>> WE NOW MOVED TO THE SECOND
CASE ON THE DOCKET.
WHICH IS THE STATE OF FLORIDA
VERSUS MARSH.
>> MAY IT PLEASE THE COURT.
I AM PETER KOCLANES WITH THE
ATTORNEY GENERAL'S OFFICE FOR
THE STATE.
ELIZABETH FRANCES MARSH
COMMITTED FOUR CRIMES WHEN SHE
REAR-ENDED TWO TEENAGERS
CONTROLLED BY CONTROLLED
SUBSTANCES, SHE HAD DUI WITH
SERIOUS INJURY AND DW LS OR
DRIVING WHILE LICENSE SUSPENDED
WITH SERIOUS BODILY INJURY FOR
BOTH VICTIMS.
THE SECOND DISTRICT AIRED IN
FINDING THE SYMBOL HOMICIDE
RULE, - THIS COURT MUST ABOLISH
THE SINGLE HOMICIDE RULE IN
ORDER TO PROPERLY RESPECT THE
LEGISLATIVE INTENT TO BLOCK THE
STATUTE, AND WITH LOOK AT THE
STATUTE.
AND IT ABOLISHES LENITY, ADOPT
THE BLOCK TEST ACROSS THE BOARD.
AND LEAVES NO ROOM FOR GATHERING
THE EXCEPTIONS IN THE STATUTE.
AND WHOEVER COMMITS AN ACT, AND
CRIMINAL OFFENSES, IT GOES ON,
WE HAVE A SHALLOW THE
LEGISLATURE AND WHETHER THERE IS
DISCRETION TO DO IT
CONSECUTIVELY OR NOT.
OFFENSES ARE SEPARATE OF EACH
REQUIRES PROOF OF AN ELEMENT,
THE INTENT OF THE LEGISLATURE IS
TO CONVICT FOR EACH CRIMINAL
OFFENSE IN ONE EPISODE FOR THE
PRINCIPLE OF LENITY.
THIS IS AS CLEAR AS IT GETS FOR
SPELLING OUT THE LEGISLATIVE
INTENT TO ABOLISH LENITY IN THE
BLOCK BURGER TEST.
THAT IS 3 PROBLEMS TO
GRANDFATHERING THE SINGLE
HOMICIDE RULE, 3 -- 3 REASONS WE
CAN'T DO IT.
THE FIRST IS THE UNQUALIFIEDLY

WHICH, THE BLANKET TERM,
OFFENSES WHICH DOES NOT --
EXCEPT HOMICIDE.
THE ABOLISHMENT OF LENITY DOES
NOT QUALIFY FOR THE SINGLE
HOMICIDE RULE AND THE BLANKET
STATEMENT OF LEGISLATIVE INTENT
TO CONVICT AND SENTENCE FOR EACH
CRIMINAL OFFENSE, THERE IS NO
QUALIFICATION ABOUT HOMICIDE.
THE STATUTE EXPLICITLY ABOLISHES
LENITY AND IF WE LOOK CLOSE AT
CASE LAW YOU SEE THE SINGLE
HOMICIDE RULE IS BASED ON LENITY
AND ROSE UNDER LENITY AND CARE
WHEN IDENTIFIES HOW THERE IS AN
APPLICATION OF LENITY AND HAUSER
USES OBSOLETE LANGUAGE THAT WAS
OVERRULED IN VALDES AND WAS TRUE
UNDER LENITY.
HAUSER SAYS SECTION 775 IS A
TOOL OR AN AIDE.
>> IF IT WASN'T LENITY, WHAT
ELSE COULD IT BE?
>> IT HAS TO BE LENITY BECAUSE
DOUBLE JEOPARDY JURISPRUDENCE
BEGINS AND ENDS WITH LEGISLATIVE
INTENT, SO YOU LOOK TO
LEGISLATIVE INTENT AND ONLY A
WITH AMBIGUITY WOULD YOU USE
LENITY BUT THERE IS NO ROOM IN
DOUBLE JURISPRUDENCE FOR
BASICALLY A COMMON-LAW SORT OF
FAIRNESS DOCTRINE BASED ON
JUDICIAL EQUITY.
IT HAS ALWAYS BEEN ALL ABOUT
LEGISLATIVE INTENT AND THE THIRD
REASON THE SINGLE HOMICIDE RULE
IS NOT A REASONABLE RULE
REASONABLY ADDED TO THE
STATUTE'S LEGISLATIVE LISTS ARE
EXHAUSTIVE AND THIS STATUTE
CONTAINS A LIST OF 3 EXCEPTIONS
AND EXCEPTIONS, DOES NOT SAY
INCLUDE BUT NOT LIMITED TO THE
RULE OF INSTRUCTION, ONE 23.
THAT LINES UP PERFECTLY WITH THE
CANON OF LEGISLATIVE INSTRUCTION
THAT WE SHOULD ASSUME A
LEGISLATIVE LIST TO BE

