

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

State of Florida v. Edgar Sylvester Whitby

SC06-420

LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT, PLEASE BE SEATS.

THE NEXT CASE ON THE CALENDAR IS HOSKINS VERSUS THE STATE OF FLORIDA.

MAY IT PLEASE THE COURT. JOHNNIE LEE HOSKINS WHO WAS RESENTENCED TO DEATH IN BREVARD COUNTY FLORIDA AFTER NEW PENALTY PHASE ORDERED BY THE COURT. I BELIEVE THE -- THIS CASE IS ISSUES FOR THE ORDER FOR THIS COURT TO ORDER EAR NEW PENALTY PHASE ARE THE TWO ISSUES I WOULD LIKE TO DISCUSS THIS MORNING. THE FIRST TWO ISSUES IN THE BRIEF. WAS SERVING A LONG-TERM PRISON SENTENCE FOR A VIOLENT FELONY. A NUMBER OF OTHER FAMILY MEMBERS AN FRIENDS HAD BEEN TO PRISON. WELL, THAT IS CERTAINLY NOT SUPPORTED BY THE RECORD. IF YOU WILL LOOK AT MISS HARP'S ANSWER, SHE SAID SHE HAD A GODSON WHO WAS SERVING A PRISON SENTENCE FOR VIOLENT FELONY IN ANOTHER, ANOTHER STATE. SHE HAD SEVERAL FAMILY AND FRIENDS WHO HAD BEEN 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 CONTENDED 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 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 PREEMPTORY IS 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. 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 HOSKIN'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 CONTENDED 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 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 STEPS? 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 SARO.

THE NATURE OF THE CRIME NOR THE DISPOSITION.

BUT THE 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, 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 CONTEXTUAL 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 CIRCUMSTANTIAL EVIDENCE CONTAINED IN THE RECORD IS OVERWHELMING, 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 THE NATURE OF THE FELONY 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 PRISON, SERVED AS SPIRITUAL ADVISER.

THE DEFENSE COUNSEL DIDN'T MAKE ALL OF THOSE NOT ALL OF THESE. HE REELED OFF AS BEST AS HE COULD.

HE SAID MR. INGRAHAM 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 EXCUSABLE.

GIVE YOU THE OPPORTUNITY BECAUSE YOU SAID YOU HAD TWO ARGUMENTS? YOU ARE 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 AND THERE WAS AFTER MR. HOSKINS 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 VERY GORY PHOTOGRAPHS OF THE VICTIMS IS AN ABUSE OF DISCRETION. 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 IT TO 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 AND 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 KNOW 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 EXHIBIT 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 CONTEMPLATED.

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 PRECISELY 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 FELONIES 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 INTERPLAY 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 AS VERY HIGH STANDARD, AND I THINK THAT WE HAVE HAD, YOU KNOW, AGAIN, WE HAVE CASE AFTER CASE, WHERE SOMEONE'S CHALLENGE RACE-NEUTRAL REASON, YOU KNOW, YOU GOT AGAIN WHITE JURORS BEING CHALLENGED. THIS CASE CONCERNS ME, FIRST OF ALL, A DEATH PENALTY CASE, SECOND OF ALL, IF IT IS THE CASE, THE ONLY AFRICAN-AMERICAN ON THE JURY, WE HAVE GOT TO MAKE SURE THAT WE'RE NOT HAVING, PROSECUTOR OR DEFENSE UNDER THE GUIDES OF ASKING A QUESTION THAT HAS BEEN ACCEPTED AS RACE NEUTRAL. . THAT SITUATION THE VICTIM IN THIS CASE WAS HISPANIC -- HISPANIC, ALL OF THE JURORS, OKAY, UP TO THIS POINT, WB HISPANIC. -- WERE HISPANIC WITH THE EXCEPTION OF THIS APPARENTLY WHITE -- WHATEVER THAT IS. BUT THAT THERE WAS AN ATTEMPT MADE THAT WHAT PROSECUTION HOPED FOR, AS FOR -- LIKE TO HAVE REALLY, ALL HISPANIC JURY, BECAUSE WE'VE GOT A VERY SYMPATHETIC LITTLE OLD LADY HISPANIC THAT REDUNDANCY THE CORNER GROCERY STORE OR SOMETHING, AND, OBJECTION LIKE THIS MAY HAVE BEEN PERFECTLY APPROPRIATE.

LET ASK YOU, LET'S FOLLOW UP THAT LETS STEP BACK, THE PROSECUTOR STRUCK A BLACK FEMALE, AND THERE WAS OBJECTION SAYING I OBJECT SHE IS BLACK FEMALE HE IS DISCRIMINATORY IT WASN'T FRAMED THAT WAY BUT THAT WAS INFERRED HE STRUCK A WHITE MALE CONSIDER FOR A MOMENT WHERE IS DISCRIMINATION WHAT IS PROSECUTOR TRYING TO DO. IF HE HAS BAIN ACCUSED OF DISCRIMINATING AGAINST MEN AND WOMEN, WHO DOES HE EXPECT IS GOING TO SERVE ON THIS JURY?

