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Johnnie Hoskins v. State of Florida

SC05-28

,
ARRESTED, NOT CONVICTED.
THERE WAS NO MENTION OF
GOING TO PRISON.
THERE WAS NO INQUIRY BY THE
STATE AS TO WHAT THOSE
ARRESTS WERE FOR AND I WOULD
LIKE TO POINT OUT THAT AND
EMPHASIZE THEY WERE ARRESTS,
NOT CONVICTIONS.
THE PRESERVATION ISSUE ON
THAT CLAIM?
I DON'T THINK IT WAS
BRIEFED.
WAS THERE EVER AN OBJECTION?
WAS THE PANEL NOT ACCEPTED
BY COUNSEL?
I, I DON'T -- I AM SORRY.
I SHOULD KNOW THAT, AIM SO
REQUIRE.
I DON'T THINK THAT -- I
CAN'T REMEMBER IF HE UTTERED
THE MAGIC WORD TO ACCEPT THE
PANEL.
I THINK OR WITH THE
EXCEPTION OF THE PRIOR
JUDGES.
HE MADE IT CLEAR AT THE TIME
THAT THERE WERE OTHER JURORS
WHO, WHO WERE ACCEPTABLE TO
THE STATE AN SAID THAT THE,
THEY WERE IN SIMILAR
SITUATION AS MISS HARP YET
THE STATE DID NOT CHALLENGE
THEM AND CONTENTED THE ONLY
REASON WAS BECAUSE OF HER
RACE.
THE RECORD APPARENTLY
SHOWS THAT THE PANEL WAS
ACCEPTED WITHOUT RESERVING
THE OBJECTION.
WELL, I WILL CONCEDE THAT
UNDER THE CASE LAW.
THAT DOES HURT MY ISSUE.
I THINK IT IS VERY CLEAR
THAT, AT THE TIME THE RACE-

NEUTRAL REASON WAS GIVEN.
HE DID OBJECT TO THAT AS
BEING PRETEXT, NOT GENUINE
AND POINTED OUT THE OTHER
JURORS.

IT DOESN'T RAISE THE
PRESERVATION ISSUE BUT IT
CERTAINLY APPEARS IN THE
RECORD THAT THE OBJECTION
WAS NOT RESERVED.

IT IS THE STATE MORAL ARGUE
AM.

CERTAINLY WISH HE HAD NOT
SAID THAT AND HAD PRESERVED
THE ISSUE MORE CONCISELY,
BUT I CONTEND THAT UNDER THE
RECORD THIS COURT HAS, YOU
CAN TELL HE, HE DID OBJECT.
WITH YOU SAYING ON, THIS
LET'S MAKE SURE.

YOU ARE SAYING THAT THE
STATE INSTRUCT THE LONE
AFRICAN-AMERICAN JUROR.
THERE WERE NO OWN
AFRICAN-AMERICAN ON THE
PANEL?

THAT, THE DEFENSE COUNSEL
SAID, I WANT TO POINT OUT,
SHE IS THE LONE
AFRICAN-AMERICAN JUROR AND
THE TRIAL JUDGE SAID, SHE IS
CERTAINLY AFRICAN-AMERICAN.
I AM MT. SURE IF SHE IS THE
ONLY ONE.

THAT IS WHAT THE RECORD
REFLECTS.

WHAT I GUESS, WHAT I -- I
ASK OS IN THE PRESERVATION
ISSUE.

I AM NOT SURE WHAT USUALLY
THE PRESERVATION IS SO THE
JUDGE COULD DECIDE, WELL,
WITH HE SHOULD HAVE INSTRUCT
THAT PERSON OR DIDN'T.

WHAT ELSE -- I MEAN THE
JUDGE COULDN'T HAVE CALLED
THE JUROR BACK IF THEY HAD
REDECIDED THAT THERE WAS --
THAT IS A GOOD POINT.

THANKS FOR THINKING FOR ME.
NA IS AN EXCELLENT POINT.
THAT JUROR WAS GONE.

AT THE TIME THE STATE, THE
PROSECUTOR STATED HIS

ALLEGED REASON THE DEFENSE
COUNSEL OBJECTED AND POINTED
OUT SOME JURORS AND THEY
ARGUED.

THEY POINTED OUT, THEY SAID,
WELL, THAT IS DIFFERENT.
HE JUST HAD THIS, THIS,
THIS, BUFF I GO THROUGH IN
THE BRIEF.

WHEN THAT REASON WAS
GIVEN, AND THE COURT, AND
THE COUNSEL SAID, BECAUSE HE
HAD SEVERAL FAMILY MEMBERS
WHO HAD CONVICTION AN ALL OF
THAT, DID THE DEFENSE
COUNSEL SAY, NO THAT IS NOT
TRUE.

THERE IS ONLY ONE GODSON WHO
SERVED TIME IN PRISON.

THE OTHERS WERE ARRESTED,
BUT NOT CONVICTED.

WHAT THEY DID WAS, THEY,
THE JUDGE ORDERED THE COURT
TO READ BACK THE PERTINENT
TESTIMONY OF MISS HARP
DURING VOIR DIRE WHEN SHE
CLEARLY SAYS ARREST, NO
FURTHER DISCUSSION WAS
POINTED OUT AS TO
DISTINGUISHING ARRESTS FROM
CONVICTION.

HE DID POINT OUT THAT IT WAS
IN ANOTHER STATE.

SHE SAID SHE REALLY DID NOT
KNOW MUCH ABOUT IT.

WHAT SHE KNEW ABOUT HER
GODSON'S CASE WAS FROM
HEARSAY.

SHE DIDN'T FOLLOW THAT
CLOSELY.

LET'S ASSUME, THERE WERE
ARREST AND NOT CONVICTIONS.
THE QUESTION IS NOT WHETHER
IT IS EVEN REASONABLE.

THE QUESTION IS WHETHER THE
PREEM TORRES GENUINE SO WHY
WOULDN'T THAT FACT, THE
STATE MAY HAVE BEEN MISTAKEN
THEY WERE ARREST, BUT NOT
CONVICTION, DOES THAT EFFECT
THE GENUINENESS OF THE
CHALLENGE?

YES, IT DOES.

I THINK THAT WHERE HE STATES

THE REASON AND IT IS NOT SUPPORTED BY THE RECORD, THAT IS ONE INDICATION THAT IT IS NOT GENUINE 6:00. HE FURTHER ADD NOT OM THAT THERE WERE CONVICTIONS INSTEAD OF ARRESTS. HE SAID BEEN TO PRISON. HE ADDED THAT FACT. I MEAN, THAT WAS NOT ON THE PART THEY READ BACK OR ANYWHERE IN MISS HARP'S VOIR DIRE. EOTHER JURORS WHEN YOU SAY, IF YOU ACKNOWLEDGED THAT A PERSON HAS A CLOSE FAMILY MEMBER OR FRIEND THAT WOULD BE IN PRISON ON A VIOLENT FELONY WOULD BE AN APPROPRIATE REASON TO STRIKE A JUROR. YES. OKAY. THE OTHER JURORS THAT YOU SAY, WELL, THIS IS REALLY BECAUSE THE OTHER JURORS SIT THAT SIMILAR, MY REVIEW OF IT, YOU GOT SOME DUIs, YOU GOT OTHER TYPES OF CRIMES THAT HAVING A GODSON IN PRISON FOR PRIOR VIOLENT FELONY, THAT THERE IS NOBODY CLOSE TO THAT SITUATION, CUE TELL ME WHERE IT IS THAT THE OTHER JURORS WERE, THAT THEY DID NOT EXCUSE WHO WERE WHITE, HAD SIMILAR TYPES OF HISTORIES OF RELATIONSHIPS? WELL, OKAY. I WILL. I WILL START THE WAY I HAVE THEM LAID OUT, NOT NECESSARILY GOING IN THE ORDER OF THE MOST SEVERE. ONE BROTHER WAS ARRESTED AN BREAD PLEADED GUILTY TO BRIBERY AS A POLICE OFFICER. LOST THE JOB. THE PROSECUTOR NEVER ASKED IF SERVED TIME. HE SERVED ON HOS SKIN'S JURY. HE HAD A FRIEND WHO HAD BEEN CONVICTED OF A FELONY, SHE

SAID, THE STATE NEVER FOLLOWED UP WITH A QUESTION OF WHITE WAS VIOLENT FELONY, WHAT THE DISPOSITION OF IT WAS.

