

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT OF APPEALS
STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

NO. 25

SABB (JHAJUAN),

Respondent.

20 Eagle Street
Albany, New York
February 12, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

EMILY SCHULTZ
Attorney for Appellant
599 Lexington Avenue
New York, NY 10022

STEVEN M. SHARP
Attorney for Respondent
6 Lodge Street
Albany, NY 12207

Christy Wright
Official Court Transcriber

1 CHIEF JUDGE WILSON: Last case on the calendar is
2 People v. Sabb.

3 MS. SCHULTZ: Good afternoon. Emily Schultz on
4 behalf of the People. I'd like to reserve three minutes
5 for rebuttal, please.

6 CHIEF JUDGE WILSON: Yes.

7 MS. SCHULTZ: Thank you. May it please the
8 court. I come before this court seeking remedy to a
9 disparity in the law. The facts of this case are
10 straightforward and uncontested. The defendant committed a
11 drive by shooting. He opened fire on a city street corner
12 here in Albany. Those bullets caused the death of one man
13 and injured four more. Sixteen bullets, five victims, and
14 the defendant took responsibility for that shooting.

15 By the plain language of the Appellate Division
16 majority decision, the court was constrained to impose
17 concurrent sentencing despite the defendant's negotiated
18 plea, which called for consecutive sentencing for two of
19 the five victims. But had the defendant gone to trial,
20 quote, "the outcome may have been different". That is the
21 disparity in law I seek to remedy. Where, like here, a
22 defendant pleads guilty to a reduced count - - -

23 JUDGE RIVERA: I don't understand. That's true
24 in any case that you take a plea, the outcome might have
25 been different at trial. I'm not - - - I'm not sure that

1 the fact that there might have been a different outcome.
2 Maybe it's an acquittal. Depending on whether or not there
3 are multiple counts, maybe it's a partial verdict.

4 MS. SCHULTZ: The disparity comes in what a court
5 can consider in deciding whether or not - - -

6 JUDGE RIVERA: Yeah, that's correct, but hasn't
7 our law - - - you're asking for a change in the law?

8 MS. SCHULTZ: Yes.

9 JUDGE RIVERA: Our law is if you take a plea to a
10 count in the indictment, you can look to the indictment.
11 If you take a plea to a lesser count, you can look at the
12 indictment to the extent it does - - - it's useful for that
13 purpose in the plea colloquy. So what in the indictment
14 and the plea colloquy, given that you have one count that's
15 in the indictment, the other counts - - - in the lesser
16 charge, what - - - what - - - if we're looking at that
17 universe, before we get to the test that you want - - -

18 MS. SCHULTZ: Sure.

19 JUDGE RIVERA: - - - are you conceding that if
20 you just look at those things, the indictment and the
21 colloquy, that there you don't have a factual record that
22 would support consecutive sentencing?

23 MS. SCHULTZ: I have maintained that - - - I
24 think the question of whether we could have done more is
25 different and not dispositive of whether we did enough. I

1 maintain that we did enough. The record is sufficient.

2 JUDGE RIVERA: What - - - what can I - - - what
3 can I look at - - -

4 MS. SCHULTZ: Sure.

5 JUDGE RIVERA: - - - to - - - to agree with you?

6 MS. SCHULTZ: So obviously, the allocution to the
7 two separate victims was taken separately from one another,
8 one at a time. At the outset of the entire plea
9 allocution, we obviously outlined the details of what the
10 terms of the plea are. We articulate at that point that we
11 would be asking for consecutive sentencing. In this - - -

12 JUDGE RIVERA: No, no, I understand the
13 negotiation over the consecutive sentencing, but that - - -
14 that isn't really the analysis that the court goes through
15 on reviewing this. But the fact that you've got allocution
16 to two different crimes in this case, given it's a drive by
17 shooting, aren't we left with the fact that it could have
18 been the same bullet, that it's not different shots?