LA WOULD HAVE HAPPENED IF MELBOURNE EXERCISE, HAD BEEN -- IN THIS CASE.

I UNDERSTAND AND AGAIN, I AM NOT -- AT THIS POINT I'M ARGUING FOR PERSPECTIVE, PURPOSES, NOT NECESSARILY AT AS HAVE TO WHETHER OR NOT YOU SHOULD AFFIRM.

PLEASE DO SO CONCISELY YOU ARE BEYOND YOUR TIME.

I KNOW, THAT OR REVERSE.

WHAT I'M SUGGESTING THIS THIS HAS BECOME A TOOL AND NOTHING MORE, IN THIS CASE, THE SUGGESTION IS PROSECUTOR IS DISCRIMINATING AGAINST BLACK PEOPLE AND WHITE PEOPLE, MEN, AND WOMEN. WHY? WHO DOES HE EXPECT TO BE ON THIS JURY? IF NOT A MAN A WOMAN A BLACK OR WHITE, IS HE REALLY FOCUSED SUCH ROGUE RACIST THAT HE IS TRYING SECURE SOMETHING LIKE THIS? IT HAS BECOME A TOOL. A TOOL TO GET REVERSALS. AND HERE IS THE THING. THE LAWYERS KNOW THEY ARE PLAYING THE MELBOURNE GAME AND THE JUDGES KNOW THE LAWYERS KNOW THEY ARE PLAYING THE MELBOURNE GAME BUT PEOPLE IN THE GALLERY, THEY DON'T KNOW IT IS A GAME. THEY REAL SEE THESE YOUNG PEOPLE, WHO ARE PROBABLY

THE MOST RACE ETHNIC AND GENDER SENSITIVE GENERATION OF LAWYERS THAT WE HAVE EVER HAD, ACCUSING EACH OTHER OF BEING RACIST, BIGOTS, MISOGYNISTS THEY THINK THAT IS LA WE ARE ABOUT, ABSOLUTELY UNTRUE. WHEN OBJECTION IS MADE I EXPECT SUGGEST THEY NEED TO SHOW MAKE SOME SHOWING, AND IT IS NOT A SEVERE SHOWING IN THE FEDERAL COURTS, THAT IN FACT, THERE IS AN INFERENCE TO BE DRAWN, EVEN IF YOU SAY, THE SECOND OR THE THIRD STRIKE ARE THE ONES THAT GIVE YOU THE CLUE, THE JUDGE CAN ALWAYS SAY LOOK I ALLOWED FIRST TWO NOW THE THIRD ONE I'M GOING TO ASK YOU TO START FROM THE FIRST ONE AND WHY YOU ARE EXCLUDING THESE, THANK YOU. THANK YOU VERY MUCH. THANK YOU.

GOOD MORNING MAY IT PLEASE THE HE COURT SHANNON McKINA PUBLIC DEFENDER ON BEHALF OF THE RESPONDENT MR. EDGAR WHETHER IT BEE FLORIDA SINCE STATE VERSUS NEIL AT FOREFRONT IN FEDERAL AND STATE COURT PROCEDURES TO ENSURE DISCRIMINATION IS ELIMINATED FROM THE JURY PROCESS.

OBJECTION -- THE JUDGE -- YOU KNOW OVERRULED THERE IS ABSOLUTELY NO INTELLECTUAL CONTENT OR SUBSTANTIVE CONTENT TO THE WHOLE ANALYSIS THAT GOES ON THERE. AND HAVE WE COME SO FAR THAT WE STILL CAN -- TRAP IN THE SYSTEM NOW THAT WE ARE -- IN SOMETHING VERY QUIETLY THAT GOES ON, IS THE DEFENSE AFFIRMING HERE HAVE AN OBLIGATION TO TELL THE JUDGE, JUDGE, THE PREVAILING LAW IN FLORIDA IS MELBOURNE, MELBOURNE REQUIRES THIS THREE STEP ANALYSIS. AND I'M EXERCISING THE FIRST STEP OF THAT ANALYSIS. WHICH ONLY REQUIRES ME TO MAKE OBJECTION, IN -- WHAT BASIS OF IT IS, SHOULD THERE LEAST BE THAT OBLIGATION ON THE PART DEFENSE LAWYER.