YOU ARE SAYING, IT GOES TO THE FACT THAT NO FURTHER QUESTIONS WERE ASKED OF WHITE JURORS, THAT IS WHAT YOU ARE -- THAT IS PART OF THE ARGUMENT?

YES, MA'AM.

THAT IS DEFINITELY LAY FACTOR.

THAT IS ONE INDICATION OF THE REASON BEING PRETEXTUAL. THE DEFENSE COUNSEL RAISED AT THE TRIAL, THE JURY SELECTION RATHER THAN WAITING THROUGHOUT THE WHOLE TRIAL AND THEN COMING UP HERE AND ARGUING.

THE DEFENSE COUNSEL DID. THE DEFENSE COUNSEL AS BESTS' COULD, THE ALLEGED RACE NEUTRAL REASON WAS GIVEN REELED OFF SEVERAL JURORS WHICH HE CONTENTENDED WERE IN SIMILAR SITUATIONS, THAT DID NOT, HE DID NOT SPECIFICALLY ALLEGE THAT THE STATE FAILED TO INQUIRE FURTHER AND IN FACT SOME OF THE FACTS, SOME OF THE FURTHER DETAILS ABOUT SOME OF THE JURORS FRIENDS AND RELATIVE, THEIR BRUSHES WITH THE LAW WAS ELABORATED ON BY DEFENSE COUNSEL, AND FOLLOW-UP TO VOIR DIRE WHERE THE PROSECUTOR HAD LEFT IT, WELL, THE TRIAL JUDGE ACCEPTED THE CHALLENGE AND THE STATEMENT, I THINK, THAT MADE A STATEMENT THAT IT WAS REAL, CORRECT?

YES, SIR.

NOW, WHAT IS OUR VIEW HERE?

WHAT DID HE SAY IN MEL BURN THAT THE REVIEW IN COURT WAS TO DO IN RESPECT TO REVIEWING WHETHER THE TRIAL COURT MADE AN ERROR IN

ACCEPTING THE CHALLENGE
WHERE THE TRIAL BOARD MAKES
THE DERL NATION THAT IT WAS
-- DETERMINATION THAT IT WAS
GENUINE REASON?

WELL, WHERE YOU HAVE
DEFENSE COUNSEL CONTESTING
THE GENUINENESS OF IT, THAT,
THAT IS SOMETHING THAT THE
TRIAL COURT MUST CONSIDER.
IT WAS A THREE-PRONG, A
THREE-PRONG TEST THAT THIS
COURT SET FORTH, BUT WE ALSO
MADE STATEMENT THERE AS TO
WHAT THE APPELLATE COURT WAS
TO DO.

YOU SAID THAT, I MEAN,
WANT ME GO THROUGH THE THREE
STEPSS?

I KNOW THE THREE STEPS.
I AM TALKING ABOUT THE
STANDARD OF REVIEWING.
WELL, YOU SAID THAT IF
THE CIRCUMSTANCES
SURROUNDING, GIVEN THE
CIRCUMSTANCES SURROUNDING
THE STRIKE, THE EXPLANATION
IS A NOT A PRETEXT, THE
STRIKE WILL BE SUSTAINED,
AND I BELIEVE THAT THIS
COURT, AND I DON'T KNOW FIT
WAS IN OTHER OPINIONS
INDICATED THAT WHERE THE
RECORD REFLECTS IT WAS NOT,
THAT IT WAS IN FACT
PRETEXTUAL, THEN, AND THAT
IS POINTED OUT TO SOME
EXTENT, AT LEAST, BY THE
DEFENSE COUNSEL, AND HE DID
IN THE CASE, THEN THIS COURT
CAN REVERSE.

AND SHOULD REVERSE.
WASN'T HARP SUPPOSED TO
BE ALTERNATE JUROR?
HAD ALREADY A PANEL, NOW,
THEY WERE STRIKING
ALTERNATES?

I DON'T BELIEVE SO.
I THINK THAT THE JUROR THAT
WAS, WAS SUPPOSED TO BE
ALTERNATE JUROR WAS, UM,
MISS SARO, HER BROTHER HAD
BEEN ARRESTED "MORE TIMES
THAN I CAN COUNT, I CAN'T

EVEN REMEMBER ALL OF THE CHARGES SHE SAID" DESPITE THE PROVOCATIVE STATEMENT. THE PROSECUTOR NEVER ASKED MISS SAR

THE NATURE OF THE CRIME NOR THE DISPOSITION.

BUT THE STATE STATE STRUCK HER.

MISS HARP,, NO I BELIEVE WAS EARLIER, THERE WAS NO, THEY DID NORTH, THEY CERTAINLY, THEY WERE NOT GETTING DOWN THE NITTY-GRITTY, OKAY, WE GOT 12, OKAY, THAT IS NOT MY RECOLLECTION OF THE RECORD.

BUT PERHAPS I AM WRONG.

THE STATE THEN

SUBSEQUENTLY STRUCK THE OTHER JUROR, THE ONE THAT SAID MY --, NO THE DEFENSE DID.

BUT YOU STATED STATE.

I AM SORRY, I MEANT DEFENSE.

I WELL, I DON'T KNOW.

BUT BOTH THE STATE AND THE DEFENSE ARE ALWAYS

INTERESTED IN WHAT THE CRIMINAL HISTORY OF PEOPLE THAT ARE CLOSE TO THE JUROR IS AND, YOU KNOW, INTERNALS

OF TRYING TO UNDERSTAND WHERE THIS WAS REALLY A

RACE, LET ME UNDERSTAND,

SERIOUS, THIS IS THE ONLY AFRICAN-AMERICAN ON THE JURY

PANEL, TO ME, THAT IS WHAT THE CASE SUPPOSED TO BE

ABOUT, YESTERDAY, WE HAD A CASE WHERE, YOU KNOW, WHERE

A WHITE JUROR CHALLENGED

BASED ON THEIR RACE, BUT IF SOMEBODY DECIDES, I AM NOT,

YOU KNOW, IN MY -- MY

BROTHER HAS BEEN ARRESTED FOR MORE THINGS THAN I CAN

COUNT, THERE IS A

SENSIBILITY ISSUE, AT WHAT POINT, WELL, I WANT YOU TO

NOW LIST EVERYTHING YOUR BROTHER HAS BEEN ARRESTED

FOR AND WHAT HE HAS BEEN

CONVICTED FOR.

I MEAN, AT SOME POINT, YOU DON'T WANT TO GO IN ALL THAT MUCH DETAIL ABOUT WHAT, YOU KNOW, WHAT THAT JUROR'S HISTORY IS, AND WASN'T THAT LEGITIMATE AS FAR AS, YOU KNOW, HOW FAR ARE YOU GOING TO GO ONCE YOU FIND THIS INFORMATION OUT.