19 MS. SCHULTZ: Well, I think - - -

20 JUDGE RIVERA: Isn't that what's missing in the
21 record?

22 MS. SCHULTZ: Well, I think it depends - - -
23 well, first and foremost, you have to look at the totality
24 of the circumstances.

25 JUDGE RIVERA: You do agree it would have to be

1 different shots?

2 MS. SCHULTZ: Absolutely. Yes. I - - - I - - -

3 JUDGE RIVERA: So where in the record can we find
4 that?

5 MS. SCHULTZ: I think you look at the
6 circumstances of the crime, sixteen bullets, you had
7 multiple shooters, you had five victims. I - - - I don't
8 think it's - - -

9 JUDGE RIVERA: I think you're trying to look
10 beyond the only thing that we've said one can look at.

11 MS. SCHULTZ: Yes. I - - -

12 JUDGE RIVERA: Okay. But in what - - - I'm going
13 to get to your test, just in what we can look at based on
14 the law as it stands, can I find something there that will
15 get me to see that you're - - - you're correct that - - -

16 MS. SCHULTZ: Again, I do look - - -

17 JUDGE RIVERA: - - - that it shows that there's
18 two separate shots?

19 MS. SCHULTZ: Well, because it's a negotiated
20 plea, obviously the elocution, you know, we don't prove our
21 case during an elocution to the extent we would at trial,
22 obviously.

23 JUDGE RIVERA: No, but maybe - - - maybe that was
24 the one question you needed to ask. But okay, so let's
25 move on to the test that you want.

1 MS. SCHULTZ: So well - - -

2 JUDGE RIVERA: I think we've kind of drilled down
3 enough here.

4 MS. SCHULTZ: Yeah. I mean, just to - - - to put
5 a point on it, I'm not, you know, ignorant to the fact that
6 more could have been done at this allocution. I do
7 maintain that enough was done, that it was sufficient.

8 JUDGE RIVERA: Right. No, I know that's the
9 point of - - - that's the question. Okay.

10 MS. SCHULTZ: Right.

11 JUDGE RIVERA: But let's move to the test that
12 you - - - you want and why the court should adopt that
13 test.

14 MS. SCHULTZ: Sure. I believe expanding the rule
15 as to what a court can consider in determining whether
16 consecutive sentencing is authorized, it is consistent with
17 Penal Law 70.20, the obvious objectives of sentencing. As
18 this court recognized in a previous argument today, you
19 know, we want to deter gun violence. Obviously, there is
20 an inherent - - -

21 JUDGE RIVERA: Tell me how it's consistent with
22 the penal law.

23 MS. SCHULTZ: Because I guess - - -

24 JUDGE RIVERA: Well, I'm sorry, unless I
25 misunderstood you. You say it would be - - - to expand

1 what an appellate court can consider - - -

2 MS. SCHULTZ: Yes.

3 JUDGE RIVERA: - - - to review the legality of
4 these sentences, it would be consistent with the penal law.
5 What - - - what makes it consistent with the penal law - -
6 -

7 MS. SCHULTZ: Sure.

8 JUDGE RIVERA: - - - to expand the universe of
9 what we can consider?

10 MS. SCHULTZ: Well, we want to look - - - well,
11 sentencing courts have this inherent discretion at the time
12 of sentencing.

13 JUDGE RIVERA: Okay.

14 MS. SCHULTZ: And so under the current law, where
15 they can only look at either the allocution or the
16 allocution and the indictment, we are restraining a
17 consecutive - - - or excuse me, a sentencing court in what
18 they can consider at the time of sentencing, thereby, I
19 think, interfering with their sentencing discretion.

20 So there's really two sides of this issue as I
21 see it. You know, obviously, did we satisfy our burden at
22 the allocution? And the second side is should a court be
23 limited - - -

24 JUDGE RIVERA: But our - - - you know, our case
25 law does explain why it's this limited universe. It's

1 because it's a plea and it's what the person is admitting
2 they're guilty of having done.