NO, YOUR HONOR AND THE REASON WHY IS THIS EVERYONE IS TALKING ABOUT YOU KNOW THE TRIAL COURT, AND SOMEBODY HAVE NOTIFIED THE TRIAL COURT AS TO WHAT PROCESS TAKES PLACE THE TRIAL COURT WAS WELL WAR WHAT PROCESS TO TAKE PLACE THERE WERE TWO OTHER PREEMPTORY CHALLENGES MADE IN RESPONSE TO BOTH OF THOSE PREEMPTORY CHALLENGES SHE -- PREEMPTORY SHE ASKED THE STATE FOR REASON TRIAL COURT KNEW HOW TO UNDERTAKE MELBOURNE PROCESS HERE DEFENSE ATTORNEY OF COURSE WOULD HAVE BEEN BETTER IF HE SAID TO THE JUDGE AGAIN NO WAIT YOU ARE REQUIRED TO DO AN INQUIRY UNDER MELBOURNE. BUT HERE THE COURT DIDN'T JUST SAY, IT WASN'T GOING TO UNDERTAKE AN INQUIRY IT SAID THAT IT WAS FOUND THAT NO ABSOLUTE REASON FOR THE BASES OF DISCRIMINATION.

--? TERMS OF THE CONTENT OF THIS CASE? WHETHER OR NOT IT IS -- HYPOTHETICALLY -- THAT IS -- VICTIM IN THE CASE, MAY BE -- ALL -- HISPANIC DESCENT, AND, THAT IT LOOKS LIKE, THERE IS A POSSIBILITY TO GET ALL HISPANIC -- YOU KNOW BY A PROSECUTOR, AND THEREFORE -- BLACK, WHITE, GREEN, BLUE, JUST WANTED HEALTH CARES ON THAT JURY, IN ORDER TO -- TO PARTICULAR -- CAN YOU GIVE US THE CONTEXT THE CONTENT OF THIS PARTICULAR CASE THAT WOULD MAKE ANY KIND OF AN INDICATION THAT STRIKING A QUOTE WHITE AGAIN WHAT A THAT IS, WOULD GIVE TRIES SOME SUGGESTION EVEN, THAT THIS IS BEING DONE ON A RACIAL GROUND

YES, YOUR HONOR PART IS BASED IN THE RECORD PART IS NOT WHAT'S NOT IN THE RECORD. TELLS US WHAT IS IN THE RECORD.

THE FACT THAT VICTIM WAS MALE HISPANIC IF IN FACT WE ARE GOING TO LOOK AT STEREOTYPES AND POSSIBLE STEREOTYPES THE STATE MAY HAVE BEEN ENACT, IS THAT A THEY MAY HAVE BEEN SEEKING ALL FEMALE NONAFRICAN-AMERICAN -- LET ME READ A YOU WHAT IS IN THE RECORD.

YES YOUR HONOR.

WHAT IS IN THE RECORD SAYS THAT BRINGS US TO NATHANIEL LESSER -- MR. -- AS JUROR NUMBER TWO, WE WOULD LIKE TO ASK THE STATE TO PRODUCE A RACE NEUTRAL REASON, MR. LINN ALTHOUGH HE IS A WHITE MALE HE IS PROTECTED, HE IS A MEMBER OF A PROTECTED CLASS. THAT IS THE THAT IS LAW WAS STATED; RIGHT?

YES YOUR HONOR.

THAT IS THE EXTENT OF WHAT WAS STATED RIGHT.

YES YOUR HONOR.

OKAY NOW I ASK YOU, IS THE THAT FOLLOW MELBOURNE WHEREAS MELBOURNE, WE SAID A

PARTIES OBJECTING ON THE OTHER SIDE'S USE OF A VERY PREEMPTORY CHALLENGE ON RACIAL GROUNDS, MUST STATE MUST MAKE A TIMELY OBJECTION ON THAT BASIS. NOW, I UNDERSTAND IT SAYS THAT HE WANTS TO PRODUCE A RACE NEUTRAL REASON, BUT WAS THERE I DON'T READ THAT AS AN OBJECTION, THAT THERE IS RACE THAT IS A RACIALLY MADE CHALLENGE. WELL YOUR HONOR UNDER THE FIRST PRONG OF THE FIRST STEP WHICH IS THE OBJECTION REQUIREMENT THE REQUIREMENT ARE UNDER CASTER VERSUS STATE THAT THE OBJECTION MUST BE SURE TO APPRISE TRIAL COURT WHAT BASIC OF OBJECTION HERE TRIAL COURT CLEAR UNDERSTOOD BASES OF OBJECTION.

THAT IS NOT WHAT WE SAID IN MEL MULTIPLE WE MADE IT CRYSTAL-CLEAR IN MELBOURNE IF YOU ARE GOING TO MAKE THIS OBJECTION YOU'VE GOT TO DO IT ON ONE, TWO THREE BASIS. YES YOUR HONOR WHAT'S MISSING FROM HERE IS THE FACT THAT HE DID NOT USE THE WORDS THERE'S AN OBJECTION. THAT IS RIGHT.

HE LOOKED AT I'M SORRY YOUR HONOR IF YOU LOOK AT THIS COURT OPINION IN HOLIDAY STATE VERSUS HOLIDAY, ALMOST VIRTUALLY IDENTICAL OBJECTION WAS MADE IN HOLIDAY VERSUS STATE IN FACT THEY DIDN'T GO AS FAR AS THE OBJECTION IN THIS COURT, AND HOLIDAY VURS STATE SIMPLY IDENTIFIED.

