THIS,  
AND IF THERE WERE EIGHT VICTIMS,  
HE'D BE SERVING 160 YEARS.  
BUT HOW DOES "SHALL" INTERPRET  
-- BE INTERPRETED TO MEAN "MAY."

>> WELL, I'M NOT NECESSARILY  
SAYING SHALL IS MAY.

I'M JUST SAYING THAT SHALL  
DOESN'T RELATE TO THE 10-20-LIFE  
OFFENSES, THE FIREARM OFFENSES,  
THOSE THAT REQUIRE THE MANDATORY  
MINIMUM SENTENCES.

>> BUT THE SHALL RELATES TO  
SHALL BE IMPOSED CONSECUTIVELY  
TO ANY OTHER TERM OF  
IMPRISONMENT IMPOSED FOR ANY  
OTHER FELONY OFFENSE.

YOU'VE AGREED THAT THE OTHER  
FELONY OFFENSES ARE THE THREE  
OTHER AGGRAVATED ASSAULTS.

>> I DON'T AGREE WITH THAT.

>> OKAY.

>> I DON'T AGREE WITH THAT.  
I THINK YOU HAVE TO READ IT IN  
ITS ENTIRETY, AND I THINK WHEN  
YOU READ IT IN ITS ENTIRETY, THE  
ANY OTHER FELONY OFFENSES MEANS  
THOSE OFFENSES THAT ARE NOT IN  
THE SUBSECTION 7750872D.

>> BUT THAT'S NOT -- BUT IN  
STATE V SOUSA DIDN'T WE REJECT  
THAT?

>> YOU NEVER ANSWERED THAT  
QUESTION.

>> NO.

WE INTERPRETED WHAT FOR ANY

OTHER FELONY OFFENSE MEANT.

>> I DO NOT THINK YOU DID.

YOU WERE NOT CLEAR.

IN STATE VERSUS SOUSA--

>> EXPLAIN THIS TO ME AGAIN.

IF THERE'S A WAY TO INTERPRET THIS THAT THERE'S AMBIGUITY, IT SEEMS TOTALLY OFFENSIVE AND I

CAN THINK OF OTHER GROSS

INJUSTICES AND YOU HAVEN'T

RAISED LIKE A 8TH AMENDMENT

ISSUE FOR THIS PARTICULAR CASE.

SO EXPLAIN AGAIN HOW READING THE

INTENT IS THE FIRST -- IT'S ONLY

TWO SENTENCES.

IT'S A LONG SENTENCE.

>> IT'S A LONG SENTENCE.

>> BUT THEY SHALL BE PUNISHED TO

THE FULLEST EXTENT OF THE LAW

AND MINIMUM TERMS OF

IMPRISONMENT SHALL BE IMPOSED

FOR EACH QUALIFYING FELONY COUNT

FOR WHICH THE PERSON IS

CONVICTED.

THAT MEANS ON THAT ONE 20 YEARS

-- YOU AGREE THAT EACH

QUALIFYING FELONY COUNT WAS 20

YEARS, 20 YEARS, 20 YEARS, 20

YEARS?

>> YES.

>> OKAY.

THE SECOND SENTENCE SAYS THE

COURT SHALL IMPOSE ANY TERM OF

IMPRISONMENT PROVIDED FOR IN

THIS SUBSECTION CONSECUTIVELY TO

ANY OTHER TERM OF IMPRISONMENT

IMPOSED FOR ANY OTHER FELONY

OFFENSE.

THERE YOU'RE SAYING IT MEANS IT

WOULD BE LIKE IF THERE WAS A

BURGLARY, THAT YOU WOULD IMPOSE

IT CONSECUTIVELY TO A BURGLARY,

BUT NOT FOR THE ONES THAT ARE

GIVEN THE ENHANCEMENT FOR THE

FIREARM?

I'M JUST TRYING TO UNDERSTAND

WHAT YOU'RE SAYING BECAUSE I'M

READING IT AND THE ENTIRE FOURTH

DISTRICT READ IT.

IT WAS CLEAR THAT--

>> WELL, -- THE WAY THEY  
INTERPRETED IT.

>> I'M HOLDING FIRM ON THE  
PROPOSITION THAT "SHALL" REFERS  
TO ANY OTHER FELONY OFFENSE.  
SO WHAT WE HAVE TO LOOK AT IS  
WHAT IS ANY OTHER FELONY  
OFFENSE.

I AM ARGUING THAT ANY OTHER  
FELONY OFFENSE OF ANY FELONY  
OTHER THAN THOSE IN SUBSECTION

--

>> WAS THAT IN YOUR BRIEF?  
I READ YOUR BRIEF OVER AGAIN  
THIS MORNING.

>> IT WAS.

IT WAS.

IT WAS IN MY BRIEF.

>> I DIDN'T PICK UP ON IT.

>> IT'S ANY FELONY THAT IS NOT A  
FELONY COVERED UNDER THE  
10-20-LIFE STATUTE.

>> YEAH.

THAT'S CONSECUTIVE.

THAT YOU HAVE TO DO CONSECUTIVE,  
LIKE IN YOUR EXAMPLE, THE  
BURGLARY, BUT IN THIS CASE AFTER  
THE SHOOTING MR. WILLIAMS RAN  
AWAY.

SO THEY GOT HIM FOR RESISTING.  
AND I WOULD SAY THAT WOULD THEN  
HAVE TO BE CONSECUTIVE.

>> AND I UNDERSTAND EXACTLY -- I  
UNDERSTAND WHAT YOU'RE SAYING  
AND I THINK IT MAKES A LOT OF  
SENSE EXCEPT HOW DO YOU -- YOU'D  
HAVE TO -- WE'D HAVE TO READ  
SOMETHING INTO THIS STATUTE.  
YOU WOULD HAVE TO READ INTO THE  
STATUTE THAT THE LEGISLATURE  
REALLY MEANT TO SAY AT THE END  
OF THAT SENTENCE THAT  
CONSECUTIVE TO ANY OTHER TERM OF  
IMPRISONMENT IMPOSED FOR ANY  
OTHER FELONY NOT COVERED IN THIS  
SECTION OR SOMETHING TO THAT  
EFFECT.

>> OR HOW ABOUT THIS?

I WAS PLAYING WITH THE WORDS.  
I AGREE.

THAT MAYBE ADD SOMETHING--

>> BUT WE'RE ADDING SOMETHING TO THE STATUTE, AREN'T WE, IF WE INTERPRET IT THAT WAY?

>> WELL, YOU'RE TRYING TO FIGURE OUT HOW DO WE GET CLARITY IN THIS STATUTE.

HOW DO WE GET CERTAINTY IN THIS STATUTE?

WHAT DOES THIS STATUTE MEAN BY ANY OTHER FELONY OFFENSE?

AND I THINK THE COURT SPECIFICALLY SOUSA WRESTLED WITH THAT AND ANOTHER CASE THAT WAS THE FIRST CASE THAT REVIEWED THE STATUTE.