3 MS. SCHULTZ: And in this case, he admitted to -
4 - - to - - -

5 JUDGE RIVERA: In this universe, that's the - - -
6 you don't have a trial. You can't look at what - - - what
7 would have happened in a trial because there is none.
8 That's why you're left with the indictment and possibly
9 with the plea colloquy, right?

10 MS. SCHULTZ: Right. But I guess an example is
11 we can look at the face of an indictment on an allocution,
12 correct?

13 JUDGE RIVERA: Yes, yes.

14 MS. SCHULTZ: But it - - - it sort of defies
15 common sense why we can't look at the proof submitted in
16 support of that indictment, right, the proof that was
17 submitted at grand jury. It - - - it - - -

18 JUDGE RIVERA: Well, because it hasn't been
19 tested. And if they didn't admit to it that - - - that's
20 not the basis for the sentence.

21 MS. SCHULTZ: Except he does admit to it. He
22 understands the plea.

23 JUDGE RIVERA: Well, he admitted to two separate
24 shots?

25 MS. SCHULTZ: I conceded that that question was

1 not asked. I don't have that explicit, you know, language
2 in my plea allocution.

3 JUDGE RIVERA: Do you - - - you agree that's what
4 you need, though, for the consecutive sentencing?

5 MS. SCHULTZ: I think that would certainly be
6 best practice. I - - - I don't disagree on that point. I
7 don't know that it's necessary because plea allocution, if
8 you take a step back and we're not - - -

9 JUDGE RIVERA: No, no, I'm sorry I wasn't being
10 clear. You agree that you need the two separate shots?

11 MS. SCHULTZ: Yes. Yes. You need - - -

12 JUDGE RIVERA: I think I - - - I think I would
13 agree with you that maybe there's something else in the
14 plea colloquy that gets you to an admission. I - - - I get
15 that.

16 MS. SCHULTZ: Well, I think there's an implicit
17 admission through the defendant's negotiated agreed to
18 terms of his plea. The court when it - - -

19 JUDGE RIVERA: Well, that would be contrary to
20 all our jurisprudence.

21 MS. SCHULTZ: But I think there's something to be
22 said for his understanding that he has negotiated. He had
23 five victims.

24 CHIEF JUDGE WILSON: That's what Judge Bellacosa
25 said in dissent in Laureano, and the court rejected that.

1 MS. SCHULTZ: Yes, but I mean, the law changes.
2 The law evolves.

3 CHIEF JUDGE WILSON: So you're asking us, at
4 least in part, to overrule Laureano?

5 MS. SCHULTZ: I'm asking for an expansion of the
6 rule. An expansion where - - -

7 CHIEF JUDGE WILSON: That sounds like a
8 euphemism.

9 MS. SCHULTZ: I want the court to be able to be -
10 - -

11 CHIEF JUDGE WILSON: So did Judge Bellacosa,
12 right?

13 MS. SCHULTZ: Yes.

14 CHIEF JUDGE WILSON: And we said no.

15 MS. SCHULTZ: Well, sometimes dissenting judges,
16 you know, on the next go around.

17 CHIEF JUDGE WILSON: I live in hope.

18 MS. SCHULTZ: Yes. But an expansion of the rule
19 is it doesn't deprive a defendant of his opportunity to
20 challenge a sentence as unlawful. It doesn't prejudice him
21 that way. It does not remove our burden of proving
22 separate and distinct acts. I acknowledge there have to be
23 separate and distinct acts. I understand that under 70 - -
24 -

25 JUDGE RIVERA: But you're - - - you're looking

1 for that to be established by allegations that the
2 defendant has not admitted to. And I think our case law is
3 very clear that we cannot consider that.