THAT WAS DEALING WITH A HISPANIC FROM CUBA. CORRECT?
IN HOLIDAY YES THEY DID NOT IDENTIFY THE FACT THE JUROR WAS --
THE RECORD DID.

WELL THE RECORD YOU KNOW IF YOU CAN INFER FROM THE NAME BUT ALL THEY DID THEN WAS REQUEST A RACE NEUTRAL REASON.

WHAT DO YOU MAKE OF OUR WYNDHAM CASE WHERE WE SAID THAT WE DID MAKE REQUIREMENT, OF MAKING AN AFFIRMATIVE STATEMENT AS TO THEIR WHAT CLASS DISTINCT CLASS THAT THE OBJECTOR IS TALKING ABOUT. AND SAID THAT THAT WAS INSUFFICIENT. HOW CAN IT BE SUFFICIENT HERE WHERE YOU ARE IDENTIFYING SIMPLY A WHITE MALE? TO PUT HIM IN A DISTINCT CLASS?

WELL THERE'S TWO DIFFERENT REASONS FIRST OF ALL YOUR HONOR WINDSHAM DECIDE UNDER PRE-JOHAN STANDARD SECOND OF ALL UNTIL WYNDHAM THE OBJECTION WAS BY DEFENSE ATTORNEY WAS I'M OBJECTING REQUESTING ASSUMING COURSE THAT SHE IS BLACK. AFTER THAT, SHOULD WAS A DISCUSSION AS TO WHETHER THE JUROR WAS BLACK, CARRIBEAN BLACK OR EAST INDIAN ORIGIN THAT IS WHERE THE DIFFERENCE IS.

I DO HAVE ONE MORE QUESTION THAT IS DO YOU THINK WE VEERED FROM WYNDHAM IN JOHAN? ABSOLUTELY, WYNDHAM WAS DECIDE UNDER PREJOHAN STANDARD WHICH REQUIRED A PRIMA FACIE CASE.

HAVE WE RECEDED WYNDHAM DID WE THAT SAY.
AS FAR AS THE CHIEF --.

DID WE SAY IN A THIS COURT JOHANNNS HOW THE RULE IN JOHANNNS CHANGED THE BURDEN REQUIREMENT UNDER JOHANNNS NO LONGER A PRIMA FACIE CASE IS REQUIRED.

WHAT IS THE WHAT IS THIS RULE DESIGNED TO PROTECT, DEFENDANT? THE FROM DISCRIMINATION? EFFECT OF DISCRIMINATION FROM HAVING A JURY THAT IS CROSS-SECTION OF THE COMMUNITY THE JUROR WHO IS HISTORICALLY MAY NOT HAVE BEEN ABLE TO -- BECAUSE THEY WOULD EXCLUDED? BY LAW? OR PROSECUTORS AND DEFENSE LURES WE DON'T WANT TO BE DISCRIMINATING -- LAWYERS WE DON'T WANT TO BE POTENTIALLY DISCRIMINATING. THE RULE GOES FOR ALL OF THOSE PEOPLE.

THAT IS THE PROBLEM. THOUGH, -- THOUGH WE'VE BEEN TALKING ABOUT WE DON'T WANT TO HAVE RACIST -- PUBLIC DEFENDERS, STATE ATTORNEYS, WHO IS -- THAT IS NOT THE ISSUE. THE ISSUE IS WE ALL KNOW THOSE OF US TRIAL LAWYERS YOU LOOK BEFOREHAND YOU GO I'VE GOT A CIVIL CASE I WOULD REALLY LOVE TO HAVE AS MANY OLDER WOMEN ON JURY OR I WOULD LIKE TO HAVE YOU KNOW -- SO FEW BLACKS AT LEAST MANY OF THE PLACES IN THE STATE THAT ACTUALLY SO INTEREST JURIES, A COUPLE IN AMERICANS ON THE JURY, IF I COULD, OR MIME IMMEDIATE DADE MAYBE THIS I WOULD LIKE TO HAVE NOT ALL HEALTH CARE, LIKE TO HAVE YOU KNOW -- THE PROBLEM IS THAT IN A GIVE SITUATION, WE ARE PROTECTING THE RIGHT OF THAT PERSON TO BE ASK IT OR NOT SIT ON THE JURY ISN'T THAT WHAT WE ARE VINDICATING.

WE ARE PROTECTING THE EQUAL TECHNICIAN RIGHTS OF THE JURORS.

THAT IS WHERE I DON'T GET HAS SOMEBODY TO SAY HE IS A WHITE MALE, AND THEN GO AHEAD AND ALLOW ALL THESE OTHER INQUIRIES TO OCCUR AS IF SOMEHOW MIGHT -- MIGHT WHITE WHALES HAVE BEEN EXCLUDED FROM JURIES IN THE PAST.

