>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
PLEASE BE SEATED.
>> OKAY.
THE LAST CASE ON THE DOCKET IS
GUZMAN VERSUS STATE.
WHENEVER YOU'RE READY,
COUNSELOR.
>> MICHAEL REITER FOR
MR. GUZMAN.
LIKE TO START OFF WITH ISSUE
ONE.
IF WE RELY ON THE COURT'S
PREVIOUS DECISIONS--
>> SPEAK UP A LITTLE BIT.
PICK IT UP A LITTLE HIGHER.
>> START OFF WITH ISSUE ONE.
IF WE'RE TO RELY UPON YOUR
DECISION IN MCGIRT, JOHNSON AND
CARR, MR. CRUISE MAN IS ENTITLED
HAVING CASE GO BACK FOR NEW
PENALTY PHASE.
IN ALL THREE CASES 11-1 DECISION
AS IT IS IN THIS CASE AS WELL.
THE STATE ARGUED IN THE BRIEF
RATIONAL JURY WITH MINIMAL
AMOUNT OF MITIGATION AND
ACTIVATING FACTORS WOULD NOT BE
ABLE TO FIND LIFE AN APPROPRIATE
SENTENCE.
WHAT THEY DON'T SAY IN THE
BRIEF, THAT THE JURY IS
INSTRUCTED THERE IS NEVER A
SITUATION WHERE A JURY HAS TO
VOTE FOR DEATH REGARDLESS OF
NUMBER OF AGGRAVATORS IN THIS
CASE.
>> THIS IS PARTICULARLY
INTERESTING IN THIS ISSUE THE
AGGRAVATORS WERE FOUND
UNANIMOUSLY, WEREN'T THEY?
>> CORRECT.
IN WRITING.
>> EXACTLY.
WHICH IS NOT SOMETHING WE SEE IN
MOST OF THESE CASES.
SO, BASED ON THE FACT THAT THESE
AGGRAVATORS WERE FOUND
UNANIMOUSLY WHY ISN'T IT A CASE

THAT THE A JURY, WHAT COULD HAVE
MOTIVATED THEM THEN TO HAVE THE
11-1 DECISION?
>> WELL I THINK THERE IS A
NUMBER OF SITUATIONS.
ONE IS, I WILL TALK ABOUT IT AT
THE END ON THIS PARTICULAR
ISSUE, ONE ISSUE HERE HEAVILY,
NOT ONLY FOR AGGRAVATORS BUT
ANOTHER ISSUE BOWED HEAVILY
AGAINST MR. GUZMAN, STILL A
JUROR CHOSE NOT TO ISSUE A DEATH
RECOMMENDATION AND THAT'S THIS.
IT WAS A FEATURE DURING VOIR
DIRE.
AT LEAST TWO--
>> LET ME GO BACK TO SOMETHING,
WAS THIS JURY INSTRUCTED THAT
THEY COULD RECOMMEND DEATH IF
THERE WAS A 10-2 VERDICT?
>> THEY WERE.
>> SO THIS WAS A SENTENCING
UNDER THE DEATH PENALTY STATUTE
THAT HAS BEEN DECLARED
UNCONSTITUTIONAL?
>> THAT'S CORRECT.
>> SO, YOU KNOW, I THINK WE HAVE
HAD SOME CASES WHERE THEY USED
SPECIAL VERDICTS EVEN FROM
BEFOREHAND WERE THERE WERE
UNANIMOUS AGGRAVATORS BUT THEN
THE ISSUE IS, THE WAY-- ON THIS
QUESTION OF THE JUROR, IF WE
FOUND THAT HE IS ENTITLED TO A
NEW PENALTY PHASE, AND AT LEAST
AS TO ONE JUROR, SEEMS THAT
MAYBE SHE SHOULD HAVE BEEN
EXCUSED FOR CAUSE, DOESN'T THAT
JUST GO TO THE PENALTY PHASE?
WHY WOULD THERE NEED TO BE A NEW
GUILT PHASE?
>> THAT GOES BASICALLY TO ISSUE
TWO I THINK BECAUSE OF THE FACT
THAT YOU HAD, ON ISSUE TWO,
THREE JURORS PEREMPTORY
CHALLENGES REQUESTED EVEN THOUGH
ATTACK ON THREE JURORS.
MISS WOODS, I DON'T THINK THERE
IS ANY QUESTION, EVEN THOUGH
THEY TRIED TO REHABILITATE HER,

UNLESS MENTAL ILLNESS
INVOLVED--
>> I'M ASKING YOU, ASSUME SHE
SHOULD HAVE BEEN, EXCUSED
FOR CAUSE.
>> RIGHT.
>> HOW DOES THAT, DO WE HAVE
CASES THAT, IF THIS IS GOING
BACK FOR A NEW TRIAL, BECAUSE
THIS WAS, HE WAS SENTENCED
UNDER, AND JURY WAS INSTRUCTED
UNDER UNCONSTITUTIONAL STATUTE,
WHY, SINCE THAT ONLY GOES TO HER
ABILITY TO BE FAIRER OR UNFAIR
ABOUT THE DEATH PENALTY, HOW
DOES THAT AFFECT GUILT.
>> COUNSEL DID NOT GOT
OPPORTUNITY, IF HE HAD GOTTEN
TWO MORE PEREMPTORY CHALLENGES,
MRS. ROOTE WOULD NOT SIT ON
JURY, HAD OPTION ANOTHER JUROR
PUT ON, BENEFICIAL, MIDDLE EAST
GOTTEN A HUNG-- MIGHT HAVE
GOTTEN A HUNG JURY AND NOT
GUILTY VERDICT.
WHENEVER THE SITUATION IN THE
COURT'S PRIOR HOLDINGS, WHEN THE
JUDGE MAKES AN ERROR REGARDING
THE JUROR BEING QUALIFIED--
>> BUT DO WE HAVE A CASE WHERE
THE DISQUALIFICATION WOULD BE
BASED ON DEATH PENALTY ISSUE AND
NOT SOMETHING THAT WOULD AFFECT
HER ABILITY TO BE FAIR IN THE
GUILT PHASE?
DO WE HAVE CASE ON THAT POINT.
>> NO, THERE IS MORE TO IT THAN
THAT YOU HAVE TO REMEMBER WHY IT
HAPPENED.
TWO JURORS, IF HE GETS FOUND
GUILTY, WALKING OUT FREE
PROBABLY BECAUSE OF RULE OF 25
YEARS.
BOTH POINTED OUT FACT, HEY, IT
HAS BEEN 25 YEARS, IF HE IS
FOUND GUILTY HE IS WALKS OUT OF
HERE ON PROBATION, ON PAROLE.
TWO JURORS, MISS WOODS AND
MR. MONGAS SAID SAME THING.
THIRD JUROR DISCUSSED THAT AS