4 MS. SCHULTZ: I think by negotiating - - -

5 JUDGE RIVERA: Because the guilty plea is the
6 admission to the crime.

7 MS. SCHULTZ: Yes. But by negotiating and
8 accepting the terms that inherent in those terms, inherent
9 in accepting consecutive time, you are agreeing that it is
10 authorized - - -

11 JUDGE RIVERA: And that goes against the
12 jurisprudence.

13 MS. SCHULTZ: I nonetheless, you know, maintain
14 that position. But if you look at - - - so this particular
15 shooting was captured on video. And so we put the video in
16 at grand jury, just like we did at the suppression hearing.
17 The foundation of what we would have laid, right, all of
18 the questions we would have asked the relevant witnesses,
19 it's the same at all three proceedings, right? Because to
20 demonstrate the authenticity, it's - - - it's the same. So
21 to think that - - -

22 JUDGE RIVERA: But it actually doesn't prove two
23 separate shots for the victim for the fatal shot, right, to
24 one victim and the wounding of the other. It just shows a
25 shooting. Lots of - - - lots of shots by a couple of

1 people.

2 MS. SCHULTZ: Certainly the circumstances of the
3 drive by shooting is relevant to determining whether or not
4 they are separate and distinct acts, right? In this
5 particular case, you have two shooters who are - - -

6 JUDGE RIVERA: But you got no proof that it was
7 separate shots.

8 MS. SCHULTZ: I think the circumstances. Again,
9 I do. Not to be a broken record - - -

10 JUDGE RIVERA: Well, the circumstances, if I'm
11 under - - - and you could correct me. The circumstances
12 being lots of shots were fired at a group of people. So -
13 - -

14 MS. SCHULTZ: Well, here's where the video
15 becomes relevant, right? Because the - - - the car is
16 moving. So that means the angle is changing. There is a
17 group of men standing clustered together, and then one of
18 the victims, the victim for the first count, the - - -

19 JUDGE RIVERA: There are ricochets, right?

20 MS. SCHULTZ: I'm sorry?

21 JUDGE RIVERA: There are ricochets, are there
22 not?

23 MS. SCHULTZ: Certainly. And I - - - you know,
24 but there's certainly not a magic bullet that hit all five
25 people.

1 JUDGE RIVERA: But that's not what he pled to.

2 MS. SCHULTZ: I understand that.

3 JUDGE RIVERA: He pled to two.

4 MS. SCHULTZ: I understand that, but that is how,
5 you know, the evidence before grand jury, the video,
6 becomes relevant to the question.

7 JUDGE HALLIGAN: How is that properly considered,
8 the video? I don't understand that.

9 MS. SCHULTZ: Well, my - - - my request of this
10 court is to expand what a court can look to, to include
11 something like evidence put before grand jury in this
12 particular case, that is.

13 JUDGE HALLIGAN: But you agree that under
14 Laureano as it stands, that we could not properly consider
15 the video.

16 MS. SCHULTZ: Yes. And that is why I'm asking
17 for an expansion of the rule.

18 JUDGE RIVERA: And you understand why, right?
19 Because it's not been tested. So there wasn't a trial. So
20 then you're left with the defendant must admit to - - - to
21 the guilt.

22 MS. SCHULTZ: But there is an implicit admission
23 to this.

24 CHIEF JUDGE WILSON: You're asking us sort of to
25 make a fact finding, which is a little troubling.

1 MS. SCHULTZ: In - - - I guess I don't understand
2 in - - -

3 CHIEF JUDGE WILSON: Well, to look at the video
4 and try to decide whether we think it maybe supports
5 multiple bullets causing the two separate injuries here.
6 It sounds like a jury question.

7 MS. SCHULTZ: Well, to be clear, I - - - I do
8 think the appropriate remedy, if this court were to expand
9 the rule, I think the appropriate remedy is to remit this
10 case back to the Third Department for, you know, both of us
11 to have the opportunity to litigate the factual
12 determinations. I am not asking this court to make a
13 factual determination.