EXHAUSTIVE WITH THE OPINION ON
THE MATTER.
WE WOULD HAVE TO IGNORE ALL
THREE OF THESE PROBLEMS TO
GRANDFATHER THE SINGLE HOMICIDE
RULE.
ANY ONE OF THESE ALONE LOOKING
AT THE FIRST PARAGRAPH OF THE
STATUTE ALONE WOULD BE ENOUGH TO
CONVINCE SOME JUDGES TO EMPLOY A
BLACK LETTER TEXTUAL LIST
INTERPRETATION AND THAT IS WHAT
YOU SEE IN HAUSER WHICH WAS IN
1985 BEFORE THE 1988 AMENDMENT
AND IN HAUSER YOU HAVE A
DISTANCE, LET'S APPLY THE
STATUTE, LEGISLATIVE INTENT IS
CLEAR TO ADOPT BLOCKBURGER AND
ANOTHER COUPLE DISSENTERS AND
CAROLINE, WE SHOULD BASICALLY
APPLYING THE STATUTE.
THEY DIDN'T WIN THE DAY UNTIL
VALDES WHEN THE COURT ACCEPTED
THE STATUTE IS JUST A TOOL OR
ANY AID TO LEGISLATIVE INTENT.
YOU LAUNCH A COMPLETE DEFINITIVE
STATEMENT OF LEGISLATIVE INTENT.
NOW, IF WE LOOK AT THE STATUTE,
IT WOULD NOT BE THAT BIG A
CHANGE TO ABOLISH THE SINGLE
HOMICIDE RULE AND EMPLOYEE THIS
BLOCKBURGER STATUTE.
IT HAS 3 EXCEPTIONS WHICH WOULD
LIMIT THE WAY THAT WE COULD
PROSECUTE HOMICIDES OR IF THEY
WERE IDENTICAL ELEMENTS OR
DEGREE VARIANCE PROVIDED BY
STATUTE, THE BLOCKBURGER STATUTE
WOULD OFFER DOUBLE JEOPARDY
PROTECTION TO HOMICIDE
DEFENDANTS IN THE YOU CANNOT
PUNISH THOSE TWICE AND THAT
WOULD APPLY TO ALL MURDERS UNDER
782.04 BECAUSE THEY WOULD BE
DEGREE VARIANCE, FIRST-DEGREE
MURDER, FELONY MURDER AND IT
WOULD ASSUME MANSLAUGHTER
BECAUSE MANSLAUGHTER IS LESSER
INCLUDED SO THAT WOULD BE SWEPT
UP BY LESSER INCLUDED.

THERE WOULD BE VERY FEW CASES IN
WHICH WE COULD PROSECUTE HER
MURDER TWICE.
IT WOULD BE DIFFERENT ELEMENTS
AND WOULD RISE IN A FEW TRAFFIC
CRIME PERMUTATIONS WHERE THERE
WAS A DIFFERENT TRAFFIC OFFENSE
AND IF THERE WAS A UNIQUE
ELEMENT THAN IT COULD ARISE.
THIS WOULD BE AN EXAMPLE OF
CHARGES IF THERE HAD BEEN A
DEATH BUT THERE WOULD NOT BE
VERY MANY.
IF WE ADOPTED THAT POSITION AND
STRICTLY APPLIED BLOCKBURGER
ACROSS THE BOARD THAT WOULD
BRING UNIFORMITY AND CONSISTENCY
TO CASE LAW AND ADOPT THE
SIMPLICITY FOR HOMICIDES.
THE SECOND REASON THE COURT
SHOULD ABOLISH THE SINGLE
HOMICIDE RULE, A FORM OF LENITY.
WE DON'T HAVE TO ABOLISH THE
SAME HOMICIDE RULE.
THERE WOULD BE TENSION IN THE
SINGLE HOMICIDE RULE.
>> THEY WERE EVADED BY
MEALYMOUTHED OPINION THAT SAYS
WITHOUT DIRECTLY ADDRESSING
WHETHER THE END HOMICIDE RULE
EXPRESSED AND NOT EXPOSING AN
OPINION ONE WAY OR ANOTHER WE
FIND IT DOES NOT APPLY TO THIS.
>> IT WOULDN'T BE MEALYMOUTHED.
BUT THE SINGLE HOMICIDE RULE
APPLIES TO HOMICIDES AND WE
WOULD APPLY THE STATUTE AND THE
LATER CASE THAT INVOLVED A
HOMICIDE WE WOULD HAVE TO DEAL
WITH WHETHER THE SINGLE HOMICIDE
RULE –
>> IF YOU DID IT THAT WAY YOU
WOULD BE SETTING A PRECEDENT
THAT IT STILL EXISTS AS TO
HOMICIDES.
>> WHAT DO YOU MEAN WE WOULD BE
SETTING PRECEDENT?
>> THE SINGLE HOMICIDE RULE IS
LIMITED TO HOMICIDES.
>> THE LABEL SUGGESTS DEAL WITH