WELL.
THAT BODES TO THE FACT THAT PERHAPS JURY WOULD HAVE FOUND HIM GUILTY ANYWAY SENTENCE HIM TO DEATH.
IN RESPONSE TO JUSTICE QUINCE'S QUESTION WHY SHOULD WE HAVE ANYTHING WITH REGARD TO THE ONE JUROR?
WE HAVE FOUR AGGRAVATORS, THE JURY KNOWS IF WE FIND THE PERSON, GIVE LIFE HE IS WALKING OUT.
I WILL GIVE HIM DEATH.
THE PERSON WHO VOTED FOR LIFE COULD HAVE DONE SO BASED ON THE FACT OF MITIGATING.
THAT HE DOES WELL IN PRISON.
EXHIBITS INTRODUCED WITH REGARD TO THE GED AND DONE HUMAN RIGHTS COURSES, A NUMBER OF COURSES IN PRISON.
NO INDICATION THE FACT HE WASN'T DOING WELL IN PRISON THAT COMMIT BAIT BACK AND FORTH TO HER.
COULD MITIGATE.
THEY FELT PRIOR TO HURST, 12-0 WAS, JURY DOES NOT HAVE TO THE VOTE THE PERSON TO DEATH.
IT HAPPENED HERE TOO.
AND I'M SUBMITTING TO THE COURT, IN THIS PARTICULAR CASE, MORE CONFIDENCE IN IS 1-1, THAN HURST, SENTENCE TO LIFE RATHER THAN THE PENALTY PHASE.
WE HAVE FOUR AGGRAVATORS POINTED OUT.
25 YEARS TO LIFE.
THE JURY WELL AWARE OF THAT.
BECAME DISCUSSION IN VOIR DIRE, STILL NOT UNANIMOUS VERDICT.
I BELIEVE THAT THIS COURT SHOULD ACTUALLY SENTENCE HIM TO LIFE BECAUSE MORE CONFIDENCE IN THAT VOTE THAN THERE WAS IN THE 12-0 VOTE PRIOR TO HURST.
I REALIZE THAT ARGUMENT SO CONTRADICTORY TO MY CLIENT'S POSITION, BECAUSE IF YOU SEND IT BACK ON NEW TRIAL, THAT

SITUATION WOULD NOT BE
AVAILABLE.
HE WOULD BE SUBJECT TO THE NEW
RULES BUT NONETHELESS--
>> LET ME SEE IF I UNDERSTAND
YOU.
ON THE ISSUE ABOUT THE JURY
PANEL HAVING HEARD THE
DISCUSSION ABOUT HIM ALREADY
BEING IN, I HAVEN'T BEEN IN
PRISON FOR 25 YEARS AND IT WOULD
BE 25 YEAR MINIMUM MANDATORY
VERSUS LIFE, DO YOU GET A NEW
SENTENCING OR A NEW TRIAL
TOTALLY?
>> WELL IN THIS PARTICULAR CASE
IT WAS ARGUED IN ISSUE ONE AS A
NEW PENALTY PHASE, IN ISSUE 2,
WAS NEW TRIAL, THE FACT, THAT
ALSO ISSUE 4 BECAUSE--
>> IF HE GOT RID OF THE WHOLE
PANEL, IF YOU GET RID OF, IF YOU
SAY YES THE WHOLE PANEL WAS
TAINTED, THEN YOU GET A NEW
TRIAL.
>> THAT'S CORRECT.
WHICH MIGHT BE CONTRADICTORY TO
GETTING LIFE AND BEING ABLE TO
SUBJECT TO PAROLE BUT THE POINT
BEING THE COURT MAY WE DEVELOP
SAY, THE STATE POINTS OUT THERE
IS NO CASE LAW SENDING ANYBODY
BACK, SENTENCING TO LIFE UNDER
THE CIRCUMSTANCE.
I AGREE THERE IS NO CASE LAW
SAYING THAT THE LOGIC BETWEEN
12-0 VOTE CONFIDENCE IS
SUFFICIENT TO SAY WE HAVE
CONFIDENCE BETWEEN THE
AGGRAVATORS, MORE AGGRAVATORS
FOUND IN WRITING.
THE JURY WAS INSTRUCTED THEY DO
NOT HAVE TO SENTENCE SOMEONE TO
DEATH.
THERE IS NOW ONE PERSON VOTING
FOR LIFE, THAT SUFFICE TO
QUALIFY FOR HURST, ACTUALLY
SENTENCING HIM TO LIFE, RATHER
THAN GOING BACK.
THIS WOULD BE HIS FOURTH TIME

GOING BACK.
IF WE SEND HIM BACK SOONER OR LATER ENOUGH TIMES A JURY OF 12 WILL SENTENCE HIM TO DEATH.
GIVEN THE FACT ALL THE INSTRUCTIONS OTHER THAN, YOU HAVE TO FIND UNANIMOUS VERDICT, EVERYTHING WAS QUALIFIED UNDER HURST IN THIS CASE.
AND I SUBMIT TO THE COURT THE LIFE SENTENCE IS APPROPRIATE HERE.
IN REGARD TO THE JURORS THEMSELVES, MR. MONGAS WAS, AN INDIVIDUAL WHO QUESTIONED THE 25-YEAR ISSUE AND INDICATED HE WOULD FALL ASLEEP, WOULDN'T PAY ATTENTION, GET DISTRACTED AS WELL AS MISS ROOT.
ALSO HAD, HOME INVASION IN HER PAST WHERE HER HUSBAND WAS KIDNAPPED OUT OF HER HOME.
ALSO INDICATED SHE WOULD FALL ASLEEP.
THE PROBLEM WITH NOT ALLOWING A NEW, PROBLEM WITH DENYING FOR CAUSE, YOUR HONOR, IF THE OBJECT IS TO BEYOND A REASONABLE DOUBT TO A JUROR WOULD BE FAIR AND IMPARTIAL.
THE JUDGE WAS NOT CONSISTENT WHAT HE WAS DOING.
HE ALLOWED TWO OTHER INDIVIDUALS, FIREMAN, HE WOULD FALL ASLEEP, WOULD BE DISTRACTED.
JUDGE FIRST WOULD DENY IT FOR CAUSE.
TURNS AROUND, I WILL GO AHEAD AND GRANT IT BECAUSE HE COULDN'T STAY AWAY BECAUSE OF HIS SHIFT.
DENIES THE SAME CAUSE CHALLENGE FOR MON MISS GAS AND ROOT.
I SUBMIT BY DOING THAT ACTED IN INCONSISTENT MANNER.
NOT TELLING ATTORNEYS HOW THEY WOULD ASK THE QUESTIONS FOR ANYBODY SUFFERING SAME PROBLEMS.
FEDERAL COURTS CONSTANTLY HELD IF A PERSON WOULD BE DISTRACTED

TO POINT WHERE THEY CAN NOT
LISTEN, FALL ASLEEP, JUDGE'S
PROPER DISCRETION TO HAVE THEM
DISMISSED FOR CAUSE.
>> OTHERS WERE IN DIFFERENT
OCCUPATIONS OR PROFESSIONS,
CORRECT?
>> THEY WERE.
>> WHAT IS A TRIAL JUDGE TO DO
WHEN, LET'S FACE IT, ONCE OUR
JURY RETURN BASED ON THE, WHEN
WE SUMMONS THE, SUMMON THE
JURIES, 25%?
PEOPLE SHOW UP.
THEY'RE LOOKING FOR WAYS,
UNFORTUNATELY, TO AVOID SERVICE.
AND, I SEE, OH, WELL, MY FRIEND,
CHIEF JUSTICE LABARGA GOT OUT OF
THIS SAYING HE WILL FALL ASLEEP.
HE IS A LAWYER.
I'M A LAWYER.
I WILL FALL ASLEEP, WHERE DOES A
TRIAL JUDGE'S DISCRETION END
WITH REGARD TO THOSE KINDS OF
THINGS?
ONCE A JUROR FINDS SOMETHING
WORKS I HAVE SEEN IT HAPPEN
BEFORE MULTIPLE TIMES.
WELL THAT WORKED FOR THEM.
IT SHOULD WORK FOR ME.
>> I UNDERSTAND IT'S A DIFFICULT
SITUATION.
BUT IF THIS PARTICULAR JUDGE HAD
MADE SPECIFIC RULES HE WOULD
FOLLOW CONSISTENTLY, IN OTHER
WORDS, HE AT FIRST MADE THAT
COMMENT HIMSELF, WHAT IF I AM TO
DO EVERYBODY WINDS UP SAYING I
WOULD FALL ASLEEP?
YOU DON'T DISMISS ANYBODY ON
THAT BASIS.
TOO BAD.
>> TOO BAD TO A FIRST RESPONDER
WHO WORKS MIDNIGHT SHIFTS?
THERE ARE DIFFERENCES, THAT IS
WHY WE USE THE BIG D WORD,
DISCRETION.
ISN'T THAT WHAT WE'RE LOOKING
FOR?
WE'RE NOT LOOKING FOR ABSOLUTE