14 CHIEF JUDGE WILSON: But I guess I wonder whether
15 there isn't a jury trial right to that finding. I mean - -
16 -

17 MS. SCHULTZ: Unless he waves it by pleading
18 guilty like he did in this case. And I - - - he - - -

19 CHIEF JUDGE WILSON: Well, he - - - he of course
20 waived under the existing rules.

21 MS. SCHULTZ: Yes.

22 CHIEF JUDGE WILSON: Which he may have relied on.

23 MS. SCHULTZ: Well, and - - - and perhaps that is
24 the ultimate outcome that we - - - we are remitted back to
25 a trial court. But it doesn't change the fact that there

1 is a disparity here; it doesn't make sense that a court in
2 imposing a sentence should have all of this discretion,
3 except for in this very narrow instance, we remove their
4 discretion.

5 CHIEF JUDGE WILSON: Well, but you said that a
6 couple of times, but it's in a sense, though, it's really
7 you who removed the discretion. That is, the control of
8 what's in the indictment is up to you. The control of what
9 you take a plea to is up to you. And the judge did ask,
10 are you satisfied with the allocution here? So there's a
11 sense in which the discretion was limited by choices you
12 made.

13 MS. SCHULTZ: There is certainly not a perfect
14 record before this court, but that does - - - again, it
15 doesn't mean that it's not good enough. I see that my
16 light is on. I would like - - -

17 JUDGE RIVERA: Let me just ask you this. If we -
18 - - if we - - - if we were to disagree and not - - - not
19 take up the invitation to expand as you've described it,
20 isn't the only thing that's going to happen is the next
21 time the prosecutor will ask the question at allocution.
22 Is that all it means?

23 MS. SCHULTZ: I believe, you know, this has
24 certainly been a learning - - - learning experience.

25 JUDGE RIVERA: All I'm saying - - - all I'm

1 saying it doesn't mean that you can't indeed get the kind
2 of information on the record that would satisfy the
3 existing rule.

4 MS. SCHULTZ: Correct.

5 JUDGE GARCIA: Counsel, can I - - - I'm sorry.
6 With the Chief Judge's permission, I would just like to ask
7 you about the appellate - - - assume that the court
8 disagrees with you on this issue. The Appellate Division
9 declined to send it back, vacate the plea in terms of the
10 People not getting their bargain, I think in part because
11 you hadn't elected a remedy. Would you comment on that?
12 Do you think if we disagree with you on the first issue,
13 should this plea be vacated?

14 MS. SCHULTZ: I don't believe that that
15 particular issue is before this court. I did not preserve
16 that. Ultimately, time rarely favors the people at trial.
17 We are almost five years out after this crime occurred.
18 Memories fade. Witnesses become, you know, unavailable.
19 Every case is going to rise and fall on their particular
20 circumstances, so.

21 JUDGE GARCIA: I appreciate that. Thank you.

22 MR. SHARP: Thank you. May it please the court.
23 This court in Laureano, and then most recently in Dean, set
24 forth very straightforward rules and procedures regarding a
25 plea and consecutive sentencing.

1 JUDGE GARCIA: Do you think, Counsel, that any of
2 that basis for that rule has been undermined by the Oregon
3 v. ICE case in the Supreme Court, where the Supreme Court
4 said for consecutive - - - in relevant part to the
5 defendant, "There was arguing that he had a Sixth Amendment
6 right to have the jury, not the sentencing judge, find the
7 facts that permitted the imposition of consecutive
8 sentencing". And the Supreme Court, in 2009, said no,
9 Apprendi, and that line of cases does not apply to fact
10 finding for consecutive sentences. And it seems to me,
11 going to the Chief Judge's question, that some of that rule
12 at least may incorporate that idea that in a plea, the jury
13 hasn't found the facts necessary for consecutive sentencing
14 and that infringes on this Apprendi type right.

15 MR. SHARP: So I'm not familiar with the case.
16 You know, I appreciate you explaining it a little bit, but
17 I think the most recent Supreme Court case in Erlanger
18 talking about where any fact that a defendant's sentence is
19 going to be enhanced needs to be decided by a jury. So
20 that's where the structure came from, from this court,
21 which is you have a constitutional right as a defendant,
22 that facts are decided in one of two ways by a jury or
23 assuming bench trial, sitting alone, or by omission by
24 plea. Those are the - - -

25 JUDGE GARCIA: If the Oregon v. ICE case has not

1 been overruled by Erlanger, then we would have to
2 anticipate that?