BECAUSE AT THE VERY LEAST, THE PROSECUTOR, AS HE DID WITH MISS HARP, COULD HAVE AT LEAST ASKED FOR ANY OF THOSE VIOLENT FELONIES?

WERE THEY MISDEMEANOR FELONIES IF THEY WERE FELONY, WERE THEY VIOLENT? HE DIDN'T DO THAT.

HE DIDN'T DO THAT WITH SORO, HE DIDN'T DO THAT WITH -- WAIT A MINUTE.

HE DID IT WITH HARP. HE DIDN'T DO IT WITH THE OTHERS.

RIGHT.

HE DID IT WITH HARP AND NOT THE OTHERS.

MR. SALLY SAID HE WAS -- HE WAS ARRESTED FOR UNDERAGED DRINKING, THEN, HE HE HAD NEPHEW CURRENTLY SERVING TIME IN PRISON FOR BURGLARY AND DRUG OFFENSES.

I MEAN, BURGLARY, THAT, THAT CAN, DEPENDING ON THE,S, THAT CAN BE A VIOLENT CRIME.

IT IS A VERY SERIOUS FELONY, YET THE STATE ACCEPTED MR. SALLY.

HE SERVED ON MR. HOSKIN'S JURY.

ALL OF THIS IS CIRCUMSTANCE EVIDENCE THAT THE RACE-NEUTRAL, THE ALLEGED RACE-NEUTRAL REASON GIVEN.

NOW, WE GO BACK TO WHAT JUSTICE WELLS IS SAYING, THAT IS THERE BECOME AS TIME WHERE THERE IS A DUMB CALL ON WHETHER THERE IS GOOD FAITH BEING EXERCISED BY THE PROSECUTOR OR DEFENSE OR NOT.

LOOKING AT THE TOTALITY OF WHO IS THERE, AND IT DOES

APPEAR THAT THIS JUDGE, YOU KNOW, WANTED -- HAD THEM READ BACK AND LOOK INTO WHAT EXACTLY WAS SAID.

THIS WASN'T SOME KIND OF A JUST CURSORY I AM DENYING IT OR I AM ACCEPTING IT, SO HOW DOES THIS COURT SECOND GUESS THE SORT OF SHADES OF WELL I SHOULD HAVE ASKED ONE MORE QUESTION OF THAT JUROR, THAT WOULDN'T BE CONTECTUAL AN IN TERMS OF REALLY GIVING IN THIS AREA THE TRIAL JUDGE BROAD DIGRESSION TO MAKE THESE CALLS AT THE MOMENT THERE HAPPENING.

WELL, IN A CLOSE CASE, THAT MAY BE A PROBLEM.

IN THE IS, I BELIEVE THE RECORD IS CIRCUMSTANTIALIAL EVIDENCE CONTAINED IN THE RECORD IS OVERWELL AMING, I HAVE NOT EVEN ADDRESSED THE JUROR'S SON WAS ARRESTED, SERVED SOME, SOME PERIOD OF TIME, INCARCERATE, SHE SAID, FOR FELONY, THE PROSECUTOR NEVER ASKED THINK NATURE OF THE FELL NIF HER.

THE FELONY OF HER.

OF HER SON, MR. INGHAM WAS A PASTOR, A MEMBER OF THE CONGREGATION WAS CHARGED, APPARENTLY, DID PRISON TIME FOR SEXUALLY ABUSING CHILDREN.

AND THE MR. INGRAHAM VISITED THIS CHURCH MEMBER, A MEMBER FIVE TO SIX TIMES IN PRSON, SERVED AS SPIRITUAL ADVISER. THE DEFENSE COUNSEL DIDN'T MAKE ALL OF THOSE ARMINGS? NOT ALL OF THESE. HE REELED OFF AS BEST AS HE COULD.

HE SAID MR. INGHAM IS GONE, HE WAS ACCEPTABLE TO THE STATE.

YES.

HE HAD CONTACT FROM SOMEBODY WITH THE CHURCH. HE IS NOT LISTING ALL OF THESE THINGS THAT YOU ARE

SAYING.

NOT IN GREAT DETAIL
BECAUSE IT IS ALL CONTAINED
IN THE RECORD ON APPEAL, HE
KNOWS THE QUESTIONS ARE
THERE ON THE RECORD THAT --
WELL, THAT IS MY POINT.
SHOULDN'T -- ISN'T THERE
SOME DEFENSE COUNSEL WHEN HE
BELIEVES THAT THE STATE'S
REASON IS PROTECTUAL TO
OFFER, SPECIFIC POINTS WHY
THAT IS PROTECTUAL AND THAT
NOT TO RELY NONE ON APPEAL
THAT SOMEBODY IS GOING TO
TESTIMONY FURTHER THAN HE
HAS?

HE DID.

I WANT TO EMPHASIZE THAT.

A LOT.

HE DID.

HE DID OBJECT.

HE.

YOU ARE GIVING A LOT MORE
DETAIL.

I AM.

BECAUSE I HAVE THE
PRIVILEGE, I HAVE THE --
THAT IS MY PROBLEM.

THAT YOU ARE EMBELLISHING A
LOT MORE THAN WHAT DEFENSE
COUNSEL DIN HIS OBJECTION.

WELL -- THE JUDGE HAS TO
RELY ON THE STATE'S REASONS
AND THE DEFENSE COUNSEL'S
COUNTERS AND OBJECTIONS TO
THAT AND HIS REASONS WHY THE
STATE'S ARGUMENT IS
PROTECTUAL THAT IS HOW THE
COURT USES HIS DIGRESSION,
IF HE DOESN'T HAVE THE
INFORMATION FROM THE DEFENSE
COUNSEL AT THE TIME, THEN,
WE CAN NOT FAULT THE TRIAL
COURT AND SAY HE ABUSED THE
DIGRESSION WHEN THE DEFENSE
COUNSEL DIDN'T GIVE HIM ALL
INFORMATION.

HE DIDN'T MAKE A PERFECT
RECORD, BUT HE MADE A REALLY
GOOD RECORD.

IT IS ONE OF THE BEST I HAVE
SEEN.

HE DID REEL OFF -- YOU ARE

IN THE HEAT OF JURY
SELECTION, YOU GOT NOTES
SPREAD ALL OVER THE TABLE.
YOU ARE TRYING -- THE STATE
COMES UP WITH THIS ALLEGED
RACE-NEUTRAL REASON, WHICH
WANT TO EMPHASIZE, WAS NOT
EVEN SUPPORTED BY THE
READBACK OF HER VOIR DIRE
TESTIMONY.

IT DID NOT SAY CONVICTIONS.
IT DID NOT SAY LONG PRISON
SENTENCE.

IT WAS THE CIRCUMSTANTIAL
EVIDENCE IS OVERWHELMING, HE
DID OBJECT.

TO THE BEST OF HIS ABILITY
IN THE HEAT OF JURY
SELECTION, HE REELED OFF A
BUNCH.

SOME OF THESE JURORS,
PERHAPS, I CAN'T REMEMBER,
THEY MAY HAVE COME AFTER THE
MISS HARP'S EXCUSABLEAL.

GIVE YOU THE OPPORTUNITY
BECAUSE YOU SAID YOU HAD TWO
ARGUMENTS?

OOCHLS YOU ARE TWHOOOL THE
REBUTTAL.

I AM.

20 IS A SHORT PERIOD OF
TIME.

WELL, I THINK, IT IS CLEARLY
PRESERVED ON THE
CIRCUMSTANTIAL EVIDENCE THAT
IT WAS NOT, THAT IT WAS
PRETEXTUAL, NOT GENUINE IS
OVERWHELMING WHEN YOU LOOK
AT THE RECORD PLEASE.