PER SE RULE, AREN'T WE?
>> SOME CASES YOU CAN DO THAT WITH REGARD TO CIRCUMSTANCES OF THE WITH REGARD TO FALLING ASLEEP YOU CAN.
IN THAT PARTICULAR DAY HE WOULD FINISH UP A SHIFT.
BUT AFTER THAT WOULD HAVE TIME OFF TO BE ON THE JURY.
WE MAKE IT A CRIME-- WELL, WE MAKE IT DIFFICULT FOR EMPLOYERS TO SAY YOU CAN'T SERVE ON A JURY.
WE DON'T ALLOW THAT.
THIS PERSON WORKS FOR CITY OR COUNTY.
THEY ARE TO MAKE RECOMMENDATIONS, ACCOMMODATIONS PEOPLE IT SIT ON JURIES ESPECIALLY FIRE OR POLICEMEN.
THAT IS WHAT THEY NEEDED TO DO, IN MY PARTICULAR SITUATION I BELIEVE FIREMEN SHOULD BE REQUIRED TO SIT, OTHER PERSON NOT SO SPECIFICALLY WHEN TALKING ABOUT THE 25 YEARS SITUATION THEY'RE UPSET ABOUT.
THE FACT THAT A HOME INVASION THAT A LADY HAS.
WOULD FALL ASLEEP.
NOT A QUESTION IN THOSE PARTICULAR INSTANCES FALLING ASLEEP.
THERE WERE BACKGROUND CIRCUMSTANCES THAT GAVE RISE--
>> TO FOLLOW UP ON JUSTICE LEWIS' QUESTION, AM I CORRECT THIS IS JUROR HAD ENTIRE COURTROOM ENTERTAINED AND LAUGHING, WAS VERY GREGARIOUS AND THAT THE TRIAL JUDGE NOTED THAT IN DENYING THE CAUSE CHALLENGE WITH RESPECT TO THIS JUROR?
>> THAT'S CORRECT.
>> OKAY.
>> LET ME ASK ONE OTHER QUESTION.
WITH RESPECT TO THE ISSUE OF THE DEFENDANT HAVING SERVED IN

PRISON FOR 25 YEARS, YOU STATED
THAT THE JURY WAS TOLD THAT.
IN MY REVIEW OF THE RECORD, IT
LOOKS LIKE THERE WAS A JUROR WHO
ASKED THAT IN VOIR DIRE.
WAS TOLD WE CAN'T GET INTO THAT,
WE CAN'T TELL YOU ANYTHING
ABOUT-- ALL YOU HAVE TO KNOW
WE'RE HERE AND YOU HAVE TO
DECIDE THE CASE BASED ON THE
EVIDENCE BUT THERE WAS NO
DIRECTION, THE JURY WASN'T TOLD
HE HAD BEEN IN PRISON, IS THAT
CORRECT?
>> THERE WAS NOBODY SAID THIS
MAN SERVED 25 YEARS IN PRISON.
THERE WAS NO DENIAL OF IT
EITHER.
FOR EXAMPLE, MISS WOOD,
MR. MONGAS ASKED A QUESTION OF
PERSON IN PRISON, IF PERSON IN
PRISON 25 YEARS HE WOULD GET
OUT.
MISS WOOD SAID THIS MAN PROBABLY
SERVED 25 YEARS, THAT IS THE
WORD SHE USED PROBABLY GET OUT.
NOBODY SAID THAT IS OR IS NOT
TRUE.
ALL THEY SAID THEY COULD
CONSIDER THAT.
>> WHAT SHOULD HAVE THEY HAVE
DONE.
>> PARDON ME.
>> WHAT SHOULD THEY HAVE DONE?
SHOULD THEY DONE ANYTHING
DIFFERENT THAN THEY DID?
>> YES.
NOT RAISED DATES.
JUDGE WE'LL STIPULATE TO THE
DATES OF THIS CASE.
NO NEED TO BRING THEM OUT.
THE JURY WOULD HAVE HEARD IF IT
HAPPENED YESTERDAY.
BY DOING NOTHING--
>> WITNESSES WHO DIED?
>> I'M SORRY.
>> WITNESSES TESTIMONY HAD TO BE
PRESENTED BY DEPOSITION BECAUSE
THE LENGTH OF TIME.
>> WITNESSES FOR THE GUILT PHASE

WERE ALL THERE.
THERE WAS NO PROBLEM WITH THAT.
NO PRIOR TESTIMONY WAS READ ON
THE GUILT PHASE.
>> YOU'RE SUGGESTING THEY SHOULD
HAVE SANITIZED ENTIRE TRIAL,
NEVER MENTIONED DATE OF ANY
EVENT, AND THAT SUCCESSFULLY CAN
BE DONE WE'LL TRY CASES IN A
VACUUM?
THERE IS NO REFERENCE TO ANY
DATE, TIME, REFERENCE AT ALL?
>> I DON'T KNOW WHAT, I DON'T
KNOW WHY IT IS NECESSARY TO FOR
PURPOSES OF THE JURY TO HEAR THE
DATE OF THE DEATH.
>> I DON'T UNDERSTAND WHAT THIS
POINT IS GOING TO BECAUSE WHAT
ARE THE MITIGATING CIRCUMSTANCES
WAS PRESUMABLY OFFERED AND JUDGE
FOUND WAS HIS, YOU KNOW, GOOD
CONDUCT DURING HIS
INCARCERATION.
SO THE PENALTY PHASE JURY,
WHATEVER WAS, THEY WILL KNOW
WHEN THE CRIME OCCURRED, IT IS
1991, THE PENALTY PHASE--
YOU'RE NOT RAISING ANY OTHER
GUILT PHASE ISSUE THAT I SEE,
THE PENALTY PHASE JURY IS GOING
TO KNOW THAT HE HAS BEEN IN
PRISON.
AND THEN THE ONLY ISSUE COME UP
IN SOME CASES IS WHAT DOES
PAROLE MEAN?
DOES IT MEAN HE WILL GET OUT
AFTER 25 YEARS?
OR, YOU KNOW, SO HOW DOES THAT
AFFECT THE GUILT PHASE IS MY
PROBLEM?
>> I DON'T KNOW THAT IT DOES BUT
WHEN YOU QUALIFYING A JURY,
DEATH QUALIFYING A JURY, I'M
SITTING HERE BEING ASKED WHETHER
OR NOT, AND HEARING PEOPLE TALK
ABOUT, THIS GUY, IF I FIND HIM
GUILTY, I SENTENCE HIM TO LIFE
HE WILL WALK OUT THE DOOR IN
WEEK FOR ALL I KNOW.
I DON'T WANT THAT TO HAPPEN.