3 MR. SHARP: I just think that this court's
4 precedent is clear, and there's no reason to go beyond. I
5 mean, Dean was '07, so that was two years before the case
6 that you just cited. I don't see - - - I don't see - - -
7 I'm just not familiar enough with the case, honestly, to
8 give you a really informed answer on it. But the basis and
9 the principle of law where this court has rested its
10 determinations on has been that you need to have fact
11 finding, either by a jury or by admission, by plea.

12 And part of that is because it's the people's
13 burden, as this court has repeatedly said. Interestingly
14 enough, I don't think any court has actually decided what
15 standard of proof applies to that burden. The assumption
16 on my part is that it's proof beyond a reasonable doubt.

17 JUDGE HALLIGAN: So in other words, the - - - the
18 Apprendi issues may reinforce your position, I take it?

19 MR. SHARP: Correct.

20 JUDGE HALLLIGAN: Because if we're looking to
21 just what's allocated to, then we can sidestep that
22 concern.

23 MR. SHARP: Yes. Yes. And I mean the Apprendi
24 issue and - - - and why it's an issue here, the People are
25 asking for essentially an unlimited expansion of what can

1 be considered by a sentencing court is the grand jury
2 minutes that they want to rely on. You're talking about
3 uncross-examined testimony, and then you're talking about a
4 judge making a fact-finding decision based on that. And
5 even if - - - even just embracing the rule that they want
6 this court to - - - to hold, I don't think the record
7 supports consecutive sentencing. If you look at the grand
8 jury testimony, there's no medical testimony to indicate
9 that separate shots caused the death and caused this
10 injury. And so - - -

11 JUDGE SINGAS: Yeah, but your client pled guilty
12 knowing that it was going to be a consecutive sentence,
13 right?

14 MR. SHARP: Sure.

15 JUDGE SINGAS: Okay. Can I just ask about the
16 indictment here? Because I'm not so sure that I agree that
17 it - - - it's - - - the presumption is one act caused it.
18 I mean, it says under Count 1, "On the aforesaid date,
19 time, place, defendant personally or acting with another
20 with intent to cause the death of another person did cause
21 the death of person X by shooting him with a firearm". And
22 then the next count is, "Did attempt to cause such injury
23 by shooting a firearm, a dangerous instrument, at person B
24 causing an injury". Like why isn't that at shooting one
25 person, causing death and then shooting at another person?

1 Why isn't that two acts?

2 MR. SHARP: Well, you can't rely on the first
3 count of the indictment because it was a lesser included of
4 manslaughter in the first degree.

5 JUDGE SINGAS: Okay.

6 MR. SHARP: So this court, by this court's
7 precedent, you're left with the allocution of the lesser
8 included of Count 1.

9 JUDGE SINGAS: And the allocution, I think, goes
10 along the same way.

11 MR. SHARP: And - - - and then you have the other
12 count in terms of the allocution. But what you have there
13 is you do not have the fact that the bullet caused the
14 injury and the death.

15 JUDGE SINGAS: Well, I don't know. I don't know
16 how familiar you are with reading indictments, but do they
17 do that that - - - and it was a separate bullet that caused
18 another injury to a separate person. Have you read an
19 indictment that reads that way?

20 MR. SHARP: I'm not suggesting that the People
21 should have done that in their indictment. I'm suggesting
22 they should have, as they should have known and are
23 chargeable with knowledge of, asked a very simplistic
24 question at the time of the allocution.