THE SECOND POINT WAS THAT
GORY PHOTOS SPECIFICALLY
DURING JURY SELECTION ANDER
THERE WAS AFTER MR. HOS
SKINS STOOD GUILTY BEFORE
THE JURY OF MURDER, SEXUAL
BATTERY, KIDNAPPING, RAPE.
ANY CASE IN THE COUNTRY
THAT HAS HELD THAT TRIAL
COURT PROHIBITING DEFENSE
COUNSEL FROM SHOWING THE
VENIRE GORE RY PHOTOGRAPHS
OF THE VICTIMS IS AN ABUSE
OF DISKBRETION?

DIE NOT.

BUT I SUBMIT TO YOU, THIS IS
A VERY UNUSUAL SITUATION
WHERE YOU ALREADY STAND
CONVICTED BEFORE THE JURY.
ALL OF THE EVIDENCE HAS BEEN
STIPULATED BY BOTH SIDES AS
ADMITTED INTO EVIDENCE, SO
THAT THEY KNEW, THE JUDGE,
BOTH SIDES KNEW THAT THIS
PHOTOGRAPH WAS GOING TO BE
INTRODUCED INTO EVIDENCE.
THE JURY WAS GOING TO SEE
IT.

THE DEFENSE COUNSEL SAID,
TALKING ABOUT GORY PHOTOS IN
ABSTRACT, THAT IS ONE THING.
THESE JURORS HAVE NEVER SEEN
THIS TYPE OF PHOTO BEFORE.
YOU SEE THESE TYPE OF PHOTOS
ON A REGULAR BASIS, SO DO I.
THE LAY PERSON, THE ONLY
TIME THEY SEE THEM INJURY.
IF THE STATE HAD
ATTEMPTED TO SHOW THOSE
PHOTOS TO THE VENIRE AND THE
TRIAL COURT WOULD HAVE ALLOWED
THE STIT DO SO, WOULD YOU
HAVE AN EXCELLENT ARGUMENT
THAT YOU JUST PREJUDICE THE
ENTIRE PANEL.

MAYBE SO.
THAT IS NOT WHAT HAPPENED.
IN FACT, IN THE CASE, THE
PROSECUTOR DID NOT REALLY
OBJECT.
HE EXPRESSED CONCERN ABOUT
IT AN TOLD THE JUDGE IT IS
UP TO YOU, YOU COULD ALLOW
THIS IN YOUR DIGRESSION,,
YET THE JUDGE EVEN WOULD YOU
TELL A VERY VOCAL OBJECTION
FROM THE STATE DID NOT LET
IT.

UNDER THE RECORD THAT EXISTS
I LAID OUT IN THE BRIEF WHEN
HE ASKED HIM ABOUT IT.
WHEN HE ASKED POTENTIAL
JUROR, THEY SAY, WELL, I
THINK CAN I DO IT, YOU KNOW
WHAT?
I HAVE NEVER SEEN ANYTHING
LIKE THAT.
I DON'T KNOW.
I DON'T MOW IF I GET SICK TO

MY STOMACH OR NOT.
I DON'T KNOW IF I CAN HANDLE
THAT.
I DON'T KNOW IF I WOULD HAVE
EMOTIONAL REACTION OR
PHYSICAL REACTION.
THERE ARE ABOUT SIX JURORS
WHO SAID, I TRIED BUT I HAVE
NEVER SEEN THAT.
THIS WOULD HAVE ALLOWED THEM
TO MAKE SURE THEY WOULD NOT
BE COMPLETELY BIAS BY THAT
PHOTOGRAPH ALONE WHICH THEY
SUBSEQUENTLY SAW IF THEY SAT
ON THAT JURY.
WITH OUR ASSISTANCE, YOU
HAVE EXHAUSTED ALL OF YOUR
TIME MR. QUARLES.
MR. NUNNELLEY.
MAY IT PLEASE THE COURT,
I REPRESENT THE COURT ON
THIS APPEAL.
ON THE ORDER OF DEFENSE THAT
HAS TACK WITHIN RESPECT TO
THE VOIR DIRE CLAIM THAT THE
DEFENSE SHOULD HAVE BEEN
ABLE TO EXIN BIT THE
PHOTOGRAPHS TO THE JURY AS
THIS COURT POINTED OUT THERE
IS NO CASE ANYWHERE ON THE
COUNTRY THAT ALLOWS THAT.
THE STANDARD OF REVIEW FOR A
SO-CALLED LIMITATION ON VOIR
DIRE IS WHETHER OR NOT THE
TRIAL JUDGE ABUSED HIS
DIGRESSION IN WHATEVER HE
DID.
IT WOULD SEEM TO ME,
FRANKLY, THAT EVEN THOUGH WE
ARE SAYING DIGRESSION, I
WOULD BE CONCERNED IF THE
TRIAL JUDGES WOULD HAVE
ALLOWED SOMETHING LIKE THIS.
EX IN BUYS THAT ARE GOING TO
BE IN EVIDENCE.
I THINK WE WOULD BE GOING
DOWN A PATH.
I THINK YOU ARE ASKING FOR
TROUBLE.
I THINK THAT IS ASKING FOR
TROUBLE TO DO THAT.
I THINK YOU FIRST OF ALL --
I THINK YOU HAVE LAW ISSUES.
I THINK YOU HAVE SOME ISSUES

OF WHETHER OR NOT THE PANEL
IS PREJUDGING THE CASE.
THAT IS ALL I WAS
OBSERVING WHEN YOU SAY
DIGRESSION, I DID DEGREES,
WHICH YOU IMPLIES THE JUDGE
COULD HAVE SHOWN IT OR NOT.
I AM NOT REALLY SURE WHETHER
THAT WOULD BE CONTEM FLAT
PLATED.

I DON'T THINK AT THIS
TIME WOULD BE APPROPRIATE.
WELL, CAN YOU HELP ME.
AT WHAT POINT, DID THE
DEFENSE COUNSEL REQUEST
THIS?

WAS IT AFTER SIX OR SEVEN
POTENTIAL JURY MEMBERS SAID
THEY WOULD ENSURE OR WAS IT
OUTSET?

MY MEMORY IS, JUSTICE, IT
WAS EARLY, I DON'T REMEMBER
PRESIGHSLY WHERE IT WAS.
I WAS TRYING TO PICK IT UP
FROM THE RECORD ON THE
BRIEFS ABOUT WHERE IT
HAPPENED.

ALTHOUGH, YOU COULDN'T DO
THAT.

IT WASN'T, IT WASN'T JUST
IN, I WILL PUT IT THAT WAY.
IT WAS SOMEWHERE EARLY IN
THE PROCESS IS MY MEMORY OF
IT.

WITH RESPECT TO THE ISSUE,
THE STANDARD IS WHETHER OR
NOT THE REASONS WERE
GENUINE.

DID YOU TELL ME THIS,
THOUGH, FROM WHAT WE SEE
HERE, AND THE DEFENSE LAWYER
SAID, MISS HARP WAS THE ONLY
AFRICAN-AMERICAN IN THE
PANEL.

ON THE PANEL.

CORRECT?

HE SAID THAT I BELIEVE,
YES.