IT IS NOT BASED ON MATTER OF HISTORIES REGARDING CERTAIN GROUPS HISTORICALLY OF AMERICANS HAVE BEEN EXCLUDED FROM JURIES AND EVEN WOMEN THE PRESENT CASE, THIS CAN JUROR HAVE A RIGHT TO REMAIN ON THIS JURY? IT IS NOT ONLY IN THE EQUAL PROTECTION RIGHTS FOR JUROR IT IS ALSO THE RIGHTS OF THE LITIGANT TO BE TRIED BY A FAIR AND CROSS-SECTION.

WE DON'T SAY WE HAVE THE FRICTION GOING ON IF SOMEONE SAYS I WOULD LIKE A CROSS-SECTION THAT IS WHY I AM TAKING OUT THESE JURORS, WE SAY THAT IS NOT PERMISSIBLE YOU CAN'T JUST -- WE HAVEN'T EVEN ALLOWED THAT TO BE A REASON THAT IS WHY I THINK WE'VE GOTTEN SO FAR FROM THE INTENT AND YOU MENTIONED SOMETHING IMPORTANT TO ME SAID I GET PROSECUTING ATTORNEY WANTED, IDEALLY THEY WANTED.

HISPANIC FEMALE.

HISPANIC FEE A MULTI, WHY ISN'T THAT WHAT HE WHAT SOMEBODY WHY ISN'T DOES DEFENDANT HAVE TO SAY THAT YOU ARE ON YOUR HONOR I'M CONCERNED THEY ARE STRIKE THIS PERSON BECAUSE I THINK THAT THEY ARE TRYING TO JUST GET HISPANIC FEMALES ON AT LEAST THEN WE WOULD KNOW WHAT THE BASIS OF OBJECTION IS AND -- COURT LOOKING AT COULD IT UNDERSTAND WHETHER THERE HAS BEEN APPROPRIATE INQUIRY WHAT IS WRONG WITH BEEFING UP THE FIRST PRONG OF MELBOURNE?

WHAT'S WRONG --

EXPLAIN WHAT IN FACT IS WHAT'S WRONG WITH IT YOUR HONOR CURRENT PROCEDURE WORKS, ANY TIME THAT YOU ARE GOING ADDING ADDITIONAL REQUIREMENTS, THERE ARE GOING TO BE ADDITIONAL COMPLICATIONS, IF THE COURT CAN'T FOLLOW THE CURRENT PROCEDURE, IT MAY NOT BE ABLE TO FOLLOW A MORE COMPLICATED PROCEDURE, ADDITIONALLY, THE UNITED STATES SUPREME COURT JOHNSON VERSUS CALIFORNIA AND THIS COURT IN HALLS EVERY DAY LACKSHIRE VERSUS STATE MELBOURNE, JOHAN, VALENTINE REPEATEDLY I STATED WHAT IS IMPORTANT IN THIS INQUIRY IS ACTUALLY REASON FOR THE STRIKE AND IT SHOULD NOT BE BASED ON IMPERFECT INSPECT, SO.

LET ME ASK, ABOUT THE CURRENT PROCEDURE, THE UNDERSTANDING UNDER CURRENT PROCEDURE THAT A COUNSEL CAN SAY AS TO EACH POTENTIAL JUROR, BEGINNING WITH JUROR NUMBER ONE, OBJECTION, AND NOW STATE HAS TO GIVE A RACE NEUTRAL REASON, JUROR NUMBER TWO OBJECTION, NEIL, JUROR NUMBER 3 OBJECTION NEIL GO, THROUGH 300 POTENTIAL JURORS SAY OBJECTION NEIL EACH TIME THE COURT AT THIS POINT KNOWS THIS IS FRIVOLOUS THIS RIDICULOUS JUST TRYING TO CRAY THE CASE CAN'T DO ANYTHING ABOUT IT BECAUSE UNDER MELBOURNE, THEY ARE REQUIRED NOW TO CONDUCT THE INQUIRY BECAUSE THEY SAID OBJECTION NEIL IS THAT YOUR UNDERSTANDING OF THE CASE LAW.

YOUR HONOR ANY TIME A BRIGHT LINE RULE THERE ARE GOING TO BE OUTLINING CASES WHAT THE COURT DOES HAVE.