THAT CASE SAID THAT ANY OTHER LANGUAGE MEANS A SEPARATE CRIMINAL EPISODE.

AND THEN OF COURSE THIS COURT IN ITS OPINION IN SOUSA SAID NO WAY.

THAT DOESN'T MEAN THAT.

THE ANY OTHER OFFENSE LANGUAGE MEANS IT CAN BE FROM THE SAME CRIMINAL EPISODE, BUT IT NEVER IDENTIFIED IF IT WAS INCLUDING THE OFFENSES IN THIS SUBSECTION.

>> WELL, IT SEEMS TO ME IF IT COULD BE THE SAME EPISODE AND WHAT WE'RE DEALING WITH HERE IS THE STATUTE THAT TALKS ABOUT HAVING A FIREARM DURING THAT EPISODE, THEN IT SEEMS TO ME THAT ANY OF THOSE OFFENSES IN THAT SAME CRIMINAL EPISODE WOULD HAVE THE FIREARM PORTION TO IT, WOULDN'T IT?

>> NO.

NO.

LIKE MY EXAMPLE WAS--

>> WHY NOT?

>> WELL, MY EXAMPLE WAS IN MR. WILLIAMS' CASE HE FIRED FOUR TIMES, SO THOSE ARE THE 10-20-LIFE, THE FOUR DISCHARGES WITH THE AG ASSAULT.

THEN HE RUNS AWAY AND NOW HE'S CHARGED WITH RESISTING WITH VIOLENCE.

AND LET'S SAY THEY ARREST HIM,  
THEY FIND COCAINE ON HIM.  
THAT'S ALL DURING THE SAME  
EPISODE.

IT'S AN EXTENSION OF THE SINGLE  
EPISODE.

I BELIEVE WHEN THE LEGISLATORS  
MADE THIS STATUTE THEY WERE  
TALKING ABOUT--

>> HE STILL HAD THE GUN ON HIM.

>> HE STILL HAS THE GUN.

>> SO THERE'S POSSESSION OF THE  
GUN AND THAT'S THE 10 PART,  
RIGHT?

ON THE 1025 LIFE, THE 10 IS IF  
YOU HAVE POSSESSION OF THE GUY.  
THE 20 IS IF YOU DISPLAY IT.

>> DISCHARGE AND STRIKE SOMEONE.

>> SO EVEN UNDER THAT SCENARIO,  
IT SEEMS TO ME HE'S STILL IN  
POSSESSION OF THE GUN.

>> BUT THE COCAINE CASE WOULDN'T  
-- THERE'S NO 10-20-LIFE.

THE COCAINE IS NOT SOME  
ENUMERATED OFFENSE IN THAT  
SUBSECTION.

EVEN IF HE HAS THE GUN WITH HIM.

>> THE EASIEST WAY, AS I SEE IT  
-- AND I JUST HAVE TO SEE HOW WE  
SAID IS IN SOUSA, WHEN THEY SAID  
FOR ANY OTHER, IT'S REALLY THE  
QUESTION OF WHAT OTHER MEANS.

>> YES.

>> AND IF THEY WERE REFERRING TO  
THE SAME ENHANCEMENT, THEY WOULD  
HAVE SAID FOR EACH FELONY  
OFFENSE UNDER THE SUBSECTION,  
WHICH IS NOW I'M GIVING YOU --  
AND I'M GOING TO ASK THE STATE  
ABOUT THAT.

IT'S REALLY -- THE HOOK IS  
OTHER.

>> THAT'S RIGHT.

YES.

100%.

AND I THINK ALSO WHERE THE  
LEGISLATORS PLACED THE WORD  
CONSECUTIVELY.

THEY PLACED CONSECUTIVELY NEAR  
TO THE ANY OTHER OFFENSE.

IF THEY WANTED THE SUBSECTIONS,  
THE 10-20-LIFE TO BE MANDATORY,  
TO BE REQUIRED TO BE  
CONSECUTIVE, IT SHOULD HAVE READ  
THE COURT SHALL IMPOSE  
CONSECUTIVELY ANY TERM OF  
IMPRISONMENT PROVIDED FOR IN  
THIS SUBSECTION.

THAT WOULD HAVE SETTLED IT.  
THAT WOULD HAVE BEEN CLEAR.

WE WOULDN'T BE HERE.  
BUT THEY DO NOT DO THAT.  
AND THEY PUT THE WORD  
CONSECUTIVELY AFTER THIS  
SUBSECTION.

>> BUT THE LEGISLATURE ALSO SAID  
THAT THE OFFENDERS SHALL BE  
PUNISHED TO THE FULLEST EXTENT  
OF THE LAW.

IT SEEMS LIKE TO ME THAT THAT'S  
REALLY A PRINCIPLE OF SEVERITY  
THAT IS EMBODIED IN THIS  
LEGISLATIVE SCHEME THAT RUNS  
COUNTER TO YOUR ARGUMENT.

I THINK YOU'VE GOT A PLAUSIBLE  
ARGUMENT ABOUT THE ANY OTHER  
FELONY IF IT'S VIEWED IN  
ISOLATION, BUT WHEN IT'S VIEWED  
IN THE CONTEXT OF WHAT THE  
LEGISLATURE SAID ABOUT  
PUNISHMENT TO THE FULLEST EXTENT  
OF THE LAW, I THINK YOUR  
ARGUMENT HAS TROUBLE, BECAUSE  
PUNISHMENT TO THE FULLEST EXTENT  
OF THE LAW I THINK CAN ONLY  
REASONABLY BE UNDERSTOOD TO  
INVOLVE CONSECUTIVE -- ALSO  
APPLY TO CONSECUTIVE SENTENCING,  
BECAUSE OBVIOUSLY CONSECUTIVE  
SENTENCING IS A MORE SEVERE  
PUNISHMENT THAN CONCURRENT  
SENTENCING.

ISN'T THAT CORRECT?

>> WELL, IT CERTAINLY IS MORE  
SEVERE.

CERTAINLY.  
ABSOLUTELY.

>> IF HE HAD ONLY DISCHARGED THE  
FIREARM ONCE BUT THE FOUR--

>> WOULD YOU MIND GIVING HIM A

CHANCE TO ANSWER MY QUESTION?

>> OH, I'M SORRY.

I'M SORRY.

>> YOU KNOW, I THOUGHT ABOUT THAT QUESTION.

YOU KNOW, THIS COURT'S GOING TO ASK YOU, WELL, WHAT ABOUT THIS FULLEST EXTENT?

WELL, FIRST, SENDING SOMEONE AWAY FOR 20 YEARS IS PRETTY SEVERE, OKAY?

YOU KNOW.