AND SO IT SEEMS TO ME
THAT WHEN YOU GOT AN ISSUE
OF THE ONLY AFRICAN-AMERICAN
JUROR IS GOING TO BE STRUCK,
THE ISSUE COMES TO, WELL, IT
IS SAID THAT WHETHER YOU

HAVE FAMILY MEMBERS WHO HAVE BEEN ARRESTED OR CONVICTED AS A RACE NEUTRAL REASON, BUT WE KNOW, WE CAN'T DENY, THAT UNFORTUNATELY GREATER PERCENTAGE OF AFRICAN-AMERICANS ARE INCARCERATED THAN WHITE, MY QUESTION IS REALLY DID MR. BROWN ASK THE OTHER JURORS WHEN THEY WERE TELLING ABOUT THE ARRESTS, WHETHER, OR FELONY, DID HE ASK ABOUT WHETHER ANY OF THOSE FELONYS WERE VIOLENT OR IS IT CORRECT THAT MR. BROWN ONLY ASKED THAT NEXT QUESTION WHETHER ANY OF THOSE FELONIES WERE VIOLENT TO MISS HARP?

JUDGE PARRY ENTITY I AM NOT TRYING TO AVOID YOUR QUESTION.

THE RECORD IS WHAT IT IS. WELL, SO YOU, BUT IT IS IMPORTANT, DO YOU NOT THINK THAT IS IMPORTANT WHICH I AND I GUESSING WE CAN GO BACK ON THE RECORD, SINCE THIS IS ONLY ONE OF FOUR ISSUES RAISED, I WOULD HOPE THAT WE WOULD KNOW THE QUESTION IS:

WAS THAT QUESTION ASKED ABOUT THE NATURE OF THE FELONIES, WERE THEY VIOLENT ASKED TO THE OTHER MEMBERS THE PANEL?

MY MEMORY JUSTICE PARIENTE IT WAS NOT NECESSARY FOR THE STATE TO ASK THE QUESTION LIKE THAT ON THE CONTEXT OF THE WAY THE ANSWER CAME OUT FROM THE JUROR OF -- BUT AGAIN WHAT WE COME BACK TO --

LET ME SEE IF I UNDERSTAND YOUR ANSWER WILLING.

DOES THAT MEAN, I MEAN, THERE WAS ONE THAT HAD A DUI.

SO THE QUESTION IS: ANY OF YOUR FAMILY BEEN

ARRESTED FOR ANYTHING,
SOMEBODY SAID I HAD A NEPHEW
WITH DUI.

YES, YOUR HONOR.

OBVIOUSLY, ONE DOESN'T ASK,
WELL, WAS THAT A VIOLENT
FELONY?

IT IS NOT A LOGICAL
QUESTION.

IF YOU THINK, IF WE GO
BACK, YOU WILL SEE THAT NONE
OF THE OTHER, LIKE WHEN
ASKED ABOUT THE BROTHER OR
THE BURGLARY, THAT THE
FOLLOW-UP ON THE BURGLARY,
TO ASK WHAT WERE THE
CIRCUMSTANCES OF THE
BURGLARY, IT WOULDN'T HAVE
BEEN APPROPRIATE FOLLOW-UP
FOR ANYBODY ELSE, BUT THE
ONLY AFRICAN-AMERICAN JUROR
ON THE PANEL?

I DON'T REMEMBER
SPECIFICALLY ABOUT THE
BURGLARY, JUSTICE PARIENTE,
WHAT WE COME DOWN, WHAT THE
STANDARD WE HAVE TO LOOK AT
IS TO THE TRIAL JUDGE THAT
WAS SITTING IN THE COURTROOM
AND OBSERVING WHAT WAS GOING
ON AND THE INTERFLAY WAS
TAKING PLACE, DURING THE
JURY SELECTION FIND THAT THE
REASONS WERE GENUINE.

I UNDERSTAND WHAT MELBOURNE
SAYS, AND I THINK AT THIS
TIME IS THINK THAT WE HAVE HAD
YOU KNOW AGAIN WE'VE GOT CASE
AFTER CASE WHERE SOMEONE IS
CHALLENGED RACE NEUTRAL
REASON AND YOU'VE GOT AGAIN
WHITE JURORS BEING
CHALLENGED.

THIS CASE, CONCERNS FIRST OF
ALL A DEATH-PENALTY CASE
SECOND OF ALL, IF IT IS THE
CASE THAT SHE IS THE ONLY
AFRICAN-AMERICAN ON THE JURY,
WE'VE GOT TO MAKE SURE THAT
WE ARE NOT HAVING EITHER
PROSECUTORS OR DEFENSE UNDER
THE GUISE OF ASKING A
QUESTION THAT HAS BEEN
ACCEPTED RACE NEUTRAL USING

IT AS BASIS TO SYSTEMATICALLY EXCLUDE AFRICAN-AMERICANS, THAT IS WHY I'M CONCERNED IN THIS CASE.

I UNDERSTAND ALL OF THAT DISCRETION, BUT MR. BROWN THE PROSECUTOR WHEN HE WAS FIRST ASKED TO GIVE A RACE NEUTRAL REASON, HE FIRST SAID THE GODSON HAD A VIOLENT FELONY THEN SAID ALSO INDICATED A NUMBER OF OTHER FAMILY MEMBERS AND FRIENDS HAD BEEN CONVICTED HAD BEEN TO PRISON THAT WAS NOT BORNE OUT EHAD ANOTHER JUROR, CONFUSED. SO WE GO BACK TO, AGAIN THE ISSUE OF WHETHER THERE'S A PRETEXT BECAUSE THAT WAS THAT SITUATION THAT IS OTHER FAMILY MEMBERS HAD BEEN CONVICTED AND SENT TO PRISON, OR NOT BORNE OUT BY HER ANSWER SNOOS BUT, AND THE TRIAL JUDGE DID EXACTLY WHAT HE WAS SUPPOSED TO IN THAT CONTEXT HAVE THE COURT REPORTER READ BACK THE JUROR'S ANSWERS.

AND AFTER THAT WAS DONE, AND ANY OF THE CONFUSION, THAT HAD TAKEN PLACE THAT HAD EXISTED AND, THIS COURT IS WAIL WAR WE SEE THIS KIND OF CONFUSION A LOT.

IN CAPITAL JURY SELECTION NEVERTHELESS FOUND RACES NOT PRETEXT!!\$\$!!!!!!!!!!!!!!

PRETEXTUAL BUT RATHER WERE GENUINE REASONS AND THAT IS. PRESERVATION ISSUE, YOU DON'T ARGUE THAT APPARENTLY ON APPEAL.

BUT IS DEFENSE COUNSEL REQUIRED TO OBJECT TO THE PANEL THAT IS ULTIMATELY IMPANELED RENEW HIS OBJECTION?

I'M NOT SURE I'M FOLLOWING YOU JUSTICE CANAL TERRO I'M SORRY.

WAS -- CANTERO.

WERE A IT ADEQUATELY PRESERVED DEFEND COUNSEL

OBJECTED AT THE TIME DERENEW
OBJECTION LATER THE JURY WAS
EMPAN SNOOELD I DO NOT
BELIEVE THAT HE DID RENEW THE
OBJECTION WHEN THE JURY WAS
IMPANELED, I DO NOT REMEMBER.
ISN'T THAT WOULDN'T THAT
BE A WAIVER?

.
THAT WOULD BE WAIVER.

.
LET'S GO BACK TO, YOU
CANDIDLY, AGREE YOU DIDN'T
RAISE THAT AS AN ISSUE THAT
IS WAS WAIVED BY THE
ACCEPTANCE OF THE JURY.
THAT'S CORRECT, JUSTICE
PARIENTE, EITHER MISSED THAT
COMPLETELY OR AM TOTALLY
CONFUSED BY WHAT'S GOING ON
IN THIS CASE I'M NOT SURE
WHOA IT IS.