THAT YOUR UNDERSTANDING YOU MAY THINK THAT IS LEGITIMATE WAY BUT IS THAT -- YES, THAT IS HOW THE LAW READS WHAT THE COURT DOES HAVE IN POWER WHEN ATTORNEY MAKES FOR -- FRIVOLOUS OBJECTIONS CAN FILE COMPLAINTS WITH THE FLORIDA BAR THAT IS THE WAY TO HANDLE THE AS YOU WERE SAYING THE WAY TO RESOLVE THE SITUATION TO NOT CHANGE THIS RULE. WHEN THIS COURT ENANTHED THIS RULE A-- IT HAD 3 POLICY REASONS BEHIND ENACTING THE RULE FIRST THE BEST WAY TO FERRET OUT DISCRIMINATORY PRACTICE, SECOND OF ALL, IT IS PRACTICABLE IT CAN SERVE FINANCIAL RESOURCES TIME RESOURCES A SIMPLE INQUIRY THIRD RISK OF REVERSALS EXACTLY WHAT THE HISTORY OF THE RULE HAS O SLOAN THAT IT HAS DONE. THE STATE NOWHERE IS IT THROUGHOUT ITS ARGUMENT HAS IT SAID THAT MELBOURNE IS NOT WORKING IN FERRETING OUT DISCRIMINATION.

SO CAN WE ASSUME BY THAT ARGUMENT THAT THE FEDERAL AND OTHER 47 STATES ARE HAVING A PROBLEM BY USING THE RULE, I CAN'T SPEAK AS TO WHY THERE IS DIFFERENCES IN THE FEDERAL SYSTEM VERSUS THE STATE SYSTEM, I DO KNOW THAT DISCRIMINATION IS OFTEN HIDDEN OFTEN SUBTLE, JUST HE JUSTICE MARSHALL IN RECENT OPINION OF MILLER -- STATED

THAT RACE GENDER BASED STEREOTYPES SEEM BETTER ORGANIZED EVEN MORE SYSTEMIZED THAN EVER BEFORE WHAT WE ARE LOOKING AT HERE PRODUCING THE ACTUAL REASON AND THE UNITED STATES SUPREME COURT EMPHASIZED THAT, THAT LETS GET THE ACTUALLY REASON THERE IS NO REASON TO ENGAGE IN IMPERFECT SPECULATION THERE IS NO REASON TO REVERSE, CASES, TO HAVE TO GO BACK AND HAVE AN APPEAL AND NEW TRIAL.

WOULD YOU AGREE TO MATTER BEING ABLE TO GO BACK POST TRIAL OR POST APPEAL FOR A DETERMINATION.

NO YOUR HON THIS COURT REPEATEDLY REJECTED THAT PROPOSITION, AND FIRST OF ALL I WOULD LIKE TO POINT OUT THE STATE YOU KNOW WHILE IT IS SO VOCIFEROUSLY ADVOCATES FOR THAT REMEDY NOW, IN NOWHERE IN THEIR INITIAL BRIEF DID THEY EVEN ADDRESS THAT REMEDY WAS NOT UNTIL THE REPLY BRIEF THEY ADDRESSED THAT AS POTENTIAL REMEDY THIS COURT REPEATEDLY STATED STARTING WITH BLACKSHIRE LATE 80s GOING ON BACK FOR POST -- HEARING IS FRAUGHT WITH SPECULATION, YOU KNOW, ATTORNEYS DO HAVE TIME TO YOU KNOW REVIEW THE RECORD AND PERHAPS COME UP WITH REASONS. WHAT'S IMPORTANT THAT IS THE ATTORNEYS REASON AT THE POINT OF TRIAL. AND WITH POST EVIDENTIARY HEARING YOU ALSO HAVE PROBLEMS WITH THE ATTORNEYS DEMEANORS AT THE TIME THE WERE MADE, WHETHER OR NOT YOU KNOW THE JUROR CAN BE BROUGHT BACK INTO QUESTIONING. THE MELBOURNE RULE, BEST SERVES THE PURPOSES IN ELIMINATING DISCRIMINATION MINIMIZING THE RISK OF REVERSALS AND MAKING SURE THAT WE GET THE ACTUAL REASONS, THIS YOU KNOW, WE TALKED ABOUT WHETHER OR NOT THERE IS DISCRIMINATION IN THE FEDERAL SYSTEM OR STATE SYSTEM. RECENTLY IN 2005 THERE WERE TWO CASES WHERE THE WERE ASKED TO GIVE REASONS IN ONE FRAZIER VERSUS STATE SAID REASON FOR STRIKING THE JUROR WAS US BECAUSE SHE WAS FROM JAMAICA COUNTRY KNOWN FOR DRUG TRAFFICKING IN ANOTHER INDUSTRIAL VERSUS STATE SAID WHY DID YOU STRIKE THE JUROR, SHE IS HAITIAN MIGHT BE MORE INCLINED TO BELIEVE ALIBI WITNESSES CLASSIC DISCRIMINATORY REASONS.

LET ME TAKE YOU BACK TO YOUR CASE.

YES YOUR HONOR.