AND I THINK THE LEGISLATORS SAID TO THE JUDGES AROUND THE STATE THAT WE WANT TO PUNISH THOSE PEOPLE WITH FIREARM OFFENSES, BUT WE'RE NOT GOING TO TAKE IT OUT OF YOUR HANDS TO SENTENCE THEM CONSECUTIVE OR CONCURRENTLY.

BUT WHEN YOU TALK ABOUT MINIMUM MANDATORY YOU TAKE SOME SENTENCING DISCRETION OUT OF THE JUDGES' HANDS.

SO YOU'RE TAKING THAT DISCRETION OUT.

BUT NOW WHEN THERE'S MULTIPLE OFFENSES ARISING FROM THE SAME CRIMINAL EPISODE, I DON'T THINK THE LEGISLATORS WANTED TO TAKE EVERYTHING OUT.

WE WOULDN'T NEED JUDGES THEN.

AND I KNOW YOU'RE READING THE STATUTE AND YOU DON'T WANT TO GO INTO THE BILL BECAUSE YOU DON'T BELIEVE THERE'S AMBIGUITY.

BUT THE LAST SENTENCE OF THE HOUSE BILL -- AND IT'S INCLUDED IN YOUR SOUSA OPINION -- SAYS THIS PROVISION DOES NOT EXPLICITLY PROHIBIT--

>> YOU'RE NOT TALKING ABOUT THE HOUSE BILL.

YOU'RE TALKING ABOUT THE STAFF SUMMARY.

>> YES.

YES, JUSTICE.

SO IT SAYS IT DOES NOT EXPLICITLY PROHIBIT A JUDGE FROM IMPOSING THE MINIMUM MANDATORY

SENTENCES CONCURRENT TO EACH OTHER.

SO WHEN THIS CREATION OF THIS BILL AND LAW WAS GOING THROUGH, YOU KNOW, I THINK THEY ALL -- IT WAS A CONCERN THAT WE STILL GIVE THE COURT SOME LEVEL OF DISCRETION.

IF WE'RE GOING TO HIT THEM WITH THESE MANDATORY MINIMUMS, WE STILL WANT TO GIVE JUDGES DISCRETION, SO YOU DON'T GET CASES LIKE MR. WILLIAMS, WHERE THE SEVERITY, THE PROPORTIONALITY -- BELIEVE ME. I LOOKED INTO THE 8TH AMENDMENT. I THOUGHT ABOUT IT HARD.

AND YOU DON'T GET THOSE TYPE OF SENTENCES.

AND, YOU KNOW, I'VE RECEIVED A LOT OF LETTERS FROM A LOT OF PRISONERS AROUND THE STATE, PROBABLY TWO, THREE DOZEN LETTERS ALL WATCHING THIS CASE BECAUSE OF SOME OF THE HARSH SENTENCES.

AND I THINK THIS COURT HAD IT RIGHT WHEN IT SAID IN -- SOUSA THIS STATUTE IS NOT INCONSISTENT WITH OUR LINE OF THINKING IN CHRISTIAN AND THOMAS, WHICH BOTH CASES SAID IT'S PERMISSIBLE.

GO AHEAD, COURT.

YOU CAN STACK.

IF YOU FIND THAT THE INJURIES WERE THAT SEVERE, STACK.

BUT IT GAVE THE COURT DISCRETION.

FOR THIS COURT TO SAY OTHERWISE, THEN YOU WOULD ACTUALLY BE OVERRULING WHAT YOU PREVIOUSLY SAID IN SOUSA.

>> MY QUESTION HAD BEEN IF HE HAD SHOT THE GUN IN THE AIR ONCE, BUT IT HAD FRIGHTENED FOUR OF THEM, COULD THAT BE FOUR AGGRAVATED ASSAULTS?

>> IT WOULD BE FOUR AGGRAVATED ASSAULTS, IT WOULD ONLY BE ONE DISCHARGE.

>> WHAT ABOUT FOR CONCEALMENT?  
DO YOU KNOW HOW THAT WORKS?  
IF YOU'RE CONCEALING IT AND YOU  
SOMEHOW ASSAULT SOMEBODY IN  
ANOTHER WAY, DOES THE  
CONCEALMENT GO TO THE MANDATORY  
TEN, GO TO EACH CONCEALMENT TO  
EACH VICTIM?

>> WELL, IF YOU ASSAULT SOMEONE  
WITHOUT DISCHARGING, LIKE YOU  
STRIKE THE PERSON WITH THE  
FIREARM, I BELIEVE YOU WOULD GET  
A TEN-YEAR MIN MAN FOR EACH OF  
THOSE OFFENSES.

I FILED IT AS A SUPPLEMENTAL  
AUTHORITY, THE KAHO CASE.  
THERE YOU DEALT WITH A PR  
SENTENCE, FIVE YEARS, WHETHER  
YOU CAN DO IT CONSECUTIVE OR  
CONCURRENT.

WITHIN THAT 30-YEAR SENTENCE, HE  
RECEIVED A HABITUAL FELONY  
OFFENDER WHICH GAVE HIM 30 YEARS  
AND THEN WITHIN THAT HE HAD A  
10-20-LIFE OFFENSE.

I BELIEVE IT WAS AN AG ASSAULT  
OFFENSE.

THIS COURT EITHER DIDN'T ADDRESS  
THAT ISSUE BECAUSE IT REALLY  
WASN'T THE ISSUE.

BUT THAT SENTENCE RAN THE  
10-20-LIFE CONCURRENT WITH THE  
HABITUAL FELONY OFFENDER  
STATUTE.

AND THIS WHETHER PASSED BECAUSE  
YOU WEREN'T CONCERNED WITH THAT.  
BUT IT'S THERE.

EVEN THE SENTENCING COURTS ARE  
STILL RUNNING THESE 10-20-LIVES  
CONCURRENT TO OTHER SENTENCES.

THE KODO DECISION SAID THAT  
NEEDS TO BE RUN CONSECUTIVE, BUT  
WITHIN THAT SENTENCE YOU'LL SEE  
THAT 10-20-LIFE IS BEING RUN  
CONCURRENTLY.

I'D LIKE TO RESERVE WHATEVER  
TIME I HAVE LEFT.

>> IN THIS CASE I UNDERSTAND  
MR. WILLIAMS FIRED THE SHOTS AT  
THE FOUR VICTIMS?

>> NO.

NO.

HE POINTED THE GUN AT THE FOUR VICTIMS AND THEN KIND OF FIRED IT IN THE AIR.

AND THEN THEY RAN INTO THEIR APARTMENT.

>> NOBODY WAS HIT.

>> NO ONE WAS HIT.

I DON'T EVEN THINK THE GUN WAS DISCHARGED IN THEIR DIRECTION.

>> THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE OF FLORIDA.

AS I STATED IN MY BRIEF AT THE OUTSET, WE CONTEND THIS COURT HAS TAKEN JURISDICTION IN THIS CASE BECAUSE THE STATUTE--

>> BUT THERE'S A CERTIFIED QUESTION.