WELL --

I WOULD -- IMAGINE I ENEMY
THE STATE HAS NEVER MISSED AN
OPPORTUNITY TO RAISE
PRESERVATION AS AN ISSUE.
MY CONCERN ABOUT IT IS THAT
WHEN OF YOU THIS KIND OF
SITUATION, GIFT TO GO BACK
AND LOOK AT JOYNER AND ALL
THOSE CASES, WHICH IS AS
JURORS ALREADY BEEN STRUCK
PEREMPTORILY THE IDEA OF
JOIRN THAT IS MAYBE BEFORE
THEY IF THEY OBJECTED SAY TO
A JUROR THAT WASN'T STRUCK
FOR CAUSE, IT GIVES THE TRIAL
JUDGE ANOTHER OPPORTUNITY TO
LOOK AT THAT JURY
COMPOSITION, MAYBE GIVE
ANOTHER PREEMPTRY CHALLENGE,
HERE IS MR. HARP WAS ALREADY
STRUCK, WHAT WOULD BE THE
PURPOSE OF SAYING I'M
RENEWING MY OBJECTION.
THEY COULDN'T DO ANYTHING.
I DON'T KNOW THAT THERE
WOULD BE.
MAYBE THAT IS WHY YOU
CANDIDLY DIDN'T -- RAISE THAT
ISSUE.
IF THE COURT IF THE COURT
THINKS THAT SUPPLEMENTAL

BREAKING ON THAT ISSUE IS
NECESSARY BILL MORE THAN
HAPPY TO DO IT.
I'M -- VERY MUCH CONCERNED BY
-- BY THIS OF COURSE AND I'M
WHAT I'M VERY MUCH CONFUSED
-- YOU KNOW, THEY YOU KNOW
VERY CANDID WITH THAT.
LET ME GO BACK TO THE ISSUE
YOU KNOW ON THE MERITS.
THERE'S CASE LAW OUT THERE
ESPECIALLY FROM THE DISTRICT
COURTS OF APPEAL THAT COMMENT
THAT ONE OF THE EVALUATIONS
OF WHEN OR NOT A CHALLENGE IS
PRETEXTUAL IS TO LOOK TO SEE
IF OTHER POTENTIAL JURORS
WERE QUESTIONED ABOUT THE
SAME ISSUE.
OR IF THEY GAVE SIMILAR
RESPONSES TO QUESTIONS AND
WEREN'T CHALLENGED.
AS A RESULT OF THAT.
SO MY QUESTION IF YOU ARE
FAMILIAR WITH THAT CASE LAW?

.
YES YOUR HONOR.

.
DID THE TRIAL JUDGE DO
THAT HERE?
THAT IS, DID THE TRIAL JUDGE
THEN IN ANALYSIS OF WHETHER
THIS WAS PRETEXTUAL DID THE
TRIAL JUDGE SAY FOR INSTANCE
TO THE STATE WELL IS THAT
CORRECT?
WERE THERE OTHER JURORS THAT
QUESTIONED AND THEY CAME UP
WITH ANSWERS ABOUT FAMILY
MEMBERS, OR RELATIVES, OR
FRIENDS, BUT YOU DIDN'T
CHALLENGE THEM.
YOU ONLY CHALLENGED THIS
AFRICAN-AMERICAN JUROR HERE.
WAS THAT PART OF THE TRIAL
JUDGE'S ANALYSIS HERE OR DID
THE TRIAL JUDGE JUST STOP AT
A DETERMINATION THAT A JUROR
HAVING FRIENDS OR RELATIVES
WITH THE RECORD THAT THAT IS
NOT A PRETEXTUAL BASIS FOR A
CHALLENGE?
DID THE TRIAL JUDGE GO
THROUGH THE ANALYSIS THAT

SOME OF THE CASE LAW
SUGGESTED IT SHOULD.
YES, HE DID YOUR HONOR AND
IT APPEARS PAGES PAGES SZS
50IS SZ PAGES SZS 50IS SZ
THAT TRIAL JUDGE IS SAYINGS
BECAUSE SOMEBODY ELSE HAS THE
SAME FAMILY MEMBERS OR
WHATEVER, THEN THAT IS NOT
REALLY RELEVANT TO MY
ANALYSIS AS TO WHETHER IT IS
PRETEXTUAL FOR THIS JUROR
THACHLT WOULD SEEM TO BE
CONTRARY TO THAT CASE LAW
THAT SAYS YOU DO NEED TO EXAM
WHETHER THE CHALLENGER LEFT
PEOPLE ON THE JURY, THAT HAD
STHAIM WERE SIMILARLY SWAITED
AS FAR AS HAVING FRIENDS OR
RELATIVES THAT HAD RECORDS.
WELL, JUSTICE ANSTEAD WHEN
HE IS TALKING ABOUT SOMEBODY
ELSE SOMEWHERE I THINK THAT
IS CLEARLY WHAT HE IS DOING
THINK HE IS COMPARING THIS
JUROR TO THE OTHER JURORS.
HOW CAN HE DROLL THAT?
KEY -- HE MADE A POINT IN
THIS CASE, OF HAVING READ
THAT WHAT MISS HARP SAID;
CORRECT?
YES, MA'AM.
AND -- THIS ATTORNEY DID
IN FACT WHETHER WE BELIEVE IT
WAS ADEQUATE OR NOT THE
DEFENSE ATTORNEY DID IN FACT
NAME SOME OTHER PEOPLE THAT
HE BELIEVED INDICATED THAT
THEY HAD FAMILY OR FRIENDS
WHO HAD BEEN ARRESTED, OR HAD
CONVICTIONS, NOW DID HE READ
ANY OF THOSE PEOPLE'S ANSWERS
BACK?
I DO NOT BELIEVE THAT HE
DID.
AND SO HOW COULD HE MAKE
ANY REAL DETERMINATION AS TO
WHETHER OR NOT THIS IS --
MRS. HARP AND THOSE OTHER
PEOPLE WERE SIMILARLY SWAITD
IF HE DIDN'T KNOW WITH THE
THEY SAID YET HE MADE A POINT
OF READING BACK WHAT SHE SAID
I THINK WE'VE GOT TO START

WITH ON THE AL AS IS OR THE REASON FOR HAVING MISS HARP'S TESTIMONY OR VOIR DIRE QUESTION AND ANSWER READ BACK, BEING BECAUSE OF BEING PRECIPITATED BROUGHT ABOUT CONFUSION BETWEEN HER AND ANOTHER JUROR, THAT DO DOESN'T MEAN TO TRIAL JUDGE. WHY WASN'T THE OTHER JUROR THAT THE CONFUSION WAS MADE ABOUT WHY WASN'T THAT TESTIMONY READ BACK. BECAUSE THAT WASN'T THE JUROR THEY WERE TRYING TO STRIKE.

-- THE DEFENSE ATTORNEY HAD MADE THE ARGUMENT THAT THERE WERE OTHERS SIMILARLY SWAITED TO MISS HARP. SO IN FAIRNESS WOULDN'T IT BE IF YOU WANT TO KNOW WHAT MISS HARP SAID YOU WANT TO COMPARE IT TO WHAT THESE OTHER JURORS SAID WHY WASN'T THEIR TESTIMONY READ BACK ALSO? WOULDN'T THAT HAVE BEEN AP BETTER WAY TO DEAL WITH THAT SITUATION?

WELL, IT MIGHT HAVE BEEN A BETTER WAY TO DEAL WITH IT BUT IT CERTAINLY NOT -- WE HAD REAL KNOWLEDGE AS TO WHEN OR NOT THESE PEOPLE WERE SIMILARLY SWAITED. WELL I THINK WE ARE PRESUPPOSING THE TRIAL JUDGE DIDN'T REMEMBER WITH THE THE OTHER JURORS SAID I DON'T THINK WE CAN DO THAT BASED ON THIS RECORD.