THAT MAY CAUSE ME TO VOTE GUILT
IF I REGARDLESS OF ANYTHING
ELSE.
NOT KNOWING WHEN PERSON DIED HAS
NO EFFECT OF THE PERSON WITH
REGARD TO BEING GUILTY OR
PENALTY PHASE.
RATHER WITH REGARD TO THE JURY.
I WOULD RESERVE MY TIME FOR
REBUTTAL.
>> MR. CHIEF JUSTICE, MAY IT
PLEASE THE COURT.
MY NAME IS TAYO POPOOLA I
REPRESENT THE STATE IN THIS
MATTER.
FIRST ISSUE, NUMBER ONE, THE
HURST ISSUE, I WANT TO CLARIFY
MY COLLEAGUE DID SAY.
MY COLLEAGUE SAID DURING HIS
ARGUMENT THAT THE FACT THAT THE
DEFENDANT DID WELL IN PRISON
COULD HAVE BEEN A MITIGATION
CONSIDERED BY THE JURY BUT I
WANT TO POINT OUT THE ONLY
MITIGATION EVIDENCE THAT WAS
PRESENTED TO THE JURY WAS THE
FACT THAT MR. GUZMAN HAD EARNED
SOME CERTIFICATES WHILE HE WAS
IN PRISON.
THE EVIDENCE RELATING TO THE
FACT THAT MR. GUZMAN WAS 27 AT
THE TIME COMMITTED OFFENSE, 52
AT TIME OF SENTENCING, THE FACT
HE USED ALCOHOL OR DRUGS AT SOME
POINT IN HIS LIFE, THE FACT HE
HAD GOOD JAIL CONDUCT, THAT WAS
A PART OF THE SPENCER HEARING.
THAT DID NOT GO TO THE JURY.
THE ONLY THING THEY HEARD HE
EARNED SOME CERTIFICATES WHILE
IN PRISON.
>> THIS JURY, THE PROBLEM IN
THIS CASE, I THINK COMPOUNDED IS
THAT THEY'RE ACTUALLY TOLD, IT
DOESN'T, THAT THEIR SENTENCE
DOESN'T HAVE TO BE UNANIMOUS.
THE AGGRAVATORS ARE IN, AS LONG
AS 10 JURORS VOTING FOR DEATH.
SO IT SORT OF PUTS THIS WHOLE
ISSUE OF THE, OF HIM BEING TRIED

UNDER THIS INTERIM STATUTE INTO
CONCERN AS TO THE JURORS
CONFUSION AND WE, AS MR. REITER
SAID, WE HAVE SAID, FIRST
WHETHER THERE IS AGGRAVATORS ARE
SUFFICIENT TO OUTWEIGH THE
MITIGATORS BUT THEN THERE IS
STILL THE FINAL RECOMMENDATION
THAT HAS TO BE UNANIMOUS.
SO IT IS WHICH THEY'RE
INSTRUCTED ON?
THEY'RE NOT INSTRUCTED.
THEY WERE TOLD 10-2 IS ENOUGH.
>> YES, YOUR HONOR.
IN THIS CASE THE JURY WAS
INSTRUCTED ON THE LAW AND
THAT THEY WERE TOLD TO RECOMMEND
THE DEATH PENALTY AT LEAST 10
JURORS HAD TO AGREE.
SO IF WE LOOK HOW THE JURY WAS
INSTRUCTED AND JURY INSTRUCTIONS
GIVEN TO THEM AT THE TIME THEY
ACCURATELY TRACKED CHAPTER 2016.
>> I'M NOT FAULTING THE JUDGE.
BEFORE HURST CAME OUT WERE
OPERATING IN THE DARK UNTIL THE
U.S. SUPREME COURT MAKES ITS
DECISION BUT, I THINK YOU'RE
TRYING TO ARGUE IN THIS CASE
VERSUS OTHER CASES IT IS
HARMLESS BEYOND A REASONABLE
DOUBT AND WE'VE HAD SEVERAL
11-1S WHERE THE SAME ARGUMENT
COULD HAVE BEEN MADE BUT WE
DON'T KNOW WHY THE ONE JUROR
VOTED FOR LIFE AND WAS CLEARLY
TOLD THAT WOULD BE AN
APPROPRIATE VERDICT, RIGHT, TO
NOT VOTE FOR DEATH BECAUSE THERE
WERE 10 OTHERS THAT WERE, ALL
THEY NEEDED WAS 10.
>> CORRECT.
YOUR HONOR.
THE STATE'S POSITION HAD THE
JURY BEEN INSTRUCTED WITH THE
NEW LAW THAT IS NOW IN EFFECT,
THAT THE ONE JUROR, BASED ON THE
AGGRAVATION PRESENTED AND
MITIGATION EVIDENCE, THE LACK OF
MITIGATION, THAT THAT ONE JUROR

WOULD HAVE VOTED IN FAVOR OF THE DEATH PENALTY BUT WE UNDERSTAND THAT THIS COURT'S PRECEDENCE IS AGAINST US IN THAT MATTER.
JUST THAT THE STATE'S CONTENTION A RATIONAL JURY PROPERLY INSTRUCTED WOULD HAVE FOUND THE HURST ERROR IN THIS CASE TO BE HARMLESS.
>> LET ME ASK YOU A QUESTION ABOUT WELL, MISS WOOD.
MISS WOOD SEEMED LIKE SHE WAS VERY SURE THAT SHE WOULD NOT, SHE WAS GOING TO VOTE FOR THE DEATH PENALTY AND SHE MAKES A SERIES OF STATEMENTS THAT LOOKED TO ME LIKE SHE IS NOT ABLE TO SET ASIDE HER, HER PREVIOUS THOUGHTS ABOUT IT.
I WAS TRYING TO GET TO WHERE SHE TALKED ABOUT IT.
AND WE REALLY SAID, ONCE SOMEBODY MADE THOSE KIND OF STRONG STATEMENTS, THEN THE JUDGE IS TRYING TO REHABILITATE HER, AND THEN THE DEFENSE LAWYER, I MEAN THE STATE'S TRYING TO REHABILITATE HER.
MY QUESTION, WHAT I ASKED MR. REITER, ASSUMING SHE SHOULD HAVE BEEN STRUCK FOR CAUSE, DO WE HAVE ANY CASES THAT SAY HER PREDISPOSITION IS ONLY-- THAT THERE IS A DIFFERENCE BECAUSE IT WAS GOING TO HER PENALTY, IF WE GIVE A NEW PENALTY PHASE VERSUS BUILT?
DO WE HAVE ANY CASES ON THAT?
>> NO, YOUR HONOR, NOT TIME.
THIS COURT HAS NOT DECIDED THAT PARTICULAR ISSUE BUT IT IS THE STATE'S CONTENTION MISS WOODS, THAT THE TRIAL COURT DID IN FACT PROPERLY DENY THE CAUSE CHALLENGE FOR MISS WOODS BECAUSE WHAT THIS COURT STATED, IT IS IMPORTANT TO LOOK AT ENTIRE RECORD, TO LOOK AT ALL OF THE STATEMENTS MADE BY THE JUROR IN DETERMINING WHETHER OR NOT THAT

JUROR SHOULD BE STRICKEN FOR
CAUSE.
>> BUT SHE SAYS THIS, THIS IS
THE POINT-- THE PERSON WENT TO
THE ROBBERY, TOOK HIS KNIFE HE
BROUGHT THERE, WITH THE
INTENTION TO USE IT, BECAUSE YOU
WOULDN'T BRING A KNIFE, UNLESS
YOU HAVE THE NERVE TO USE IT TO
KILL THE PERSON.
I BELIEVE HE SHOULD DIE.
THAT IS AS SIMPLE AS THAT.
>> THAT'S CORRECT, YOUR HONOR,
THAT IS ONE THING MISS WOODS DID
SAY.
HOWEVER IF WE LOOK AT PAGES 131
AND 132 OF THE RECORD AND PAGE
135 AND PAGE 138, MISS WOOD SAID
DEPENDING ON MITIGATION EVIDENCE
PRESENTED, NOTWITHSTANDING THE
FACTS IN THIS CASE THAT THE
DEATH PENALTY MIGHT NOT BE
APPROPRIATE FOR MR. GUZMAN.
SO IF WE LOOK AT ENTIRETY--
>> WHEN WE SAY YOU MAKE A
STATEMENT, EXPRESS A STRONG
BELIEF ON SOMETHING.
THEN THE JUDGE COMES IN, BUT
COULD YOU DO THAT?
YOU LOOK AT ATTEMPTS TO
REHABILITATE IN A DIFFERENT WAY
THEN IF IT IS EQUIVOCAL FROM THE
FINISHING.
WE HAVE MANY CASES LIKE THAT.
MISS WOOD WOULD BE PRETTY CLEAR.
IF SOMEBODY SAID, I DON'T
BELIEVE IN THE DEATH PENALTY,
BUT IF IT WAS THIS AND THAT,
YOU'RE GOING NO, I REALLY DON'T
BELIEVE IN THE DEATH PENALTY,
THEN YOU FINALLY SAY, BUT IF
THEY WERE, IF YOU FOUND ALL THIS
AGGRAVATION, WELL, I GUESS I
COULD CONSIDER IT, THAT YOU
KNOW, THOSE PEOPLE GET STRUCK
BECAUSE THEY DON'T BELIEVE IN
THE DEBT PENALTY.
IF THEY WON'T IMPOSE DEATH,
THOSE WOULD BE STRUCK UNDER THE
CASE LAW.