YOU SAID IMPROVIDENTLY.

WE DON'T HAVE TO EXERCISE IT, BUT IT'S NOT IMPROVIDENT WHEN THEY CERTIFY A QUESTION.

>> LET ME GO TO THE CERTIFIED QUESTION BECAUSE THE CERTIFIED QUESTION IS NARROWED.

THE CERTIFIED QUESTION ONLY IS WHETHER A TRIAL COURT HAS DISCRETION OR IS MANDATED TO IMPOSE CONSECUTIVE SENTENCES IN A SINGLE CRIMINAL EPISODE.

AS WE HAVE ALREADY BEEN THROUGH, THERE ARE MULTIPLE VICTIMS IN THIS CASE.

THIS INDIVIDUAL, MR. WILLIAMS, I WANT TO JUST BRIEFLY MENTION THE FACTS.

THESE FOUR INDIVIDUALS WERE GAY. HE BASICALLY SHOT AT THEM DUE TO THEIR SEXUAL ORIENTATION.

HE ADMITTED AS MUCH TO THE POLICE.

HE WAS SHOOTING AT THEM BECAUSE HE THOUGHT THEY MIGHT BE FLIRTING WITH HIM.

HE THOUGHT BECAUSE HE WAS TRYING TO SCARE THEM AND TO SEND THEM A

MESSAGE NOT TO COME BACK TO THE NEIGHBORHOOD.

>> AGAIN, IT DOESN'T MATTER, BECAUSE HE DISCHARGED THE FIREARM.

MY UNDERSTANDING WAS WHAT JUSTICE PERRY SAID AT THE END, WHICH WAS THAT HE POINTED A GUN, BUT THEN WHEN HE SHOT, HE SHOT IN THE AIR.

>> HE POINTED THE GUN INDIVIDUALLY AT EACH OF THE VICTIMS.

AT THAT POINT, SEE THE A .357 MAGNUM POINTED AT THEM, THEY WERE ALL STANDING AT THE DOORWAY OF A HOUSE.

THEY ALL JUMPED EACH OTHER INTO THE HOUSE.

THEY HEARD THE SHOTS BEING FIRED.

>> BECAUSE YOU SAID HE SHOT AT HIM.

IF HE SHOT AT HIM, HE WOULD HAVE BEEN CHARGED WITH ATTEMPTED MURDER.

>> NO.

I UNDERSTAND THAT, YOUR HONOR. AND IT WAS THE DEFENDANT WHO STATED TO POLICE THAT HE SHOT IN THE AIR.

THEY ASSUMED HE SHOT IN THE AIR BECAUSE IT WASN'T SHOT AT THEM.

>> DID THEY FIND THE SHELLS ANY PLACE?

>> NO.

>> THEY WERE NEAR A HOUSE, IN A THE DOORWAY OF A HOUSE?

>> RIGHT.

>> SO IF HE HAD SHOT AT THEM, THEY WOULD HAVE FOUND THE BULLETS CLOSE TO THE HOUSE.

>> QUITE FRANKLY, YOUR HONOR, I DON'T KNOW WHERE THE SHOTS WERE FIRED.

BUT THE KEY IS NOT WHERE THE SHOTS--

>> YOU SAID HE SHOT AT THEM.

>> NO.

HE TOOK THE .357 MAGNUM AND POINTED AT THEM.

>> WAS IT THE POINTING OF THE GUN OR FIRING OF THE GUN?

>> THE POINTING OF THE GUN WAS THE AGGRAVATED ASSAULT.

>> SO THE DISCHARGING OF THE GUN BASICALLY HAD NOTHING TO DO WITH THE CHARGE?

>> IT HAS TO DO WITH THE 10-20-LIFE STATUTE, AS TO WHY HE RECEIVED 20 YEARS IN THIS CASE ON EACH OF THE COUNTS.

AND I'D LIKE TO GO BACK--

>> AS FAR AS THE ACTUAL UNDERLYING CHARGE OF AGGRAVATED ASSAULT, IT WAS THE POINTING -- WAS IT A MACHINE GUN, YOU SAID?

>> IT WAS A .357 MAGNUM.

>> THE ACTUAL POINTING OF THE HANDGUN AT THEM THAT INSTILLED THE FEAR THAT AMOUNTED TO AGGRAVATED ASSAULT.

THAT HE DISCHARGED THE GUN IS WHAT AGGRAVATED THE SENTENCING.

>> YES.

>> IF HE HAD ONLY -- IF HE HAD DONE SOMETHING, WHICH IS TERRIBLE, OKAY, POINTED A LOADED GUN AT FOUR VICTIMS, FOUR AGGRAVATED ASSAULTS.

IF HE THEN THEREFORE AFTER THEY SCATTERED HAD SHOT THE GUN ONCE IN THE AIR, IT WOULD ONLY BE ONE 20-YEAR MANDATORY, CORRECT?

>> DEPENDING WHAT THE JURY WAS TO FIND.

IF THE JURY FOUND THAT ALL FOUR OF THESE VICTIMS, THAT HE HAD POINTED AT THEM, THAT THEY WERE ALL SCARED TO DEATH -- IN TERMS OF THE 10-20-LIFE, YES.

>> IF HE HAD DISCHARGED IT TEN TIMES IT WOULD STILL ONLY BE THE FOUR BECAUSE IT WAS ONLY RELATED TO THE OFFENSE.

>> THEY'RE THE MULTIPLE VICTIMS. YOU'D ONLY HAVE FOUR VICTIMS IN THE CASE.

>> AND IF AFTER -- LET ME ASK

YOU THIS QUESTION.

OKAY.

HE POINTS THE GUN, AND THEN HE PUTS THE GUN INTO HIS POCKET. THEN THERE IS FOUR MANDATORY TEN-YEAR SENTENCES?

>> NO.

I DON'T BELIEVE SO.

I ALSO -- I BELIEVE THE STATUTE STATES--

>> WELL, WHAT'S THE THAT YOU'RE CARRYING THE GUN?

>> UNDER AGGRAVATED ASSAULT, I BELIEVE IT'S THREE YEARS.

>> BUT WHAT'S THE TEN YEARS? BY HAVING THE GUN, IT'S TEN YEARS?

>> TEN YEARS IS FOR CERTAIN ENUMERATED STATUTES.

>> WELL, IS AGGRAVATED ASSAULTS ONE OF THEM?

>> I BELIEVE UNDER AGGRAVATED ASSAULT, POSSESSION OF A FIREARM BY A FELON, BURGLARY CONVEYANCE, THE LEGISLATOR'S INTENT WAS A MINIMUM TERM OF PRISON OF THREE YEARS.

>> BUT WHAT'S THE TEN YEARS FOR? CARRYING A FIREARM IN THE COURSE OF ONE OF THE ENUMERATED FELONIES.