HOMICIDE AND HOMICIDE CASE.
>> THE THRESHOLD QUESTION AND
EXPAND IT TO THIS CASE.
DOES THAT DOCTRINE EVEN STILL
EXIST.
>> BUT ISSUE IS STILL OUT THERE.
>> TRUE.
IF THE COURT FEEL THAT IS NOT
RIGHT THE COURT COULD DO THAT
BUT IN ORDER TO HONESTLY ANSWER
THE QUESTION DOES THE SINGLE
HOMICIDE RULE APPLY TO THIS, YOU
CAN'T JUST SAY WE HAVE TO KNOW
OUR REASONING FOR WHY IT STILL
EXISTS, BUT IF NOT LENITY THEN
WHAT?
DEPENDING ON THE ANSWER TO WHAT
IT IS BASED ON THAT MIGHT
DICTATE WHETHER IT EXPANDS.
IF IT WAS IN THE PENDANT DUE
PROCESS FAIRNESS PRINCIPLE THE
SECOND DISTRICT MIGHT HAVE A
POINT, THERE WOULD BE NO
LIMITING TO HOMICIDE.
YOU HAVE TO EXAMINE THE
FOUNDATION OF IT AND IN THE
COURSE OF EXAMINING THE
FOUNDATION YOU NOT ONLY ANSWER
THE QUESTION --
>> UNLESS WE SAY WHAT IS
DIFFERENT.
>> THAT IS SOMETHING.
>> IF THAT IS A REASONED WAY TO
GO FORWARD.
MEALYMOUTHED OPTION.
>> THE STATE WOULD SUGGEST IN
APPLYING THE STATUTE WE WOULD
NOT SIMPLY HUNT IT FOR ANOTHER
DAY AND DRAW A LINE IN THE SAND
SAYING HOMICIDE IS DIFFERENT.
WE HAVE TO START A STATUTE AND
HAVE A COMPELLING REASON NOT TO
APPLY THE STATUTE ACROSS THE
BOARD AND THAT IS WHY WE
SHOULDN'T ARBITRARILY DRAW A
LINE IN THE SAND FOR HOMICIDE
VERSUS OTHER CRIMES AND LEAVE IT
FOR ANOTHER DAY.
THIS COURT ESSENTIALLY HELD THAT
THE STATUTE IS TRICKY APPLIED

UNDER VALDES.
A REASONABLE READING OF VALDES
ALTHOUGH IT DOES NOT EXCESSIVELY
HOMICIDE RULE, A REASONABLE
READER OF VALDES WOULD THINK IT
DOES NOT SURVIVE.
IN THE FOOTNOTE, HE DOESN'T SEE
HOW THE SINGLE HOMICIDE RULE
WOULD BE VIABLE BUT HE DIDN'T
HAVE THE AUTHORITY TO GO THERE.
IT IS THE COURT'S JOB TO DO
THAT.
THERE IS ALSO LANGUAGE IN
VALDES, IT IS NOT HOLDING BUT
THE VALDES COURT, THEY GIVE A
LIST OF CRIMES, THEFT, MURDER,
MANSLAUGHTER AND ARSON, THESE
ARE EXEMPT OF DEGREE VARIANCE
UNDER THE EXCEPTION.
AND FOR MURDER AND MANSLAUGHTER
APPLYING THE BLOCK BURGER
STATUTE, IF THE SINGLE ON THE
SIDE RULE EXISTED WHY WOULD WE
EVER BOTHER, AND IT DOESN'T
MATTER, FOR THE SINGLE HOMICIDE
RULE, WE ARE READING BEHIND THE
RULES BUT A REASONABLE READING
OF VALDES, THE COURT IS A
BLOCKBURGER STATUTE WITHOUT
EXCEPTIONS.
I RESERVE FOR REBUTTAL.
>>
>> SOMETIME YOU NEED TO GO.
>> MAY IT PLEASE THE COURT.
MY NAME IS LEE LEVINSON, PRO
BONO COUNSEL FOR ELIZABETH MARCH
- MARSH.
ELIZABETH FRANCES MARSH WAS
DRIVING, SHE WAS NOT DRUNK.
SHE HAD PRESCRIPTION MEDICATION
IN HER AND SHE HIT ANOTHER CAR
WITH TWO TEENAGERS.
>> SHE DIDN'T HAVE A DRIVER'S
LICENSE.
>> HE DID NOT HAVE A DRIVERS
LICENSE.
SHE WAS DRIVING WHEN SHE KNEW
SHE SHOULDN'T HAVE BEEN DRIVING
AND SHE INJURED TWO TEENAGERS,
NOBODY WAS KILLED.