BUT HE DID, BUT THE PROBLEM IS AND THIS IS A THIS IS A DIFFICULT AREA, AND IT THAT IS THE TRIAL JUDGE ACTUALLY AND THE PROSECUTOR, MIXED UP MISS HARP WITH THE ONE THAT HAD SOMEBODY WHO HAD A LOT OF THE ARRESTS SO THERE WAS ALREADY CONFUSION GOING ON ABOUT WHO ANSWERED WHAT. THE DEFENSE LAWYER DID RAISE THAT HE DIDN'T THAT THOSE ISSUES THAT OR THE REASON

QUESTION OR FOR CHALLENGING
MISS HARP THAT THERE WERE
OTHER JURORS IN THAT SAME
SITUATION.

SO ALL JUFZ IS ASKING THE
NAUBL THING WOULD BE LOOK AT
THEN AND THERE.

WHAT ELSE WAS ASKED OF THEER
JURORS BY A REEDBACK.

WELL I SUPPOSE THAT BOE AN
ERROR ON THE PART IF THAT IS
AN ERROR I CERTAINLY DON'T
CONCEDE THAT IT I WAS THINK
THAT WOULD BE ERR ON PART OF
THE TRIAL JUDGE NOT SOMETHING
THAT SHOULD BE IMPUTER AS
SOME RACIALLY MOTIVATED
REASON TO THE STATE.

DID DEFENSE COUNSEL
REQUEST OTHER POTENTIAL
JURORS TESTIMONY BE READ
BACK.

NO THIERL DID NOT.

LOOK AT MR. BROWN'S
COMMENT BEFORE THE JUDGES'
STATEMENT, MAY BE HELP FULL
THAT APPEARS TO BE ABOUT THE
ONLY PLACE THAT IT OCCURS,
AND SEE WOULD YOU ADDRESS
THAT.

IT APPEARS JUST BEFORE WITH
THE YOU JUST READ.

AS MR. BROWN'S RESPONSE, THE
DEFENSE COUNSEL, AND ADDRESS
WHETHER THAT IS SUFFICIENT OR
NOT SUFFICIENT IN THIS
CONTEXT THAT SEEMS TO BE THE
CRUX OF THE MATTER.

I THINK THAT IT IS JUST
LEWIS, HE KIND OF LIKE IN THE
PROSECUTOR CONCLUDES THAT
WHEN YOU PUT EVERYTHING
TOGETHER, THERE'S NO ONE ELSE
THAT IS EVEN CLOSE TO THAT
NOBODY ELSE HAS MODERN A
SINGLE PERSON WHO IS STILL ON
THE PANEL, NO ONE ELSE THAT
IS EVEN CLOSE TO HER, AND
IT'S FOR THAT BASES IT
CERTAINLY RACE NEUTRAL THAT
IS THE KIND OF --

THE JUSTICES RAISING THE
STHASH A CORRECT STATEMENT I
THINK THAT IS REALLY WHERE

THAT'S GOING.

AND -- I THOUGHT DOES THAT
IMPACT THE DECISION PROCESS?
I THINK IS REALLY -- WHERE
THE QUESTION IS LEAD SNOOG I
THINK THE TRIAL JUDGE FOUND
THAT WAS A CORRECT STATEMENT
BASED UPON HIS KNOWLEDGE AND
HAVING OBSERVED THE VIRDIER.
THAT DOESN'T REALLY ANSWER
THE INITIAL QUESTION I ASKED
WHICH THAT IS NO ONE ELSE IS
SIMILARLY SWAITED THAT IS
THAT THEY HAVE A RELATIVE WHO
IS IN THERE, WERE A PRIOR
VIOLENT FELONY, IF THE
QUESTION WAS NOT ASKED, THE
WHITE JURORS, AND JUSTICE
CANTERO MAY BE CORRECT THERE
IS A REASON FOR EACH ONE LIKE
THE ONE IF A DUI OBVIOUSLY
THAT IS NOT A VIOLENT FELONY
BUT THAT IS WHAT WE NEED TO
LOOK AT DON'T WE OH, TO SEE
IF THERE WAS MINIMAL
QUESTIONING OF THIS JUROR
BECAUSE THAT PROSECUTOR SAID
I'M GOING TO GET RID OF THAT
JUROR THE YOU KNOW, BECAUSE I
DON'T WANT BLACK JUROR TO SO
INTEREST THIS CASE.
TO SIT ON THIS CASE, WE DON'T
KNOW THAT WAS SAID BUT THE
WAY YOU UNDERSTAND WHETHER IT
IS OR NOT IS SUPERFICIAL
QUESTIONING OF ONE JUROR AND
MORE IN-DEPTH QUESTIONING OF
ANOTHER JUROR IS THAT YOU
KNOW, WE CAN'T GET INSIDE
SOMEONE'S MIND.
SO THAT IS WHY WE NEED TO
WIPED HOPE THAT YOU WOULD
KNOW WHETHER OR NOT THERE
WERE REASONS WHY THE OTHER
JURORS WERE NOT ASKED THE
SAME FOLLOW-UP QUESTION.

.
.

AND I BELIEVE I HAVE
ALREADY ANSWERED THAT
QUESTION, THAT IN THE CONTEXT
OF THE JURORS ANSWERS THAT
SORT OF FOLLOW-ON QUESTIONING
WAS -- NOT PARTICULARLY

NECESSARY.

CANTERO HELPED YOU ON THAT ONE I DON'T KNOW AND YOU THINK THAT'S GOING TO BE THE CASE FOR EVERY JUROR THAT WOULD BE SIMILAR THAT IS IF THERE WAS SOMETHING SAID THAT WOULD SHOW THAT IT COULDN'T HAVE BEEN AL VIOLENT FELONY? I BELIEVE THAT IS GOING PROVE TO BE CORRECT, JUSTICE PARIENTE WITH THE COURTOE -- WASN'T THERE ONE JUROR WHO SAID THEY HAD A BROTHER OR SOME RELATIVE WHO HAD BEEN CONVICTED AND WAS SERVING TIME FOR BURGLARY AND, SOME OTHER OFFENSE I BELIEVE? BERGRY COULD POSSIBLY BE ABOUT -- BURGLARY COULD POSSIBLY BE ABOUT -- THERE WAS NO FOLLOW-UP ON THAT ONE WAS THERE

I DON'T BELIEVE THERE WAS ONCE AGAIN WE COME BACK TO THE TRIAL JUDGE WHO OBSERVED THIS PROSECUTOR'S CONDUCT THROUGHOUT THE COURSE OF VIRDIER FOUND THESE REASONS WERE NOT CONTEXTUAL.

--

THIS VOIR DIER.

SIR.

WE KNOW HOW LONG VIRDIER WENT.

.

I DON'T REMEMBER HOW LONG IT LASTED OFF TOP OF MY HEAD IT WENT ON FOR A WHILE.

DID I GOT ON MODERN A DAY.

I BELIEVE IT DID.

IT IS -- FIVE -- FIVE OR 600

PAIMGZ OF RECORD WITH COURT'S PERMISSION LIKE TO TURN TO CRIES PALE DEALS WITH PATSCAN ADMISSIBILITY OF IT.

THE -- ISSUE IS NOT I

DON'T HAVE MUCH TIME THE ISSUE IS NOT HOW YOU CONDUCT A PET SCAN FROM A MECHANICAL STANDPOINT OF INYEKING THE DYE INTO THE INDIVIDUAL AND WAITING APPROPRIATE LENGTH OF TIME THEN IS FLYING

INDIVIDUAL INTO THE SCANNING MACHINE.