>> POSSESSION OF A FIREARM. AGGRAVATED ASSAULT HAS BEEN REMOVED FROM THOSE FELONIES. INSTEAD OF TEN YEARS, I BELIEVE THE STATUTE STATES IT'S THREE YEARS.

>> I SEE.

SO IT'S SHOWING THERE IS SOMETHING -- THAT HERE THERE'S REALLY NO RELATIONSHIP TO THE SHOOTING OF THE -- THE DISCHARGE TO THE ACTUAL AGGRAVATED ASSAULT.

NOW WE LOOK AT WHAT THE LEGISLATURE INTENDED.

SO LET'S GO -- THE QUESTION I HAVE -- AND I REALLY -- UNTIL I'VE BEEN LOOKING AT IT,

RELOOKING.

BUT IT DOES SEEM TO ME THAT THE  
-- YOU GOT THE FIRST SENTENCE  
ABOUT PUNISH TO THE FULLEST  
EXTENT OF THE LAW IN THERE.

AND THERE'S NO QUESTION THAT  
UNDER OUR JURISPRUDENCE OF  
CHRISTIAN AND THOMAS, THAT A  
JUDGE HAS THE DISCRETION TO  
IMPOSE CONSECUTIVE SENTENCES.

SO NOBODY IS -- BECAUSE THERE'S  
FOUR SEPARATE VICTIMS, CORRECT?

>> MOST RESPECTFULLY, I AGREE  
WITH THE COURT WITH THE  
EXCEPTION OF ONE WORD,  
DISCRETION.

>> BUT THERE'S NO QUESTION THAT  
THERE'S--

>> THAT HE CAN GIVE CONSECUTIVE  
SENTENCES.

>> AND NOBODY IS CONTESTING  
THAT.

>> RIGHT.

>> SO NOW THE QUESTION IS IF THE  
INTENT WAS THAT THE JUDGE HAD TO  
RUN THE SENTENCES CONSECUTIVELY  
FOR CRIMES THAT HAD THE DISPLAY,  
CARRY, USE, THREATEN, WHY WOULD  
THEY SAY FOR ANY OTHER FELONY  
OFFENSE?

AND I'M LOOKING AT THAT AND I --  
MAYBE IT'S -- YOU MAY SAY THAT'S  
A STRETCH, BUT ORIGINALLY WHEN I  
LOOKED AT IT, I THOUGHT THAT  
THAT MEANT OTHER FELONY  
OFFENSES, LIKE IF THERE HAD BEEN  
A BREAK-IN OR AN OTHER -- AND  
NOW WE'RE SAYING IF THERE'S SOME  
OTHER OFFENSE RESISTING LAW  
ENFORCEMENT.

SO WHY IS THAT NOT THE  
AMBIGUITY?

>> WELL, FIRST WE CONTEND THAT  
IN THE SOSA CASE, THIS COURT DID  
NOT FIND IT AMBIGUITY.

THIS COURT FOUND ANY OTHER  
FELONY OFFENSE INCLUDES THE  
OFFENSES WHICH ARE ENUMERATED  
UNDER THE STATUTE IN A SINGLE  
CRIMINAL EPISODE.

THAT IS CLEAR FROM THE SOUSA  
DECISION IN THIS COURT.

>> WE DIDN'T SAY IT WAS  
MANDATORY.

WE SAID IT WAS PERMISSIVE.

>> I WOULD LIKE TO ADDRESS THAT.  
THE SOUSA CASE BELOW, THE TRIAL  
JUDGE, THIS IS IN THE SECOND  
DISTRICT OF COURT OPINION, I  
BELIEVE IN SOUSA THIS OCCURRED  
ACKNOWLEDGED SAYING BELIEVED HE  
HAD NO DISCRETION UNDER THE  
STATUTE, UNDER LANGUAGE OF THE  
STATUTE, SHALL BE REQUIRED TO  
GIVE CONSECUTIVE SENSES.

IN SOUSA THIS COURT HELD THAT  
THE ISSUE THERE WAS THE ANY  
OTHER FELONY BUT THIS COURT DID  
HOLD THE STATUTE WAS CLEAR AND  
UNAMBIGUOUS AND INTENT OF THE  
LEGISLATURE WAS THEY STATED IN  
THEIR WHEREAS CLAUSES TO  
INCAPACITATE DEFENDANTS AND  
PUNISHING THEM TO THE FULLEST  
EXTENT OF LAW.

THE REMEDY REACHED BY THE COURT IN  
SOUSA, WAS FOR THE TRIAL COURT  
TO REIMPOSE THE CONSECUTIVE  
SENTENCES, NOT GO BACK TO HAVE  
DISCRETION TO CONSIDER WHETHER  
YOU SHOULD GIVE THEM  
CONCURRENTLY OR CONSECUTIVE.

THIS COURT REMANDED IT BACK TO A  
TRIAL JUDGE WHO BELIEVED UNDER  
THE STATUTE THAT HE HAD NO  
DISCRETION.

WHICH IS THE CERTIFIED QUESTION  
BEFORE THIS COURT.

TO REIMPOSE THOSE CONSECUTIVE  
SENTENCES.

IT MAY HAVE BEEN THE ISSUE THAT  
THERE WERE OTHER SENTENCES NOT  
RELATED.

THAT WAS THE, WHAT THIS COURT  
REMANDED BACK TO.

THE COURT ALSO FOUND CLEAR AND  
UNAMBIGUOUS.

I ALSO WANT TO POINT THIS OUT.  
COUNSEL SUPPLEMENTED WITH THE  
CODE TODAY CASE, ON MAY

14th, JUSTICE LEWIS WHICH IS.

I COURT CONFERRED WITH THE DECISION.

WOULD I LIKE TO READ SOMETHING FROM THAT CASE TO THIS COURT WHICH I BELIEVE IS DISPOSITIVE TO THE CASE.

THEY TALKED ABOUT THE PALMER CASE WHICH WAS THE CASE BEFORE THE STATUTE WAS AMENDED IN 1999 AND THIS COURT STATED, THUS CONSECUTIVE SENTENCING WAS NOT ALLOWED IN PALMER BECAUSE NOT PERMITTED BY LANGUAGE. STATUTE OR CLEARLY INTENDED BY LEGISLATURE.

THERE IS A FOOTNOTE BY THIS COURT TO THAT SENTENCE IN THE CONTEXT.

FOOTNOTE 3.

THE STATUTE HAS SINCE BEEN AMENDED TO MAKE PAROLE UNAVAILABLE TO DEFENDANTS WHO HAVE BEEN CONVICTED PURSUANT TO SECTION 775.087, AND TO MANDATE THAT SENTENCES IMPOSED PURSUANT TO THE STATUTE BE IMPOSED CONSECUTIVELY TO ANY OTHER TERM OF IMPRISONMENT, SEE 775.087-2-D.

IN THAT CASE IN THAT FOOTNOTE, THIS COURT I SUBMIT, ANSWERED THE CERTIFIED QUESTION.