25 JUDGE SINGAS: And what question is that?

1 MR. SHARP: And that question is, and the bullet
2 that caused the death is separate from the bullet that
3 caused the injury? Yes. Yes. There is meeting your
4 burden as the People - - -

5 JUDGE SINGAS: Well, let's say you took a plea
6 before they did any ballistics, so they can't figure out if
7 the bullet was a separate bullet. But they know that
8 somebody came by and sprayed the place with sixteen
9 bullets. And you plead guilty to two separate injuries.

10 MR. SHARP: Well, the defen - - -

11 JUDGE SINGAS: And there hasn't been ballistics
12 done yet.

13 MR. SHARP: The defendant wanted to accept the
14 deal.

15 JUDGE SINGAS: Yes.

16 MR. SHARP: It's been my experience in seventeen
17 years of practicing criminal law that a defendant is going
18 to allocute to facts when they're asked to get the deal
19 that they want. And so there is no - - - there's no
20 requirement that the District Attorney's Office does some
21 sort of analysis to indicate that that is factually
22 correct, that they have proven that in some way, shape or
23 form. All you're asking for is that the defendant - - -

24 JUDGE SINGAS: So they should misrepresent the
25 record.

1 MR. SHARP: I don't think that's misrepresenting.

2 JUDGE SINGAS: Well, if they haven't done the
3 test and they don't know it's a separate bullet, that would
4 be misrepresenting the record.

5 MR. SHARP: I don't think that that's
6 misrepresenting the record to ask them based on looking at
7 sixteen shots being fired and five people being hit that
8 separate - - - and I don't even think they had to actually
9 ask the specific, you know, separate bullets, but the
10 trigger pulls. How many times did you pull the trigger? I
11 think that would have been sufficient.

12 JUDGE RIVERA: By two separate shots?

13 MR. SHARP: Correct. You fired two separate
14 shots. But they didn't do any of that. And this is - - -
15 this isn't new law. This is well-established law.

16 JUDGE HALLIGAN: Well, presumably, two separate
17 shots, presumably, the defendant would be in a position to
18 candidly, honestly allocute to that question.

19 MR. SHARP: Correct. Yes. So but when you - - -
20 when you look at everything that is on this record, even in
21 an expanded - - - an expanded definition that the People
22 are asking this court to adopt, there's just not a
23 sufficient record there. If there's no further questions,
24 I'll - - - thank you.

25 CHIEF JUDGE WILSON: Thank you.

1 MS. SCHULTZ: If merely asking how many trigger
2 pulls did you commit, did you commit two different separate
3 trigger pulls would have been sufficient, then again, I go
4 back to the - - - the overall totality of this crime, where
5 sixteen bullets were fired because the defendant is
6 culpable of each and every one, regardless of whether he
7 pulled the trigger under a theory of principal or
8 accomplice.

9 He was one of the shooters. He admitted to being
10 one of the shooters in that car. That much is uncontested
11 before this court because he again admitted his guilt. So
12 if that question, as - - - as my adversary suggests, would
13 have been sufficient, then again, I go back to the fact
14 that this plea allocution was sufficient.

15 Briefly, Erlanger, I don't believe, has any sort
16 of application or the Apprendi standard, because this is
17 not a sentencing enhancement. The length of the
18 defendant's sentence in this case is determined by his
19 multiple crimes. It is not, you know, we take one crime
20 and we're not elevating it because of some aggravating
21 factor like a criminal history.

22 Again, I believe this case highlights an
23 unnecessary restriction on a trial court's sentencing
24 authority, removing the restraint on what courts can rely
25 on when determining whether consecutive sentencing is



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

authorized, restores a balanced, equitable approach to sentencing, one that is consistent with giving sentencing courts discretion. A defendant would not be precluded from challenging a truly unlawful sentence by the expansion of this rule, and the circumstances of the defendant's criminal conduct are sufficient to authorize consecutive sentencing in this case.

I ask that this court either reverse the Third Department's modification of the sentencing, or remit for new consideration under a new rule. Thank you so much.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Christy Wright, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Sabb (Jhajuan), No. 25 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: Christy Wright

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: February 18, 2026