>> YOUR HONOR, IT IS UNDISPUTED THAT MISS WOODS WAS LEANING IN FAVOR OF THE DEATH PENALTY, HER VIEWS TOWARDS THE DEATH PENALTY BUT THAT IN OF ITSELF IS NOT SUFFICIENT TO STRIKE HER FOR CAUSE.
IT IS UNDERSTANDABLE WHY DEFENSE WOULD NOT WANT A JUROR LIKE THAT SERVING ON THE JURY QUITE NATURALLY BECAUSE THEY ARE LITERALLY TRYING TO GET A LIFE SENTENCE, AND HERE THEY ARE DEALING WITH A JUROR THAT HAS FAVORABLE VIEW OF THE DEATH PENALTY.
BUT JUST THE FACT THAT SHE FAVORED THE DEATH PENALTY IS NOT SUFFICIENT TO WARRANT HER BEING STRUCK FOR CAUSE.
AGAIN MRS. WOODS WAS CLEAR ON THE PAGES OF THE RECORD I POINTED TO, DEPENDS ON MITIGATION EVIDENCE PRESENTED IN THE CASE, SHE SAID THE DEATH PENALTY MIGHT NOT BE APPROPRIATE AND I CAN SEE MYSELF VOTING IN POSITION OF IN FAVOR OF A LIFE SENTENCE.
IF WE LOOK AT--
>> ONE MORE THING, IS IT AUTOMATIC-- THIS IS THE STATE, CONSIDERING THE EVIDENCE AND MAKE UP YOUR MIND-- HE IS TRYING TO REHABILITATE HER.
I CONSIDER IT BUT STILL MY MIND IS MADE UP, IF HE DID TAKE AWAY ANOTHER LIFE, COME ON, THIS IS AMERICA.
SHE DID SAY THAT SHE ALSO STATED SHE COULD SEE HERSELF IN A POSITION WHERE SHE IS NOT VOTING IN FAVOR OF THE DEATH PENALTY DEPENDING WHAT MITIGATION IS PRESENTED.
IF WE LOOK AT ENTIRETY OF MISS WOODS STATEMENTS, WHAT TRIAL COURT SHOULD DO LOOKING AT A CAUSE CHALLENGE, THAT THE TRIAL COURT DID NOT ABUSE HIS

DISCRETION IN DENYING THAT CAUSE
CHALLENGE.
>> LET ME ASK YOU THIS, EVEN IF
YOU'RE WRONG ABOUT MISS WOODS,
DIDN'T THE TRIAL JUDGE GIVE
ADDITIONAL PEREMPTORY CHALLENGE.
>> YES, YOUR HONOR.
>> SO THAT WOULD CURE THE ERROR?
>> YES, YOUR HONOR, JUSTICE
LAWSON, THAT WOULD CURE THE
ERROR BECAUSE THE TRIAL COURT
GRANTED AN ADDITIONAL--
>> IF I WOULD THINK THERE WAS
ERROR THERE, THAT IS CURED.
IF THE OTHER TWO ARE NOT FOR
CAUSE, THANK YOU, JUSTICE
LAWSON, THAT MIGHT, THAT WAS
YOUR LIFELINE?
>> YES, YOUR HONOR.
THAT IS CORRECT.
>> COULD YOU-- THERE IS ONE
THING AND I THINK IT CAME UP AS
FAR AS THE STRIKING OF AN
AFRICAN-AMERICAN JUROR.
>> YES.
>> THIS ISSUE OF THE ASKING THE
QUESTION, DO YOU WATCH FOX OR
CNN, ARE THOSE QUESTIONS
ROUTINELY ASKED OF JURIES WHO
WATCH FOX OR CNN?
>> YES, YOUR HONOR.
MY EXPERIENCE AS A TRIAL
ATTORNEY, I HAVE SEEN THIS TYPE
OF QUESTION ASKED.
LIVES SEEN ATTORNEYS ASK WHO
THEY WOULD FAVOR IN A
PRESIDENTIAL ELECTION.
SO I HAVE SEEN, VARIETY OF THIS
TYPE OF QUESTION.
AND THE PURPOSE OF THE QUESTION,
AS THE, PROSECUTOR STATED BELOW
WAS THAT, HE WOULD HAVE
PREFERRED A MORE CONSERVATIVE
JUROR VERY AS YOU MORE LIBERAL
ONE BECAUSE THE STATE WAS TRYING
TO SEEK THE DEATH PENALTY.
>> IF YOU ALLOWED DURING THE
TIME PRESIDENT OBAMA WAS
PRESIDENT AND YOU SAID, DID YOU
VOTE FOR PRESIDENT OBAMA, AND,

YOU STRIKE EVERY
AFRICAN-AMERICAN JUROR BECAUSE
THEY VOTED FOR PRESIDENT OBAMA,
AREN'T YOU IN EFFECT, YOU'RE
SAYING THAT IS GENUINE BECAUSE,
I DECIDED I DIDN'T WANT ANYONE
THAT VOTED FOR PRESIDENT OBAMA,
BUT YOU'RE, ACTUALLY THE RESULT
OF THAT WILL BE ALMOST VIRTUALLY
EVERY AFRICAN-AMERICAN IS GOING
TO END UP BEING STRUCK?
I MEAN ISN'T THERE-- SEEMS THAT
IS DANGEROUS.
THAT'S-- WERE THERE ANY
AFRICAN-AMERICANS ON THIS JURY?
>> ACCORDING TO THE RECORD WE
KNOW FOR A FACT THAT MISS
FIELDS, WHO I BELIEVE IS JUROR
NUMBER 15, SHE WAS THE
AFRICAN-AMERICAN JUROR.
IN TERMS OF WHETHER THERE WITH
ANY OTHERS UNFORTUNATELY THE
RECORD IS NOT CLEAR.
>> MISS FIELDS WAS ONE STRUCK?
>> RIGHT.
MISS FIELDS--
>> THERE WERE NO OTHER
AFRICAN-AMERICANS ON THE JURY?
>> THE RECORD DOESN'T SHOW THERE
WERE ANY OTHERS.
THAT THERE WERE ANY OTHER
AFRICAN-AMERICAN JURORS ON THE
JURY.
WE JUST KNOW--
>> WAS THERE A QUESTION WITH THE
WHOLE CNN THING, WASN'T THERE
SOME QUESTION ABOUT WHETHER OR
NOT THERE WAS A WHITE JUROR THAT
SAW CNN WHO WAS NOT STRICKEN?
>> THIS IS WHAT HAPPENED.
DURING JURY SELECTION THE RECORD
SHOWS THAT MISS FIELDS THE
AFRICAN-AMERICAN JUROR, SHE
STATED THAT SHE WATCHED CNN.
MISS BENTLEY, WHO WAS THE
CAUCASIAN JUROR STATED SHE
WATCHED FOX NEWS.
HOWEVER WHEN MAKING THE
MELBOURNE CHALLENGE BELOW OF
THE, THE DEFENSE ATTORNEY