THAT IS NOT THE ISSUE.

NEVER HAS BEEN THE ISSUE.

THE ISSUE IS WHAT DO YOU DO

WITH THE RESULTS OF THAT

PETSCAN, AND HOW CAN YOU

INTERPRET THOSE RESULTS.

THAT IS WHERE THE PETSCAN IN

THIS CASE FAILS TO DEFY AN AL

SOYS.

IS THAT THE ARGUMENT THAT

WAS MADE AT TRIAL.

THAT WAS THE ARGUMENT THAT

WAS MADE NOT THE FRYE

HEARING.

THAT IS THE ARGUMENT AT

FRYE THE ONE YOU ARE MAKE

NOW.

YES.

WE HAVE NEVER CHALLENGED

THE STATE NEVER CHALLENGED

THE WAY YOU ACTUALLY DO THE

PET SCAN THERE ARE A NUMBER

OF PROBLEMS A NUMBER OF

TECHNICAL PROBLEMS WITH WHAT

WE ARE DEALING WITH HERE.

THE --

WHY DON'T WE CUT TO THE

CHASE HERE, WHAT IS IT THAT

SHOULD HAVE BEEN FRYE TEST

SND WITH THE ARE YOU ALLEGING

SHOULD HAVE BEEN FRYE TESTED

THAT WAS NOT.

WHAT A SHOULD HAVE BEEN

FRYE TESTED TWO THINGS FIRST

OF ALL THAT SECOND IN THEP

CHRONOLOGY OF EVENTS IS

WHETHER OR NOT ONE CAN DRAW

CONCLUSIONS ABOUT AN

INDIVIDUAL'S BEHAVIOR, BASED

UPON THE IMAGES GENERATED BY

THE PET SCAN ITSELF, I WOULD

SUGGEST THAT NO COURT TO EVER

CONSIDER THE ISSUE HAS FOUND

THAT THAT PASSES FRYE.

THE SECOND COMPONENT OF FRYE

IS ANALOGOUS TO THE

POPULATION FREQUENCY

STATISTICS THAT ARE USED IN

DNA ANALYSIS, AND THAT IS IN

THE WAY THAT THE RESULTS OF

MR. HOSKINS' PETSCAN WERE

COMPARED EVALUATED TO OTHER

SO CALLED NORMAS WILL
GENERATED ON A DIFFERENT
MACHINE WITH A DIFFERENT
PROTOCOL WITH A DIFFERENT
RESOLUTION, AND A DIFFERENT
PLACE.

THAT IS WHAT NO EXPERT
TESTIFIED IS PROPER TO DO IS
CROSS COMPARING A PET SCAN ON
MACHINE A, WITH NORMALS
GENERATE!!\$\$!!!!!!!!!!!!!!!

GENERATED ON MACHINE B.
THAT IS OUTSIDE THE STANDARD
OF PRACTICE, I WILL ASK THE
COURT TO DECIDE THE PET SCAN
ISSUE EVEN THOUGH SERM NOT
DISPOSITIVE OF THIS CASE
BECAUSE OF THE FREQUENCY WITH
WHICH THE ISSUE SEEMS
TIERISE.

THANK YOU VERY MUCH SIR.
YOU HAVE A -- COUPLE MINUTES.
STARTING WITH PET SCAN,
THE STATE ATEMENTSZ TO
ATTEMPTS TO RELY ON 90.1041B
EFFECTIVE JULY 1, '20 # 03
FOR THEIR FAILURE TO OBJECT
TO THE PET SCAN COMING IN AT
PENALTY PHASE AFTER THE FRYE
HEARING.

IT WAS DETERMINATION OF
ADMISSIBILITY PRETRIAL.
I CONTEND THAT THE RECORDS
SUPPORTS MODERN JUST MORE
THAN JUST FAILURE OF THE
STATE TO OBJECT TO THE PET
SCAN BEING ADMITTED AT THE
PENALTY PHASE, THE STATE DID
OBJECT TO CERTAIN ASPECTS OF
THE TESTIMONY OF DR. WOO, WAS
O POWER POINT SOME OF THE NEW
NONES THAT HE CAME -- KNOWNS
THAT HE CAME UP WITH THAT WAS
RECTIFIED AND HE WENT ON WITH
HIS TESTIMONY AND IN IN FACT
-- IN FACT THE STATE
SPECIFICALLY AGREED ON THE
RECORD THAT THE EVIDENCE
COULD BE INTRODUCED IN THAT
IS VOLUME ONE # ONE, PAGE
968.

AS FAR AS THE JURORS,
SUPERFICIAL QUESTIONING IF
THE ANSWERS ARE NOT

DISPOSITIVE OR NOT REVEALING
OF WHETHER OR NOT THEY WERE
VIOLENT FELONIES,
SPECIFICALLY, IF YOU LOOK AT
THE QUESTIONING OF HE STATE
OF -- MISS CHAMPION'S FRIEND,
THE SON SALLY'S NEPHEW
BROTHER ALTHOUGH COULD HAVE
BEEN VIOLENT FELONIES STATE
DID NOT PURSUE THAT AT ALL IN
SUBSTANCE SOME OF THOSE LEAST
A CALM OF THEM THE DEFENSE
SUBSEQUENTLY ELISE\$\$!!IT!!\$\$!!!! ELISITED WHAT
THEY WERE STATE DID NOT,
SUPERFICIAL QUESTIONING IS A
FACTOR THERE IS A
PRESERVATION PROBLEM, AT PAGE
514.

HE SAID HE ACCEPTED THE
PANEL'S MY NOTES REFLECT
HOWEVER AS JUSTICE PARIENTE
HELPFULLY POINTED OUT MISS
HARP WAS GONE THERE WAS NO
WAY TO RECTIFY THAT.
BUT WE HAVE SAID IN OTHER
CASES THAT IT IS NOT
PRESERVED EVEN WHEN THERE HAS
BEEN A PREMENTRY CHALLENGE
THAT WAS CONTESTED, AND, THEY
FAILED TO RENEW THE OBJECTION
AVENT WE IN ZACK AND OTHER
CASES.

OF YOU I THINK WHEN
EXPECTFULLY PETTING 230IR78
FORM OVER SUBSTANCE TRIAL
SECURITY WAS CLEARLY ON
NOTICE DEFENSE COUNSEL
OBJECTED TO RACE NEUTRAL
REASON IT WAS NOT GENUINE HE
MADE THAT CLEAR ON RECORD.
WE HAVE TO RECEDE FROM --
SOME OF OUR CASES --
PERHAPS, BUT MAGIC WORDS
AREN'T REQUIRED AS LOMG AS
THE TRIAL JUDGE IS APPRISED
OF WITH THE THE OBJECTION IS
HE CLEARLY WAS HERE ON THE
RECORD, I THINK THAT IS
SHOULD BE SUFFICIENT.

AND --
HE FEELS THERE IS A NEED A
RESPONSE.
JUSTICE BELL, THE DEFENSE
COUNSEL CONSIDERATELY ASKED

BEFORE VOIR DIER STARTED
BEFORE HE STARTED VOIR DIRTEE
-- COULD USE THIS FEATHSAID I
INTEND TO USE THIS PHOTOGRAPH
BEFORE HE DID ANYTHING NONE
OF THE JURORS THAT THE POINT
EXPRESSED ANY RELUCTANCE
ABOUT GORY PHOTOS HE PUT THE
COURT AND OTHER SIDE ON
NOTICE THAT WAS WHEN
DISCUSSED IN THE TRIAL JUDGE
RULED.
THANKS.
THANK YOU, THANK YOU VERY
MUCH, WE WILL MOVE TO OUR