>> STILL HAS THE SAME LANGUAGE THAT HE IS CONTESTING -- FOOTNOTE.

WHICH IS HE CONTESTING TO ANY OTHER TERM OF IMPRISONMENT WHICH HE CONTENDS MEANS ANY OTHER TERM OF IMPRISONMENT THAT IS NOT PURSUANT TO THIS STATUTE.

AND WE DIDN'T AND WE DIDN'T, I SUBMIT IN THAT LANGUAGE, IT SEEMS WE JUST FOLLOWED THE SAME LANGUAGE WITHOUT ANY CLARIFICATION.

>> BUT THE CERTIFIED BEFORE THE COURT IS, BECAUSE THE FOURTH DCA ALONG WITH A NUMBER OF OTHER

COURTS IN THIS STATE HAVE LOOKED AT THE SOUSA CASE FROM THIS COURT AND HAVE COME TO THE CONCLUSION THAT THEY ARE ABLE TO, THAT, WELL, IF NOT, THAT THEY CAN GIVE CONSECUTIVE SENTENCES, WHICH WAS THE ISSUE IN SOUSA, TO, TO CRIMES WHICH OCCURRED THAT ARE ENUMERATED IN THE STATUTE IN A SINGLE CRIMINAL EPISODE WHICH HAPPENED IN THIS CASE.

>> AS OPPOSED TO SHALL, THEY CAN GIVE CONSECUTIVE SENTENCES. THE QUESTION IS, MUST THEY GIVE GIVE.

>> MUST THEY.

I POINTED OUT THE FOOTNOTE TO THIS COURT FROM THREE WEEKS AGO WHERE THIS COURT, THAT HAD COME FROM SOMEWHERE.

THIS COURT JUST DIDN'T PUT THE STATUTE BY VERBATIM, TO HAVE A FOOTNOTE AND GIVE THE 1999 AMENDMENT.

THIS COURT DETERMINED --

>> THAT CASE WAS NOT INTENDED TO INTERPRET THAT PARTICULAR LANGUAGE.

IT WAS JUST MERELY A QUOTATION OF THE STATUTE, WAS IT NOT?

>> I, THAT WAS, I AGREE IT WAS NOT THE HOLDING IN THE CASE.

>> RIGHT.

>> I DISAGREE WITH RESPECT, YOUR HONOR, THAT IT WAS JUST QUOTING THE STATUTE.

IT WAS QUOTING THE STATUTE BUT IT WAS INTERPRETING THE STATUTE TO SAY THAT SHALL MEANS MANDATE.

>> WELL THAT'S INTERESTING.

>> BUT THERE'S STILL A QUESTION ABOUT ANY OTHER REFERS TO.

THAT, YOU STILL GOT THAT ISSUE.

>> ANY OTHER FELONY REFERS TO --

>> I UNDERSTAND YOUR POSITION ON THAT BUT I DON'T UNDERSTAND THAT WHAT WE SAID IN SOME FOOTNOTE RESOLVES THAT QUESTION, WHICH IS THE CRITICAL QUESTION HERE,

ISN'T THAT CORRECT?

I UNDERSTAND YOUR POSITION AND FROM WHAT I'VE SAID I THINK I'M INCLINED TO AGREE WITH IT, BUT I DON'T UNDERSTAND HOW THAT FOOTNOTE HELPS?

>> WELL THE FOOTNOTE HELPS IN TERMS OF WHAT THE CERTIFIED QUESTION IS, IN TERMS OF WHETHER -- THE FOURTH DISTRICT COURT OF APPEAL WANTED TO KNOW FROM THIS COURT, IS IT DISCRETIONARY OR IS IT MANDATORY FOR A JUDGE, UNDER THE STATUTE, IT SAYS SHALL?

WHAT THEY SAID WAS, THERE WAS A CASE THAT CAME OUT AFTER WE HAD BRIEFED IN CASE IN WILLIAMS, THIS CASE CALLED MICHELLE.

IN THAT CASE THE FOURTH DCA STATED THAT THIS COURT HAD EXPLICITLY STATED THAT, OR I'M PARAPHRASING BUT EXCLUSIVELY STATED THAT SHALL MEANS SHALL, PARTICULARLY IN A SITUATION SUCH AS THIS AS JUSTICE PARIENTE HAD MENTIONED. AND THEN THEY SORT OF WONDER, MAYBE THE COURT DIDN'T SAY THAT WE WANT TO KNOW IF THAT IS CORRECT.

WE BELIEVE IT'S CORRECT.

WE THINK THE COURT SAID THAT BUT WE WANT TO KNOW BUT WHAT WE'RE SAYING IS IT IS NOT NECESSARY TO GO BEYOND THAT.

IT, THIS STATUTE IS CLEAR. THE INTENT IS CLEAR.

THE LEGISLATIVE INTENT WAS CLEAR TO ME.

I NEED TO FOLLOW IN 1999.

I WASN'T LIVING HERE WHEN THIS STATUTE CAME OUT.

I REMEMBER VISITING HERE.

I SEEM TO RECALL BILLBOARDS AND POSTERS ABOUT THE 10-20-LIFE STATUTE.

I THINK EVERYONE KNEW ABOUT IT.

>> WHEN YOU TALK ABOUT EVERYONE

KNEW, EVERYONE KNEW A GUY LIKE  
THIS WOULD GET 20 YEARS  
MANDATORY, 20 YEARS.  
I DON'T REALLY THINK ANYONE KNEW  
THAT A, SOMEBODY WHO WAS  
DISCHARGING AND NOT HURTING  
ANYBODY, WAS GOING TO GET 80  
YEARS WHEN SOMEBODY WHO SHOT  
SOMEBODY ONCE, WOULD GET, YOU  
KNOW, LIFE BUT, I MEAN.  
SO IF WE'RE ONLY TALKING ABOUT  
WHAT THE COMMON PERSON KNEW OR  
WHAT THE LEGISLATURE INTENDED, I  
MEAN IT IS A PRETTY BIG DEAL  
THAT YOU'RE CARRYING A WEAPON.  
YOU'RE GOING TO GET 10 YEARS  
MANDATORY MINIMUM.  
WE DO NOT ALLOW, AT THE SAME  
TIME WE HAVE STAND YOUR GROUND,  
WE DON'T ALLOW PEOPLE TO BE  
COMMITTING CRIMES AND HAVE A,  
AND HAVE A GUN.  
AND WE DON'T WANT, AGAIN, NO ONE  
IS CONDONING WHAT THIS DEFENDANT  
DID BUT THERE IS NO QUESTION  
THAT WHAT THIS DEFENDANT, THE  
STATE, LOOKING AT THE FACTS  
THOUGHT THIS WAS A FIVE-YEAR  
SENTENCE WHERE HE WOULD HAVE TO  
SERVE THREE YEARS.  
THERE IS NO QUESTION THAT THE  
JUDGE IN THIS CASE WAS NOT  
INCLINED TO IMPOSE THE 80 YEARS.  
THOSE ARE FACTS.  
SO WE GO BACK TO THIS WE MAY  
HAVE ENDED UP IN SOUSA  
INTERPRETING ANY OTHER FELONY  
OFFENSE TO MEAN JUST WHAT YOU  
SAID BUT TO SAY THIS IS LIKE  
EVERYONE KNEW THAT A GUY LIKE  
THIS WAS GOING TO GET 80 YEARS  
IS, I DON'T THINK, THAT WAS  
REALLY CONTEMPLATED.  
IT DOESN'T APPEAR IT MAY HAVE  
BEEN CONTEMPLATED BY THE  
LEGISLATURE BUT WHO KNOWS.  
>> MOST RESPECTFULLY YOUR HONOR  
I DISAGREE WITH YOU IN TERMS OF  
THE LEGISLATURE.  
>> YOU CAME DOWN HERE AND YOU