INCORRECTLY STATED THAT MISS
BENTLEY, THE CAUCASIAN JUROR
LISTENED, ALSO WATCHED CNN.
IN LOOKING AT--
>> DOES THE RECORD REFLECT THERE
WAS IN FACT, EVEN THOUGH HE USED
WRONG NAME, ANOTHER JUROR WHO
WATCHED CNN WHO WAS NOT
STRICKEN?
>> I BELIEVE THE RECORD DOES
REFLECT THAT ANOTHER JUROR WHO
WATCHED CNN-- ARE YOU SAYING
WAS NOT STRICKEN?
>> YES.
WAS NOT.
>> BASED ON WHAT I SAW IN THE
RECORD, I DON'T BELIEVE THAT IS
SO.
HOWEVER, THE PROSECUTOR STATED
THAT DURING THE MELBOURNE
CHALLENGE, HE STATED HIS INDEX
WAS TO STRIKE THE TWO CNN
JURORS.
HE HAD MISS FIELDS DOWN AS CNN.
HE ALSO HAD ANOTHER JUROR HE DID
NOT NAME, LISTED AS A CNN JUROR.
SO IT WAS HIS INTENT TO STRIKE
THOSE FOR THAT REASON.
LOOKING AT GENUINENESS ANALYSIS,
THE TRIAL COURT ALSO DURING THIS
ANALYSIS STATED HE ALSO HAD MISS
BENTLEY LISTED AS A FOX NEWS
JUROR, SOMETHING OTHER THAN A
CNN JUROR.
SO IN LOOKING AT GENUINENESS,
ANALYSIS, THE TRIAL COURT BY
FINDING THAT THIS, THAT THE
JUROR WAS NOT STRICKEN FOR A
RACIAL REASON, THE COURT DID
MAKE A GENUINENESS FINDING.
>> WHEN ALL THAT-- REFRESH MY
RECOLLECTION, HELP ME, SEE IF
I'M REMEMBERING CORRECTLY.
WHEN ALL THAT WAS GOING ON, THE
DISCUSSION ABOUT THAT, AND,
WHETHER THERE WAS SOMEBODY ELSE
WHO WATCHED CNN, WASN'T THE
DEFENSE LAWYER SAYING WELL
THAT'S FINE THEN?
>> HE DID.

HE DIDN'T MAKE ANY OTHER-- ONCE
THE STATE CONFRONTED THE DEFENSE
ATTORNEY WITH WHAT THEY HAD
WRITTEN DOWN IN THEIR NOTES, AND
THEN THE TRIAL COURT SAID, YEAH,
I HAD THE SAME THING THAT WAS
WRITTEN DOWN AS THE STATE, THE
DEFENSE ATTORNEY SAID OKAY,
THAT'S FINE, AND HE BACKED OFF
OF IT.
SECONDLY IT IS ALMOST AS THOUGH
THE DEFENSE ATTORNEY HAD
ACCEPTED THE FACT HE BASICALLY
WAS INCORRECT IN ASSERTING THAT
THERE WAS A PRETEXT ALL
MOTIVE STRIKING MISS FIELDS OF
THE DEFENSE ACKNOWLEDGED THAT
THEY WERE INCORRECT.
>> LET ME ASK YOU THIS.
THERE IS CONFLICTING IN OUR
PRECEDENT WHAT IS REQUIRED UNDER
MELBOURNE BUT THERE IS SOME
LANGUAGE THAT INDICATES THE
TRIAL COURT IS REQUIRED TO MAKE
A GENUINENESS FINDING ON THE
RECORD.
ER RESPECTIVE WHAT THE SHOWING
IS.
ONLY THING LOOKS LIKE COULD BE A
GENUINENESS FINDING HERE, THE
DEFENSE ATTORNEY, THAT'S FINE,
YOUR HONOR.
IF THE COURT SAYS THAT IS THE
BASIS FOR IT I FIND IT TO BE A
RACE-NEUTRAL REASON, SO I WILL
OVERRULE THE OBJECTION.
WHAT HE SHOULD SAID, I FIND IT
IS GENUINE.
IS THAT PROBLEMATIC UNDER OUR
CASE LAW THE TRIAL JUDGE SAID
ONLY FINDING WAS A RACE-NEUTRAL
REASON, THERE IS NO EXPRESS
FINDING OF GENUINENESS?
>> NO, JUSTICE LAWSON,
RESPECTFULLY.
IT WOULD BE THE STATE'S
CONTENTION IT IS NOT PROBLEMATIC
BECAUSE WHAT THIS COURT HAS
STATED THERE IS NO PARTICULAR
WORDS OR PHRASE THAT MUST BE

USED BY A TRIAL COURT IN MAKING
THE GENUINENESS FINDING.
INDEED THE FIRST DISTRICT COURT
OF APPEAL NOTED IT COULD BE DONE
IMPLICITLY.
IF WE LOOK AT THE RECORD, THIS
ISN'T A SITUATION ARE WITH THE
TRIAL COURT WASN'T AWARE HE HAD
TO MAKE A GENUINENESS FINDING,
RAKING CHALLENGE REGARDING MISS
BENTLEY AND MISS FIELDS, THE
DEFENSE ATTORNEY SPECIFICALLY
TOLD THE TRIAL COURT, WE'RE
CONTESTING GENUINENESS OF THE
STATE'S STRIKE.
SO THE TRIAL COURT WAS AWARE OF
WHAT THE ISSUE WAS BEFORE THE
COURT.
HE WAS AWARE THAT THEY WERE
CONTESTING THE GENUINENESS OF
IT.
SO BY HIM RULING IT WAS A
RACE-NEUTRAL REASON AND GIVEN
THE FACT THERE IS NO SPECIFIC
WORD OR PHRASE MUST BE USED THE
TRIAL COURT DID IT IMPLICITLY.
OKAY.
MOVING ON TO, I APOLOGIZE,
MOVING ON TO THE MOTION TO, JUST
BRIEFLY MOTION TO STRIKE THE
JURY PANEL OF BECAUSE OF
MR. MONGAS QUESTION TO THE COURT
BECAUSE THAT ESSENTIALLY WHAT IT
WAS, IMPORTANT TO NOTE BELOW
THAT DEFENSE COUNSEL DID NOT SAY
DURING THE MOTION TO STRIKE THAT
MR. MONGAS'S WOULD HAVE CAUSED
THE JURY TO GIVE A MORE SEVERE
SENTENCE THAN THEY WOULD HAVE.
THAT WAS ACTUALLY NOT THE BASIS
OF THE OBJECTION BELOW.
BELOW ALL THE DEFENSE ATTORNEY
SAID WAS, THIS GUY IS ASSUMING
FACTS, HE IS CONTEMPLATING
FACTS.
SO BASED ON THAT OBJECTION, IT
IS STATE'S CONTENTION THAT THE
TRIAL COURT PROPERLY DENIED THAT
MOTION TO STRIKE THE PANEL
BECAUSE MR. MONGAS DIDN'T REVEAL