AND THEY MADE FULL RECOVERIES.
ELIZABETH MARSH WENT TO CIRCUIT
COURT AND TRIED TO DO THE RIGHT
THING AND SHE PLED STRAIGHT UP
TO COURT AND SHE WAS SHOCKED AS
I WAS SHOCKED WHEN I HEARD ABOUT
THIS, WHEN SHE WAS SENTENCED TO
AGGRAVATED CIRCUMSTANCES ON EACH
COUNT AND SENTENCED TO 20 YEARS
IN PRISON.
FIVE YEARS ACCOUNT TIMES FOUR.
CONSECUTIVE SENTENCES AND THE
SECOND DCA THROUGH THE KELLY
CASE AND COOPER, AND CHAPMAN,
AND TO PROCESS AND DUE PROCESS
RIGHTS.
THE STATE LIKES YOU.
AND THE RIGHT WE HAVE UNDER
THE FIFTH AMENDMENT AND A RIGHT
THAT WE HAVE UNDER ARTICLE 1
SECTION 9 AND THE FLORIDA STATE
CONSTITUTION.
AND THE STATE THE STATE ONCE THE
COURT, TO ABOLISH THE SINGLE
HOMICIDE RULE.
THE SINGLE HOMICIDE RULE.
KELLY EXTENDED THE SINGLE
HOMICIDE RULE TO CASES WHERE
THERE WAS SERIOUS BODILY INJURY
AND THE REASON THIS CASE IS
BEFORE THE COURT, THE SECOND DCA
ADOPTED THAT POSITION.
THE FIFTH DCA ADOPTED THE
POSITION IN THE LOT CASE WHERE
THEY SAID THE SINGLE HOMICIDE
WILL DOESN'T APPLY TO THAT CASE
BECAUSE THE DEFENDANT DIDN'T
KILL SOMEONE AND A MEANINGLESS
DISTINCTION.
BOTH STATUTES, THE DUI STATUTE
AND DW LS STATUTE PUNISHED FOR
CIRCUMSTANCES AND ENHANCED THE
SENTENCE, HAPPEN TWO TIMES IN
THIS CASE BUT SHOULD ONLY HAPPEN
IN ONE.
THE SECOND DCA SAID YOU CAN
ENHANCE ON THE DUIs BUT TO
ENHANCE ON THE DW LS BECAUSE IT
IS SAME BASIC WRONG, YOU CAN'T
DO THAT.

THE COURT SAID REMAINS TO THE
TRIAL COURT AND YOU CAN SENTENCE
HER TO THE DUI, THAT IS
FUNDAMENTALLY UNFAIR UNDER THE
DUE PROCESS RIGHTS.
>> WHY DID THE COURT NOT APPLY
TO GO THROUGH THE STATUTE?
THE COURT DIDN'T EVEN IT LOOKS
LIKE IN THEIR ANALYSIS, THEY
DIDN'T EVEN WALK THROUGH THE 775
STATUTE AND MAKE AN EFFORT TO
SHOW HOW THE RESULTS COULD BE
SQUARED WITH THAT.
>> THE STATUTE DOES ABOLISH,
CONTRARY TO THE STATE'S
POSITION, THE STATUTE DOESN'T
ABOLISH LENITY.
I THINK THAT IS WHY THE COURT
DID THAT.
I DON'T KNOW WHY THEY MADE THEIR
ANALYSIS.
I HAVEN'T SPOKEN WITH THEM OR
ANYTHING BUT I THOUGHT THEIR
ANALYSIS WAS MORE REASONABLE
THAN THE LOT ANALYSIS.
>> DO YOU CONCEDE WE APPLY THE
STATUTE THAT WE WOULD HAVE TO
QUASH THIS DECISION?
>> IF YOU FOLLOW THE STATUTE,
THE STATUTE HAS IN IT, LET ME
JUST FIND IT RIGHT HERE.
775.02 ONE STATES AT
SUBPARAGRAPH ONE, WHEN THE
STATUTE IS SUSCEPTIBLE TO
DIFFERENT CONSTRUCTIONS THAT
SHALL BE CONSTRUED MOST
FAVORABLY TO THE ACCUSED.
THAT DOESN'T ABOLISH LENITY,
THAT IS LENITY.
>> READ ON.
WE UNDERSTAND THE STATUTE
ESTABLISHES A STATUTORY RULE OF
LENITY AND THE STATUTE ADDRESSES
THE CIRCUMSTANCES IN WHICH THE
RULE IS NOT TO BE APPLIED.
AND ONE CRIMINAL EPISODE THERE
ARE ACTS THAT VIOLATE SEPARATE
STATUTES.
ARE THEY CORRECT?
>> IT HAS OFFENSES WHICH ARE