THOUGHT THAT THIS GUY WAS GOING TO GET, WHAT I'M SAYING ABOUT THE BILLBOARDS, IT WAS SAYING 10-20-LIFE AND I THINK IN THAT WAY YOU KNEW IF YOU DISCHARGED YOUR FIREARM YOU WERE GOING TO GET 20 YEARS.

>> ON A PERSONAL LEVEL I KNEW FLORIDA HAD, ONE OF THE MAJOR HOMICIDE RATES IN THE COUNTRY FROM THE 1980s AND 1990s, WHILE I DIDN'T KNOW THE MACHINATIONS OF THE ACTUAL LAW I KNEW THE LEGISLATURE IN THIS STATUTE CLEARLY INTENDED AS THEY STATE?

THE WHEREAS CLAUSE, INCAPACITATE DEFENDANTS USING FIREARMS.

LET ME ALSO STATE THAT BEFORE THE STATUTE WAS PUT INTO EFFECT IN 1999 THIS COURT IN CHRISTIAN HAD STATED THAT MULTIPLE VICTIMS IN THE SAME CRIMINAL EPISODE, AND I BELIEVE YOUR HONOR IN THE FOURTH DISTRICT COURT OF APPEAL CASE, STATED THAT AS SUCH.

THE LEGISLATURE KNEW THAT.

SO THE LEGISLATURE KNEW THAT DISCHARGING A FIREARM FOUR OR FIVE OR SIX, SEVEN TIMES, YOU GET -- SIX OR SEVEN TIMES YOU GET 20 YEARS AND YOU GET 20 YEARS AND THEY WILL BE CONSECUTIVE.

SO I BELIEVE THEY KNEW THAT.

AND -- I'M SORRY.

>> CONSECUTIVE TO WHAT?

>> CONSECUTIVE TO EACH --

>> ANY OTHER FELONY?

>> TO EACH OF THE VICTIMS AS IN THIS CASE, OR ANY OTHER CASE OR IS IN THE SOUSA CASE.

IN THE SOUSA CASE --

>> QUESTION IS, YEAH, IT CAN BE APPLIED CONSECUTIVE BUT IT DOESN'T HAVE TO BE.

IN OTHER WORDS, IS IT REQUIRED OR IS IT PERMISSIVE?

>> OUR CONTENTION IT IS REQUIRED.

THE STATUTE IS CLEAR AND

UNAMBIGUOUS IT IS REQUIRED.  
AND AS I STATED A MOMENT AGO,  
JUST THREE WEEKS AGO THIS COURT  
IN A FOOTNOTE INTERPRETED THE  
STATUTE TO SAY MANDATE.  
SO THAT IS, THAT IS OUR  
POSITION.  
AND LET ME ALSO STATE IN SOUSA,  
TWO PEOPLE WERE INJURED BY THE  
FIREARM.  
THE OTHER PERSON WAS NOT  
INJURED.  
THAT WAS THE AGGRAVATED ASSAULT.  
THOSE WERE THE SENTENCES THAT  
THE SECOND DCA SAID THAT COULD  
NOT BE CONSECUTIVE.  
THAT THIS COURT SAID, SHOULD BE  
CONSECUTIVE.  
OR CERTAINLY CAN BE CONSECUTIVE.  
THINK I THE LEGISLATIVE INTENT  
IN THE WHEREAS CLAUSES, I THINK  
THE LEGISLATIVE INTENT WITHIN  
THE STATUTE IS JUSTICE CANADY  
MADE MENTION OF THE FULLEST  
EXTENT OF THE LAW, PUNISHED TO  
THE FULLEST EXTENT OF THE LAW IS  
THE INTENT OF THE LEGISLATURE.  
IT IS ALL THERE.  
IT IS ALL VERY CLEAR AND IF  
THERE ARE NO FURTHER QUESTIONS  
FROM THE COURT WE WOULD ASK THAT  
YOU CERTIFY, THAT YOU FIND THAT  
A JUDGE HAS NO DISCRETION UNDER  
THE 10-20-LIFE STATUTE TO IMPOSE  
CONSECUTIVE SENTENCES.  
THANK YOU.  
>> THANK YOU.  
REBUTTAL?  
>> YES, YOUR HONOR. JUSTICE.  
JUST, REAL BRIEFLY I THINK WHEN  
WE TALK ABOUT FOOTNOTE 3,  
JUSTICE LEWIS, IN THE KODO CASE,  
YOU PARAPHRASE THE STATUTE.  
IT WASN'T A QUOTE FROM THE  
ACTUAL STATUTE.  
IT WAS A PARAPHRASE.  
AND YOU DID SAY MANDATE BUT TO  
ANY OTHER IMPRISONMENT.  
THEN WE'RE BACK TO THAT ANY  
OTHER LANGUAGE.

I THINK IT IS REALLY IMPORTANT,  
WHEN WE'RE LOOKING AT THAT ANY  
OTHER FELONY LANGUAGE, THAT  
THERE WERE THREE CASES THAT  
TRIED TO INTERPRET THAT  
LANGUAGE.

THE FIRST CASE WAS MONDESIR.  
THAT WAS THIRD DCA, THAT WAS IN  
2002.

THAT WAS THE FIRST STAB AT THIS  
STATUTE.

MODESIR MEANT THAT ANY OTHER  
FELONY MEANT SEPARATE EPISODE,  
NOT FROM THE SAME CRIMINAL  
EPISODE.

THEN SOUSA COMES UP, THE SECOND  
DCA ADDRESSES SOUSA AND SOUSA  
FOLLOWS MODESIR IN SAYING THAT  
CONCURRENT SENTENCES ARE  
REQUIRED BUT THEY ADDRESS THE  
ANY OTHER FELONY TO SAY THAT  
THAT CAN MEAN FROM THE SAME  
CRIMINAL EPISODE, BUT, NOT THOSE  
OFFENSES IN THE 10-20-LIFE.