ANY FACTS TO THE JURY.
IF WE ACTUALLY LOOK AT WHAT HE SAID, I APOLOGIZE, MR. MONGAS SAID IF THIS GUY HAS BEEN IN JAIL FOR 25 YEARS, AND SO, DOES THIS GUY GET TO WALK?
SO HE WASN'T EVEN MAKING A STATEMENT.
HE WAS JUST ASKING A QUESTION.
AND SO, IT IS THE STATE'S CONTENTION THAT THE TRIAL COURT PROPERLY DENIED THAT MOTION TO STRIKE THE PANEL BECAUSE, AGAIN, THE BASIS OF THE OBJECTION BELOW WAS THIS GUY IS ASSUMING FACTS AND IT IS CLEAR THAT MR. MONGAS WAS JUST ASKING A QUESTION.
IF THERE WERE NO FURTHER QUESTIONS I WILL RELY ON MY BRIEF FOR REMAINDER OF ARGUMENTS.
WE RESPECTFULLY ASK THE COURT TO AFFIRM.
THANK YOU, YOUR HONOR.
>> LET ME DISCUSS THE CNN AND FOX NEWS.
IN MY REPLY BRIEF, TWO INDIVIDUALS SAT ON JURY AND BOTH CNN AND FOX.
TWO OTHER JURORS HAD WATCHED CNN.
UP WITH WAS.
>> BUT HOW DO YOU GET AROUND THE ARGUMENT THE DEFENSE ATTORNEY SAYS, OKAY, THAT IS FINE, WITHOUT ANY FURTHER PURSUIT OF THE ISSUE.
>> HE DID KNOW.
HE WAS COMMENTING ON JUDGE'S RULING.
HE SAID HE WASN'T ACCEPTING THE RULING OF JUDGE, THAT IS LIKE SAYING, IF JUDGE MAKES, OKAY.
I WOULD SAY IT IS RIGHT.
WHEN A PERSON FILES A MOTION FOR DISMISSAL FAILURE TO--
>> THAT'S FINE COMES BEFORE THE JUDGE'S RULING.
THE STATE SAYS, WAIT, THIS IS WHEN I WROTE DOWN.

DEFENSE SAID THAT'S WHAT I HAVE.
I DID NOT HAVE CNN, I
PROMISE.
DEFENSE COUNSEL SAYS THAT'S
FINE.
>> HE IS SAYING THAT'S FINE WITH
REGARD TO THE PARTICULAR
STATEMENT HE MADE, NOT
NECESSARILY THAT--
>> HE MAKES NO ADDITIONAL
ARGUMENT REGARDING GENUINENESS
OR CONTESTING IT.
HE JUST SAYS, THAT'S FINE.
>> I BELIEVE HE DOES SAY TO THE
COURT SPECIFICALLY,
MR. RICHARDSON, YOU HAVE TO MAKE
A FINDING OF GENUINENESS.
I THINK HE SPECIFICALLY TOLD THE
JUDGE THAT.
>> NOT DURING THIS EXCHANGE I'M
LOOKING AT BUT GO AHEAD.
>> IS THERE EVER AN ARGUMENT
THAT VIEWERSHIP OF A PARTICULAR
TELEVISION STATION IS PROXY FOR
RACE?
I CAN UNDERSTAND THAT MIGHT BE
THOUGHT TO BE THE CASE BUT HAS
THAT EVER, WAS THAT EVER PART OF
THE DISCUSSION OR PART OF WHAT
WAS ARGUED TO THE COURT HERE?
>> NO.
AGREE WITH COUNSEL ON THAT ONE.
I HEARD IT BEFORE, AND I THINK
IT DEALS WITH LIBERALISM VERSUS
CONSERVATISM.
I DON'T THINK IT WAS TO DO WITH
RACE AND I DON'T BELIEVE THAT
WAS THE CASE.
BUT MY POINT AS JUSTICE QUINCE
POINTS OUT, NUMBER OF
INDIVIDUALS, TWO INDIVIDUALS
SPECIFICALLY SAID THEY WATCHED
CNN NOT STRICKEN BY THE STATE.
ONE THE DEFENSE HAD STRICKEN
BEFORE THEY EVEN ANSWERED
QUESTION BUT TWO INDIVIDUALS
WATCHED CNN AND FOX BOTH SAT ON
THE JURY.
THE QUESTION BECOMES NOT WHETHER
OR NOT YOU WATCH THE STATION,

NOT WHETHER OR NOT YOU'RE TRYING
TO GET AROUND RACE.
THE POINT BEING THIS WAS AN
INDIVIDUAL WHO IS
AFRICAN-AMERICAN AND WHETHER
THEY WANT TO UTILIZE THAT FOR,
TO GET AROUND THAT, I DON'T
KNOW.
BUT THE POINT BEING IS, THE
COURTS HAVE INDICATED, THE JUDGE
MUST FAKE A FINDING OF
GENUINENESS.
IT WAS OBJECTED TO ORIGINALLY.
THE FACT THAT THE STATE
INTERJECTED, MAYBE I WAS WRONG,
I THOUGHT I WROTE IT DOWN.
HIS COMMENT WAS, HIS COMMENT,
NOT WITH REGARD TO THE RULING
ITSELF.
>> YOU KNOW, IF WE'RE
INTERPRETING WHAT THE DEFENSE
ATTORNEY SAID AS AN ACCEPTANCE
OF THE GENUINENESS OF IT, AS THE
STATE HAD PRESENTED IT, IF HE
WAS NOT SAYING, IF THAT
STATEMENT, THAT'S FINE, DOES NOT
MEAN HE WAS ACCEPTING THE
GENUINENESS OF IT, SHOULDN'T HE
HAVE MADE SOME OTHER STATEMENT?
I MEAN SHOULDN'T HE HAVE
CONTINUED TO SAY SOMETHING TO
THE EFFECT OF, JUDGE, YOU KNOW,
THIS IS UNACCEPTABLE.
IT IS NOT A RACE-NEUTRAL REASON,
IT IS NOT A GENUINE REASON,
SOMETHING, INSTEAD OF US BEING
LEFT WITH HIM SAYING OKAY,
THAT'S FINE, WHICH SOUNDS LIKE
NOW YOU SATISFIED MY INQUIRY
ABOUT THIS?
>> WELL, GIVE YOU MY OPINION ON
THAT ONE.
ONCE HE MADE THAT OBJECTION HE
DOESN'T HAVE TO SAY ANYTHING
ELSE.
IT BECOMES THE STATE'S
OBLIGATION TO SHOW THE JUDGE THE
FACT IT WAS A GENUINE STRIKE.
I SAY--
>> SO NOW, IF THE JUDGE IS

ACCEPTING IT, AND THE DEFENDANT
IS SOUNDS LIKE HE IS ACCEPTING
IT, WHAT MORE NEEDS TO BE DONE?
>> WHAT IS THE ACCEPTING-- HE
HAD WRONG PERSON'S NAME.
IT WASN'T MISS FIELDS.
HE SAID, MISS FIELDS WAS
WATCHING FOX.
HE HAD THE WRONG NAME.
NO, WHEN THE STATE SAID I WROTE
IT DOWN, NO, I WILL ACCEPT THAT,
THAT HE WROTE DOWN THE WRONG
NAME.
THAT IS THE CONTEXT I TOOK FROM.
NOT WITHDRAWING HIS OBJECTION.
THERE WAS A INDIVIDUAL WHO
WATCHED FOX WHO HE DID IN THE
STRIKE.
THAT I POINTED OUT IN MY REPLY
BRIEF WHO IT WAS.
>> WHO WATCHED CNN.
>> CNN, I APOLOGIZE.
BUT HE HAD THE WRONG NAME I
THINK WHAT MATTERED.
HE WAS BACKING OFF FROM THE
STATE, THAT I WROTE IT DOWN.
NOT THAT HE WATTS RELINQUISHING
HIS OBJECTION.
WITH REGARD TO MISS WOOD, LET ME
POINT OUT ONE THING--
>> YOU HAVE SAID, IN ANSWER TO
JUSTICE CANADY'S QUESTION THAT
YOU HAVE ACCEPTED THAT, HE
DIDN'T MAKE THE ARGUMENT, THAT,
WHAT YOU WATCH, IF ONLY 1% OF
AFRICAN-AMERICANS WATCH FOX, AND
YOU STRIKE AN AFRICAN-AMERICAN
BECAUSE THEY DON'T WATCH FOX,
THAT THAT'S PROTECTIONAL.
IF IT IS NOT ARGUED THAT THE
WATCHING OF THIS TV STATION IS
CONTEXTUAL, THEN THEY, THE
DEFENSE ATTORNEY NEED TO SHOW ON
THE RECORD, CONTRADICT WHAT THE
PROSECUTION IS SAYING.
THAT OTHER JURIES, JURORS, WHITE
JURORS, THAT WATCHED CNN WERE
LEFT ON BY THIS PROSECUTOR.
>> OKAY--
>> I MEAN, OTHERWISE, I DON'T