LESSER OFFENSES, STATUTORY
ELEMENTS OF THIS ARE SUBSUMED BY
THE GREATER OFFENSE AND IF YOU
ARE REFERENCING THAT, THAT IS
CLEARLY WHAT HAPPENS IN A DUI,
DW LS.
ANY OF US WHO SERVED AS PUBLIC
DEFENDERS OR PROSECUTORS KNOW
THAT AND SO IT IS TREATED --
>> THESE OFFENSES ARE ENTIRELY
DIFFERENT OFFENSES.
THE DUI IS ONE THING, DRIVING
WITHOUT A SUSPENDED LICENSE IS
AN ENTIRELY DIFFERENT THING.
THE LEGISLATURE TRYING TO
PROSCRIBE AND ONE IS SUBSUMED,
IT IS ENTIRELY DIFFERENT.
THIS WOULD BE, SOMETIMES THERE
WOULD BE SOME ARGUMENT THAT EVEN
IF IT IS A DIFFERENT PLACE IN
THE STATUTE IT WOULD BE SUBSUMED
BUT THESE ARE DIFFERENT, THE
CONDUCT IS ENTIRELY DIFFERENT.
IT MAY GET ROLLED IN TO ONE
SEQUENCE OF EVENTS.
>> THE CONDUCT IS THE SAME, THEY
ARE DRIVING WHEN THEY SHOULDN'T
BE DRIVING.
>> THE RELEVANT POINT IS THE
WILLIS CHARGE HAS A SUSPENDED
LICENSE DRIVING WITH A SUSPENDED
LICENSE AND THAT IS NOT PART OF
THE SEPARATE CHARGE OF THE DUI
WITH GREAT POVERTY INJURY.
THE DUI WITH GREAT BODILY INJURY
HAS THE ELEMENT OF IMPAIRMENT
WHICH IS NOT PART OF THE
SEPARATE CRIME, CORRECT?
>> THEY SHARE --
>> THERE IS NO IMPAIRMENT FOR
THE CHARGE.
>> CORRECT.
>> THEY ARE SEPARATE CRIMES
BECAUSE THE LEGISLATURE HAS
DEFINED DIFFERENT CONDUCT AS
PART OF EACH SEPARATE CRIME.
THAT LEGALLY DISTINGUISH
SEPARATE CRIMES.
CORRECT?
>> YES, YOUR HONOR.

>> IF YOU GO THROUGH THE 775
ANALYSIS THAT BECAUSE THEY EACH
HAVE ELEMENT THE OTHER WOULDN'T
HAVE, THEY QUALIFY FOR
PUNISHMENT EVEN THOUGH IT WAS
THE SAME OCCURRENCE OR
TRANSACTION.
YOU RECOGNIZE THAT, RIGHT?
THERE ARE PLENTY OF CASES THAT
INTERPRET AND APPLY THE STATUTE
AND IF ALL OF THEM DO IT THAT
WAY –
>> I HAVE, LET ME SEE HERE.
IN VALDES, –
IN VALDES, WHICH THIS COURT
DECIDED IN 2009 THIS COURT SAID
THAT THE COURT SHOULD NOT
MECHANICALLY APPLY SECTION 775.0
ONE 24, UNREASONABLE RESULTS.
AND –
THE COURT WENT ON TO ANALYZE
775.
AND STATED THAT THE STATUTE
ITSELF CREATES AN EXCEPTION FOR
CRIMES THAT ARE DEGREES OF THE
SAME OFFENSE AS PROVIDED BUT THE
COURTS DOESN'T APPLY IT
MECHANICALLY EVEN THOUGH THE
ELEMENTS MIGHT BE SLIGHTLY
DIFFERENT.
IT IS THE COURT TALKS ABOUT BY
ITS LANGUAGE THIS EXCEPTION IS
INTENDED TO APPLY NARROWLY.
IT PROHIBITS SEPARATE
PUNISHMENTS WHEN ONLY WHEN A
CRIMINAL STATUTE PROVIDES
VARIATIONS ON DEGREE OF THE SAME
OFFENSE SO THE DEFENDANT WOULD
BE PUNISHED FOR VIOLATING TWO OR
MORE DEGREES OF A SINGLE
OFFENSE.
THEN IT GOES ON TO SAY THAT IT
IS NOT NECESSARY FOR THE
LEGISLATURE TO USE THE WORD
DEGREE IN DEFINING CRIME IN
ORDER FOR THE DEGREE, FOR THE
DEGREE VARIANT EXCEPTION TO
APPLY.
>> ARE YOU CONTENDING THE DEGREE
VARIANT EXCEPTION APPLIES?