THAT'S SUESSA THAT IS THE SECOND  
DCA INTERPRETED TO SAY THAT ANY  
OTHER FELONY MEANS ALL OTHER  
FELONY OFFENSES OTHER THAN THOSE  
IN THE 10-20-LIFE SECTION.

THEN THIS COURT LOOKS AT SOUSA  
IN 2005.

WE CALL IT SOUSA II.

THIS COURT QUASHED SOUSA BUT IT  
REALLY DIDN'T ADDRESS THE ANY  
OTHER FELONY WHETHER IT INCLUDED  
THE SUBSECTION OR ALL FELONIES.

>> WHAT WAS, DID THIS COURT  
QUASH BECAUSE THE SECOND  
DISTRICT HAD SAID, THEY HAD TO  
BE CONCURRENT OR DID THIS COURT  
QUASH BECAUSE THEY HAD TO BE  
CONSECUTIVE?

>> WELL THIS COURT SAID THIS.  
IT SOUNDED LIKE THEY WERE A  
LITTLE FRUSTRATED --

>> OR IS THERE ANOTHER OPTION  
WHICH IS, THIS COURT QUASHED,  
DID WE SAY YOU COULD GO BACK AND  
THE COURT COULD DETERMINE  
WHETHER THEY'RE CONCURRENT OR

CONSECUTIVE?

ONLY THOSE THREE CHOICES IT SEEMS TO ME.

>> THE LAST CHOICE BUT, THE LAST ONE BUT THE COURT WAS EMPHATIC AND SAID, THIS STATUTE DOES NOT PROHIBIT CONSECUTIVE SENTENCES. THAT WAS THE LANGUAGE FROM THIS COURT.

>> WHAT HAD THE JUDGE DONE IN SOUSA?

>> IT HAD IMPOSED CONSECUTIVE SENTENCES.

>> BECAUSE HE WANTED TO OR BECAUSE HE FELT HE WAS REQUIRED TO?

MR. EGBER SAID THE JUDGE DID IT BECAUSE HE THOUGHT HE WAS REQUIRED TO.

>> THERE IS NOTHING TO INDICATE THAT.

THERE IS A CASE, THERE'S A CASE RIGHT AFTER, RIGHT BEFORE SOUSA WHICH IS THE STAFFORD CASE, IT IS A FIFTH DCA CASE DECIDED IN 2002 WHERE THE JUDGE, THE TRIAL JUDGE WAS PROBLEM, WASN'T SURE WHETHER HE COULD DO CONSECUTIVE OR CONCURRENT. IN THAT CASE THE APPELLATE COURT FROM THE FIFTH SAID IT'S DISCRETIONARY.

YOU CAN DO CONCURRENT SENTENCES AND HE REMANDED IT BACK.

IN SOUSA I COULDN'T TELL WHAT THE TRIAL JUDGE THOUGHT OR DIDN'T THINK.

IT DID LOOK LIKE, AT LEAST THE APPELLATE COURT WAS FOLLOWING THE REASONING IN MODESIR.

>> AND DIDN'T WE NOT SPECIFICALLY REJECT THAT? BECAUSE IN OUR SOUSA OPINION WE REFER TO THE HOLDING THAT THE LAST SENTENCE OF SECTION 750.762-D MEANS SENTENCES RECEIVED PURSUANT TO THAT SECTION, SAYS ONLY CONSECUTIVE TO OTHER FELONY SENTENCES NOT SUBJECT TO THAT SECTION.

IN CONTEXT THERE LOOKS LIKE WE GO ON TO SAY WE DISAGREE THAT THAT SECTION IS AMENDED, STILL DOES NOT PERMIT CONSECUTIVE SENTENCES.

SO I AGREE IT'S A LITTLE, IT'S A LITTLE AMBIGUOUS THE WAY IT'S FRAMED.

>> YES.

>> BUT SEEMS PRETTY CLEAR WE ARE REJECTING THAT, THE REASONING THAT THE SECOND DISTRICT APPLIED BASED ON MODESIR ANY OTHER FELONY BEING SOMETHING THAT IS NOT SUBJECT TO THIS 775.087-2-D AM I RIGHT?

>> I THINK YOU ARE RIGHT. YOU TALK ABOUT THE HOW THE SECOND DCA --

>> DOESN'T THAT HURT YOU TO THE CONTRARY.

>> NO, YOU JUST SAID IT IS PERMISSIVE.

>> WELL, BUT THE LANGUAGE, THE POINT ABOUT REJECTING THE, YOUR ARGUMENT I THINK WHAT THE ANY OTHER IS REFERRING TO.

I THINK IF YOU LOOK AT WHAT WE SAID THERE, WE ARE EFFECTIVELY REJECTING THAT, THAT LINE OF REASONING THAT COMES FROM MODESIR INTO THE SECOND DISTRICT IN SOUSA ABOUT WHAT THEY SAID, WHAT ANY OTHER REFERRED TO. AND THAT HURTS YOU.

IF THAT'S THE CASE, THAT WOULD HURT YOUR POSITION.

>> IT CERTAINLY WOULD BUT THEN WHY WOULD THIS COURT GO ON AND SAY, WE DISAGREE THAT SECTION 775.807 AS AMENDED DILL DOES NOT PERMIT CONSECUTIVE SENTENCES?

>> YOU KNOW, I'M A LITTLE EMBARRASSED TO ADMIT BUT SOMETIMES OUR OPINIONS ARE NOT A MODEL OF CLARITY.

IT JUST HAPPENS.

>> AND I, I BELIEVE THAT WAS SIMILAR IN THE FOURTH DCA'S OPINION WHERE, THEY HAD TO

RECEDE BECAUSE THEY SAID THAT YOU REQUIRED CONSECUTIVE SENTENCES, AND I SAID NO, THIS COURT NEVER SAID WE REQUIRE CONSECUTIVE SENTENCES IN SOUSA. SO THEY HAD TO ADD THAT.

I WOULD LIKE TO POINT OUT THIS ONE ISSUE FROM THE FOURTH --

>> IF YOU COULD GO AHEAD WITH THAT AND CONCLUDE.

YOU'RE OUT OF TIME.

>> OH, THANK YOU.

>> JUST WANT TO FINISH THIS LAST.

THE FOURTH HELD THAT, SUPREME COURT HELD IN SOUSA II THAT ANY OTHER FELONY OFFENSE MAY INCLUDE OFFENSES FALLING UNDER

775.0872-D CRIMINAL EPISODE.

THIS COURT NEVER SAID THAT IN SUESSA WHEN YOU LOOK AT THE FOURTH DCA'S OPINION THEY DON'T EVEN GIVE YOU A CITE TO A PAGE WHERE THEY'RE PULLING THAT OUT OF.

THAT IS NOT IN YOUR OPINION.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. COURT WILL BE IN RECESS FOR TEN MINUTES.

>> ALL RISE.