AND THAT IS, THE WAY I READ, WHAT HAPPENED HERE, WAS THAT THE ISSUE ASSUMING THAT THERE WAS A LEVEL ONE OBJECTION, THAT WAS ACTUALLY MADE, IS THAT THIS JUDGE RULED ON SECOND PART OF MELBOURNE, AND RULED THAT IT HAD NOT BEEN SET OUT THAT A WHITE MALE WAS IN A PROTECTED CLASS THAT. IS LA THE RULING OF THE TRIAL JUDGE HERE, RIGHT? UNCLEAR, BECAUSE LA HAPPENED --

SAYS HE IS A PROTECTED, THE ARGUMENT IS HE IS PROTECTED. HE IS A MEMBER OF PROTECTED CLASS. THIS -- WHAT PROTECTED CLASS, MISS BOSTON, MR. -- I DID NOT COME UP WITH THAT RULE, BUT THE RULE SAYS THE COURT -- DENIED. THAT IS ALL THAT IS SAID.

YES AND THEN THE A FEW LINES LATER, THE DEFENSE SAYS YOUR HONOR YOU DENYING IT BECAUSE YOU ARE FINDING HE IS NOT A MEMBER OF A PROTECTED CLASS, IN RESPONSE THE COURT SAYS I'M FINDING THAT THERE IS NO BASIS OF UPON HE WAS DISCRIMINATED AGAINST SO IT IS A LITTLE --

ON THE BASIS HE IS A WHITE MALE. THAT IS WHAT THE COURT SAID.

IT IS UNCLEAR AS TO YOU KNOW IF SHE JUST FOUND THAT WHITE MALES ARE NEVER ELIGIBLE IN THIS COURT HAS --

SO WE ARE GO REVERSE A TRIAL JUDGE BECAUSE IT IS UNCLEAR?

NO. WHAT IS CLEAR IS THAT MEL AND -- INQUIRY WAS NOT CONDUCTED THE REASON THIS COURT INSTITUTED MELBOURNE AFTER YEARS OF EXPERIENCE THE REASON THAT I VOTED THE WAY DID IN MELBOURNE WAS BECAUSE I THOUGHT THAT THIS OUGHT TO BE A JUDGMENT THAT THE TRIAL JUDGE MADE AND ONLY IN EXCEPTIONAL CIRCUMSTANCES SHOULD THE APPELLATE COURT GET INVOLVED IN IT. AND HERE AND YOU'VE GOT TO GIVE THE TRIAL JUDGE A -- A CHANCE AND THIS INSTANCE THE DEFENSE -- THE STATE DIDN'T GIVE THE TRIAL JUDGE SA CHANCE. YOU BRING UP A GOOD POINT THERE IS A DEFERENCE TO THE TRIAL COURT BECAUSE THEY ARE SITTING IN THE TRIAL THEY THAT GETS OBSERVE HE HEADS TO THEY SEE JUROR SEE THE WHOLE ATMOSPHERE OF THE TRIAL. HOW, IF A REASON IS NEVER PROFFER YOU HAD CAN'T GIVE DEFERENCE TO A REASON, THAT WAS NEVER GIVEN. AND THAT IS EXACTLY WHAT IS WRONG WITH THIS SITUATION. AND, MELBOURNE MINIMIZES THE RISK OF REVERSAL IT IS A SIMPLE PROCEDURE --

AS JUSTICE WELLS JUST READ FROM THE RECORD IF THE TRIAL JUDGE WAS SAYING THERE THAT THIS MAN WAS NOT IN A PROTECTED CLASS AND THEREFORE WE DON'T GET TO THIS MELBOURNE INQUIRY, WHAT IS WRONG WITH THAT? WHY IF THE FINDING IS HE IS NOT IN A PROTECTED CLASS?

WELL WHAT'S WRONG WITH IT IF IN FACT HE IS A MEMBER OF A PROTECTED CLASS, BASED ON HIS.

SO WE GET BACK TO THE PROPOSITION THAT EVERY PERSON IS IN A PROTECTED CLASS. YES YOUR HONOR THEY ARE. AND WHAT WE HAVE HERE WE HAVE SEVERAL COMPETING INTERESTS, AND -- THE ISSUE IS TO HOW DO WE BEST RESOLVE COMPETING INTERESTS YES YOU MAY HAVE SOME ATTORNEYS, WHO OBJECT REPEATEDLY TO MELBOURNE OBJECT TO ANY STRIKE -- BUT THE BEST WAY IS NOT CHANGE MELBOURNE.

I GUESS THE LET HER FINISH THE QUESTION.