>> NOW.
I THINK THE REASONING APPLIES
HERE IN THIS COURT, EXPECTING
2009, DID NOT WANT TO
MECHANICALLY APPLY 775 IN A WAY
THAT WOULD GET UNREASONABLE
RESULTS.
ALSO --
>> I'M NOT SURE WHAT THAT MEANS
IN THIS CONTEXT.
>> UNREASONABLE RESULTS.
>> MECHANICALLY APPLY.
THERE ARE THREE EXCEPTIONS TO
THE RULE THAT MULTIPLE
CONVICTIONS IN THE SAME CRIMINAL
EPISODE ARE TO BE PUNISHED
SEPARATELY.
THERE ARE THREE EXCEPTIONS.
WE TALKED ABOUT EXCEPTION ONE,
SO THAT WOULD BE EXCEPTION 2 AND
OFFENSES WHICH ARE LESSER
OFFENSES, THE STATUTORY ELEMENTS
ARE NOT SUBSUMED IN A GREATER
OFFENSE, NOT CONTENDING THAT
EXCEPTION.
>> I AM NOT.
>> NOT MECHANICALLY APPLIED BUT
LOOKED AT THE EXCEPTIONS AND YOU
CONCEDED THAT THE SEPARATE
CRIMES DID NOT FIT THE
EXCEPTIONS.
>> THE STATUTE ALSO LEAVES OPEN
IF THERE IS AMBIGUITY.
>> WHERE IS THE AMBIGUITY?
>> THERE IS AMBIGUITY IN THE
WORDS SUBSUMED AND INVOLVED IS,
IT TALKS ABOUT YOU DON'T HAVE TO
HAVE -- FIT INTO ONE OF THE
CATEGORIES YOU WERE TALKING
ABOUT.
>> THE WORDS SUBSUMED APPEALS IN
THE STATUTE, THE THIRD
EXCEPTION, OFFENSES WHICH ARE
LESSER OFFENSES, STATUTORY
LIMITS ARE SUBSUMED BY THE
GREATER OFFENSE.
HOW IS THE WORD IN CONTEXT IN
ANY WAY AMBIGUOUS RELEVANT TO
THE QUESTION WE ARE LOOKING AT?
>> IT IS NOT BUT WHEN WE

INTERPRET A STATUTE WE HAVE TO
HARMONIZE IT WITH CONSTITUTIONAL
JURISPRUDENCE AND THIS COURT IS
NOT -- CAN'T BE BOUND BY THE
LEGISLATURE TO DO
UNCONSTITUTIONAL THINGS.
>> WHERE IS IT WRITTEN THAT DUE
PROCESS REQUIRES LENITY?
WHERE DID THE SUPREME COURT
PRONOUNS THAT?
>> THE UNITED STATES SUPREME
COURT STATED UNITED STATES
VERSUS WILLBERGER.
CHIEF JUSTICE MARSHALL JUSTIFIED
THE RULE OF LENITY ON GROUNDS OF
CONSTITUTIONAL RIGHTS AND
STRUCTURE LEGISLATIVE SUPREMACY
AND THAT MEANS BEFORE
LEGISLATURE -- THAT DOESN'T MEAN
LEGISLATURE IS THE KING OR CAN
DO UNCONSTITUTIONAL THINGS.
IT MEANS WHEN LOOKING AT LAWS,
WE TRIED TO INTERPRET THEM AND
HARMONIZE THEM WITH THE FIFTH
AMENDMENT, SECTION 1 ARTICLE 9
OF THE FLORIDA STATE
CONSTITUTION AND IF 772 IS
BUTTING UP AGAINST THAT IT IS
UNCONSTITUTIONAL AND THIS
SENTENCE IS UNCONSTITUTIONAL.
THE LEGISLATURE ISN'T YOUR BOSS,
YOU ARE THE BOSS.
>> IS IT A DOUBLE ARE PRETTY
ARGUMENT OR DUE PROCESS
ARGUMENT?
>> THEY ARE RELATED BUT DOUBLE
JEOPARDY IS BASED ON AS YOU KNOW
DUE PROCESS.
IT IS THE SAME FUNDAMENTAL
FAIRNESS OF STATUTORY NOTICE IN
THIS CASE.
>> BUT DOESN'T THE JURISPRUDENCE
MAKE CLEAR THAT IF THE
LEGISLATURE WANTS TO IMPOSE
MULTIPLE PUNISHMENTS FOR A
SINGLE COURSE OF CONDUCT BECAUSE
THEY ARE TRYING TO VINDICATE
DIFFERENT POLICY OBJECTIVES THAT
THEY ARE FREE TO DO THAT AND IT
DOES NOT VIOLATE DOUBLE

JEOPARDY?
IT IS JUST THAT THEY HAVE TO DO
IT AND WE HAVE GOT TO KNOW THAT
THEY ARE DOING IT.
DOESN'T THAT FAIRLY SUM UP THE
DOUBLE JEOPARDY JURISPRUDENCE?
WHEN IT COMES TO LEGISLATIVE
POWER?
>> NOW.
I DON'T THINK THAT IS A FAIR
ANALYSIS.
THIS COURT GOT IT RIGHT IN STATE
V COOPER 634 WHERE THIS COURT -
>> ON ASSUMPTION WHAT THE
LEGISLATURE INTENDED.
THAT WHOLE LINE IS BASED ON AN
ASSUMPTION ABOUT LEGISLATIVE
INTENTION, NOT A CONSTITUTIONAL
RESTRICTION ON LEGISLATIVE
POWER.
>> IT IS BASED ON ALSO TELLING
THE LEGISLATURE THAT YOU CAN'T
PUNISH, YOU CAN'T PUNISH THE
SAME INJURY, CAN'T PUNISH THE
SAME INJURY FOR THE HOMICIDE.
THAT SAME ANALYSIS APPLIES TO
SERIOUS BODILY INJURY.
YOU CAN'T PUNISH A SERIOUS
BODILY INJURY TWICE AND THAT IS
WHAT IS HAPPENING IN THIS CASE.
DOES ANYBODY HAVE ANY MORE
QUESTIONS?
I KNOW YOU ARE AGAINST ME.
[LAUGHTER]
>> BUT --
>> THESE QUESTIONS ARE SOMETIMES
JUST RHETORICAL QUESTIONS.
>> I DON'T THINK SO.
[LAUGHTER]
>> I DID SAY SOMETIMES.
>> YOU BEGAN AND ENDED WITH
UNUSUAL CANDOR.
WE APPRECIATE IT.
>> AND APPRECIATE YOUR PRO BONO,
THANK YOU.
>> THANK YOU, JUDGE.
>> I WILL MAKE A FEW BRIEF
POINTS.
I HAVE ONE THOUGHT REGARDING WHY
YOU SHOULD ADDRESS THE SINGLE

HOMICIDE WILL RATHER THAN WAIT
LATER.
OF THE COURT DETERMINED IT IS AN
ERROR TO KEEP THE SINGLE
HOMICIDE WILL BECAUSE IT IS
OUTSIDE THE BLOCKBERGER STATUES.
WE ARE SIDESTEPPING THE STATUTE
OPERATING OUTSIDE THE STATUTE
AND IGNORING THE CONNECTION IN
LENITY WHICH WAS ABOLISHED.
OF THE COURT AGREES THAT IS IN
ERROR THE COURT DID NOT RATE
BECAUSE AS OF NOW THE DCAs ARE
BOUND BY COOPER AND CHATMAN.
IF YOU WAIT FOR A CASE THAT
COMES ALONG THREE YEARS FROM NOW
THE DCAs WILL CONTINUE DOING
ERRONEOUS DECISIONS FOR THREE
YEARS AND NOT ONLY WILL THAT
DEPRIVE THE STATE OF THE CORRECT
LAW IN THOSE CASES BUT OF THE
ABILITY TO USE THE BLOCKBERGER
TEST IN THOSE CASES AND DEPRIVE
THE LEGISLATURE OF ITS RIGHT TO
HAVE THE CORRECT LAW APPLIED AND
ALSO GENERATE MORE INCORRECT
CASE LAW WHICH MAY AFFECT
STARTED THIS ISIS.
THE DEFENSE ATTORNEY THREE YEARS
FROM NOW WILL ARGUE IT HAS BEEN
13 YEARS SINCE VALDES AND WE
HAVEN'T OVERTURNED IT YET
WHEREAS NOW IT HAS ONLY BEEN 9
OR 10 YEARS SINCE VALDES SO
THERE IS LESS DEEPLY ROOTED
ERRONEOUS CASE LAW.
IS WOULD BE EASIER TO PULL OFF
THE BAND-AID NOW THAN THREE
YEARS FROM NOW.
FLORIDA STATE IS UNIQUE IN THAT
WE ADOPTED THE BLOCKBERGER
STATUTORILY NOT ONCE BUT TWICE.
THE LEGISLATURE PASSED IT IN
1983, THE FIRST PARAGRAPH AND
THEN THEY PASSED AN AMENDMENT IN
1988 MAKING IT 100% CLEAR THIS
IS NOT JUST A TOOL OF STATUTORY
INTERPRETATION BUT THE CLEAR
PRECISE STATEMENT OF INTENT.
FLORIDA'S TEST IS NOT JUST A