BUT ON THE OTHER HAND IF YOU ARE SAYING I ASSUME WHAT YOU ARE SAYING IS THAT IN CERTAIN CIRCUMSTANCES ANY PERSON COULD BE IN PROTECTED CLASS, THEN, IN A SITUATION, WHERE A PERSON IS NOT NECESSARILY A WHITE MALE, FOR EXAMPLE IS NOT NECESSARILY IN A PROTECTED CLASS, UNDER MOST OF THE CASE LAW THAT WE HAVE WAS COME OUT OF THIS WHOLE NEIL BAXON INQUIRY, SHOULDN'T THE PERSON WHO IS NOW SAYING THAT THEY ARE IN A PROTECTED CLASS HAVE TO MAKE MORE THAN SAYING THAT IS WHITE MALE? HE IS A WHITE MALE AND HE IS A IN A PROTECTED CLASS BECAUSE -- IN THIS CASE, SOMETHING. THE PROBLEM. THE PROBLEM WITH THAT YOUR HONOR IS THAT THIS COURT IN JOE HAN STATED IT TRYING TO FIND LINES TO PROVIDE CLEAR GUIDANCE. WHAT WAS HAPPENING WAS THERE WERE NUMEROUS REVERSALS BECAUSE THE TRIAL COURTS WEREN'T SURE HOW TO DETERMINE THERE WAS A PRIMA FACIE CASE, AS IN THE STATES VERSUS HOLIDAY DECISION AFTER JOHANN'S THIRD DISTRICT AS WELL AS FOURTH I BELIEVE SECOND DISTRICT ALSO WERE INTERPRETING JOHANN'S REQUIRING THAT DOESN'T HAVE TO BE PRIMA FACIE CASE THERE HAS TO BE SOME FACTS TO SHOW IT. AND, AGAIN, THERE WERE NUMEROUS REVERSALS IN THIS COURT SAID, CLEARLY, NO. NOTHING HAS TO MORE HAS TO BE DONE THAN REQUESTING A NEUTRAL REASON.

SEEMS HARD FOR IF -- -- IN THE BELIEVE MELBOURNE INTENDED TO THIS TO APPLY I TO WHITE MALES OTHERWISE THE REQUIREMENT THAT THE COUNSEL SHOWED THAT JUROR A MEMBER OF A DISTINCT RACIAL GROUP, SUPERFLUOUS BECAUSE EVERYBODY IS A MEMBER OF A DISTINCT RACIAL GROUP, SO, MELBOURNE WOULD HAVE SAID TO SHOW TO WHICH DISTINCT RACIAL GROUP THIS JUROR BELONGS, NOT THAT JUROR IS A MEMBER OF A DISTINCT RACIAL GROUP IS THAT WOULD ALWAYS APPLY.

WHAT THAT IS THAT WE HAVE NUMEROUS BASES IT CAN BE BASED ON GENDER IN FACT IN THIS CASE, WE HAVE THE STATE EXERCISE ALL SIX OF ITS PEREMPTORY STRIKES AGAINST MALE WHILE MALES --.

THAT IS THE THING NOW YOU ARE GETTING AWAY FROM THE -- OF MELBOURNE THE REASON TIE PLY THIS TO WHITE MALES IS BECAUSE MELBOURNE SAYS DISTINCT RACIAL GROUPS. YOU ARE NOT TALKING ABOUT GENDER NOW GETTING AWAY FROM LANG OF MELBOURNE SO -- THE CASE BEFORE MELBOURNE WAS IN FACT BASED ON RACE, HOWEVER THIS COURT IN ABSHIRE VERSUS STATE RULED THAT THE NEIL AND DISCRIMINATION POLICIES ALSO APPLY TO GENDER. WHAT YOU ARE SAYING REALLY THEN HE MADE THE WRONG OBJECTION -- OBJECTION ANYWAY, INSTEAD OF SAYING WHITE MALE YOU ARE SAYING REALLY LA HE SHOULD HAVE SAID IS I WANT ETHNIC -- TO -- NOT BECAUSE OF RACE --

PLEASE ANSWER JUSTICE CANTERO AND JUSTICE PARIENTE QUESTION YOU ARE WELL OVER, AS CONCISELY AS POSSIBLE.

YES YOUR HONOR IT COULD HAVE BEEN BOTH IN THIS JURY IT WOULD HAVE BEEN THAT STATE WAS LOOKING FOR HISPANIC FEMALES TO SERVE ON JURY SO IT COULD HAVE BEEN A COMBINATION OF PRACTICE. MELBOURNE WORKS THE BEST WAY TO HANDLE THESE PROBLEMS MINIMIZES THE RISK OF REVERSAL THE BEST WAY TO FERRET OUT DISCRIMINATION. THANK YOU. DID YOU FINISH JUSTICE CANTERO'S QUESTION?

YES.

. ALL RIGHT.

THANK YOU.

IF I CAN JUST MAKE ONE OR TWO QUICK POINTS, IN ANSWER TO JUSTICE QUESTION ABOUT FEDERAL SYSTEM ITS EXPERIENCE IN REPLY INCLUDED.
YOU ARE OVER SO IF YOU MAKE IT VERY CONCISE YOU ARE WELL OVER TIME.
OF THE 11th CIRCUIT AND 11th CIRCUIT HAS NOT HAD ANY PROBLEMS DOES NOT REVERSE LARGE NUMBERS OF CASES, NEXT TO NOTHING HAS BEEN REVERSED, OR FOUND TO BE PROBLEMATIC APPLYING BABSON UNLESS THE COURT HAS ANY FURTHER QUESTIONS -- THANK YOU.>