TOOL OF STATUTORY CONSTRUCTION
BUT A MANDATE TO IMPOSE DUAL
PUNISHMENT WHEN THE CRIMES HAVE
UNIQUE ELEMENTS OR DO NOT
SATISFY THE STATUTORY
EXCEPTIONS.
THERE IS NO REASON TO ASSUME A
SINGLE HOMICIDE RULE EXCEPTION
TO THAT.
MY FINAL POINT IS IT DOESN'T
MAKE SENSE FOR THE LEGISLATURE
TO NOT INTEND TO PUT HOMICIDE
TWICE IN LIGHT OF WHAT THEY DO
INTEND IN BLOCKBERGER.
IF CRIME HAS UNIQUE ELEMENT,
REGARDLESS OF WHAT THE LIMITS
ARE AND WHETHER IT IS THE SAME
EVIL, IT HAS UNIQUE ELEMENT AND
DOESN'T APPLY FOR THESE
EXCEPTIONS, YOU CAN PUNISH IT
TWICE.
THAT IS A STRICT RULE THOUGH IT
GIVES DISCRETION NOT TO SENTENCE
CONSECUTIVELY.
IF THAT IS THEIR INTENT WITH
EVERY NON-HOMICIDE CRIME AS IT
IS UNDER VALDES WHY WOULD THEY
EXEMPT MURDERERS AND GIVE
MURDERERS A MORE MERCIFUL
LENIENT ONE KILL ONE CONVICTION
RULE.
WE DON'T APPLY THAT MERCIFUL
RULE TO CHILD BLISTERS OR
RAPISTS OR ARSONISTS.
ALL THE NONHOMICIDE CRIMES ARE
SUBJECT TO STRICT LAWBREAKER.
IT DOESN'T MAKE SENSE FOR THE
LEGISLATURE TO HAVE TWO STATES
OF MIND, STRICT FOR HOMICIDES
AND MERCIFUL ARCHAIC COMMON-LAW
DOUBLE JEOPARDY.
>> ANY POTENTIAL TEXTUAL BASIS
FOR FINDING SUCH DIFFERENT
STATES OF LEGISLATIVE MIND?
>> ABSOLUTELY NOT.
IT COMES FROM THE CHAPMAN,
PUTTING WORDS IN THE
LEGISLATURE'S NOW.
THEY WOULDN'T HAVE INTENDED TO
PUNISH HOMICIDE TWICE WHICH AS I

ARGUED IN THE BRIEF IS A WAY
THAT THAT WAS ONLY TRUE IN THE
1970s WHEN WE WERE OPERATING
UNDER LENITY.
>> THIS IS NOT LEGALLY RELEVANT
ISSUES RAISED BUT DO YOU AGREE
THIS IS AN UNUSUALLY HARSH
SENTENCE?
>> NOT UNDER THESE FACTS.
THIS GIVES THE TRIAL JUDGE
DISCRETION TO MAKE THE CALL AND
THE ELEMENTS OF THIS CRIME DON'T
REFLECT THE AGGRAVATING FACTS
THAT WERE BROUGHT OUT LIKE THIS
WAS HER THIRD DUI.
THE TRIAL JUDGE WAS THERE TO SEE
EXTREME ADDICTION, DIDN'T SEE
ANY END INSIDER THE FACT SHE WAS
ONCE TWICE NOT TO DRIVE, HE'S
WERE TAKEN AWAY AND SHE
CONTINUED DRIVING, HE BASICALLY
SAW A WOMAN WHO WAS OUT OF
CONTROL IT MIGHT TAKE SOMEONE
DOWN WITH HER IN THE COURSE OF
DRIVING AND ALMOST DID WITH
THESE TWO CASES.
THIS IS REASONABLE AND VICTIM'S
FAMILIES EXPRESSED THAT THEY
THOUGHT STATE INITIAL TENURE
OFFER WHICH DID NOT GET EXCEPT
WAS TOO LIGHT.
THE VICTIM'S FAMILIES WANTED
SERIOUS SENTENCE AND DIDN'T WANT
RESTITUTION.
THEY WERE HAPPY WITH THE 20 YEAR
SENTENCE.
THE TRIAL JUDGE WAS WITHIN
STATUTORY BOUNDS AND WAS A
REASONABLE SENTENCE WAS WE ASK
YOU TO QUASH THE DECISION IN
ELIZABETH FRANCES MARSH AND
RESTORE ORIGINAL CONVICTIONS AND
SENTENCES.
IF THERE ARE NO OTHER QUESTIONS,
THANK YOU.
>> WE THANK YOU BOTH FOR YOUR
ARGUMENT AND THE COURT WILL
STAND IN RECESS FOR TEN MINUTES.