KNOW HOW, WE REVERSE FOR WHAT
REASON?
>> OKAY.
WHEN HE WAS ASKING ME, I
THOUGHT, I COULD BE INCORRECT HE
WAS ASKING MY OPINION.
DO I THINK THAT LAWYERS--
>> NO--
>> I WAS ASKING WAS ARGUED?
>> IT WAS ARGUED IT WAS PRETEXT
BECAUSE THE FACT ONLY BLACK--
ONLY PERSON WATCHING FOX NEWS.
>> THAT WASN'T MY QUESTION.
MY QUESTION WAS, WAS IT ARGUED
THAT THE USE OF THE VIEWERSHIP
OF A PARTICULAR NETWORK WAS A
PROXY FOR RACE?
I THINK THAT IS WHAT I ASKED.
AND YOU SAID NO, THAT WASN'T
ARGUED.
AND FURTHERMORE, I THINK YOU
SAID, THAT YOU DIDN'T THINK THAT
IT WAS A PROBLEM TO DO THAT?
>> I APOLOGIZE.
I THINK--
>> WE CAN RUN THE TAPE BACK AND
SEE.
>> I THOUGHT YOU WERE ASKING ME
MY OPINION OF PEOPLE MAKING THAT
ARGUMENT.
I WOULDN'T DO THAT.
HE DID MAKE THE ARGUMENT, THIS
WAS AFRICAN-AMERICAN JUROR, HE
IS DISMISSING HER.
THERE WERE TWO OTHER PEOPLE
INDICATED THEY WATCHED CNN HE
LET TWO SIT ON JURY AND HE DID
NOT STRIKE THEM.
NOW HE SAID THE WRONG NAME.
THAT MADE HIM EMBARRASSED, HE
JUST DIDN'T KNOW WHAT FOR SURE
HE WAS TALKING ABOUT.
>> THAT IS SOMETIMES A PROBLEM
IF YOU DON'T KNOW FOR SURE WHAT
YOU'RE TALKING ABOUT.
THAT CREATES A PROBLEM FOR THE
COURT ALSO.
BECAUSE THE, WE EXPECT THE
ATTORNEYS TO KNOW WHAT THEY'RE
TALKING ABOUT AND TO PRESENT THE

COURT WITH FACTS.
AND LEGAL ARGUMENT, DON'T WE?
>> I DON'T DISAGREE BUT THE RECORD DOES REFLECT THE FACT THAT HIS OBJECTION WAS JUSTIFIED BASED ON THE FACT TWO OTHER PEOPLE WHO THEY LEFT ON THE JURY WHO WATCHED CNN WERE WHITE.
THAT HAPPENED.
THE WRONG NAME IS THE QUESTION.
>> WHO HAS THE ULTIMATE BURDEN OF PERSUASION WITH RESPECT TO THE OBJECTION?
>> NO I DON'T THINK SO.
THE OBJECTION IS MADE AND STATE HAS TO MAKE A SUBSTANTIVE FINDING.
>> I THOUGHT MELBOURNE THAT THE STATE HAD TO PRODUCE A RACE-NEUTRAL REASON BUT ULTIMATE BURDEN OF PERSUASION AS TO THE ISSUE, BECAUSE THERE IS PRESUMPTION THAT YOU CAN EXERCISE A CHALLENGE FOR WHATEVER REASON YOU WANT TO.
THERE IS A PRESUMPTION IT IS A GOOD CHALLENGE.
IT RELIES ON THE OBJECTOR, THE PERSON OBJECTING HAS BURDEN OF PROOF.
>> IT IS IMPOSSIBLE TO GET INTO A PROSECUTOR'S HEAD TO SAY THIS IS THE REASON WHY HE DID THAT ALL I CAN DO POSE TO THE JUDGE THINGS THAT TRANSPIRED.
TWO OTHER INDIVIDUALS WATCHED CNN STAYED ON JURY.
THE FACT THAT HE MENTIONED WRONG NAME DOESN'T MAKE IT IRRELEVANT.
>> YOU THINK THE LAW IS IF YOU OBJECT ON THIS BASIS THE BURDEN OF PERSUASION SHIFTS TO THE STATE, THAT IS YOUR LEGAL ARGUMENT?
>> NO.
MAKE THE OBJECTION AND MAKE STATEMENT.
HE INDICATED OTHER JURORS WATCHING CNN HE LEFT ON.
HE JUST STATED THE WRONG NAME.

>> YOU ARE SAYING IF WE LOOK AT THIS, I WANT TO MAKE SURE, IF WE GO BACK IN THIS RECORD, THE RECORD IDENTIFIES THERE WERE AT LEAST TWO WHITE JURORS WHO WATCHED CNN WHO WERE LEFT ON THE JURY BY THE STATE?
>> YES.
>> OR JURORS THAT WATCHED BOTH?
>> BOTH.
>> WATCHED FOX AND CNN?
>> THERE WERE TWO JURORS SAT ON THE JURY WHO WATCHED BOTH.
>> THAT'S DIFFERENT THAN, YOU COULD GO, BE WATCHING FOX AND GO, JUST LOOKING TO SEE WHAT CNN IS SAYING.
AGAIN THIS WHOLE LINE OF INQUIRY IS A LITTLE BIZARRE BUT I THINK THE POINT THAT I'M HEARING, I WOULD LIKE TO REITERATE, THIS RECORD DOESN'T SHOW AFTER THE, REASON WAS GIVEN, THAT THE JUDGE HAD ANYTHING TO, TO, TO THE CONTRARY TO SHOW THAT THE PROSECUTOR WAS BEING, OTHER THAN GENUINE IN THE REASON THAT HE STRUCK THIS AFRICAN-AMERICAN JUROR?
>> MR. RANDY, WHO ALSO SAT ON JURY, WATCHED CNN NOT FOX.
ALSO THE STATE--
>> WAS POINTED OUT BY WHOM?
>> IT WASN'T POINTED OUT-- I'M NOT SURE.
IT MIGHT HAVE BEEN POINTED OUT.
I DON'T REMEMBER TO BE HONEST WITH YOU.
MISS FIELDS WAS ACCEPTED ORIGINALLY BY THE STATE.
>> GENUINENESS THEY HAVE TO SHOW PRETEXT, YOUR, IT IS THE BURDEN TO SHOW THAT EXCUSE WAS A PRETEXT, RIGHT?
>> I UNDERSTAND.
THEY MADE THAT ARGUMENT.
I DON'T KNOW IF IT IS SUFFICIENT FOR THIS COURT.
I BELIEVE IT SHOULD BE.
GOING BACK TO MISS WOOD, I WANT

TO POINT OUT ONE THING.
SHE MADE IT CLEAR ATTEMPTED TO BE REHABILITATED THAT THE ONLY MITIGATION SHE WOULD CONSIDER WAS MENTAL ILLNESS.
SHE WOULD NOT CONSIDER BACKGROUND OR CHILDHOOD.
>> YOU AGREE WITH WHAT JUSTICE LAWSON SAID, IF WE FIND SHE SHOULD HAVE BEEN STRUCK FOR CAUSE, AND OTHER TWO KNOW THAT HE GAVE OR SHE GAVE ONE ADDITIONAL PEREMPTORY, THAT WOULD BE SUFFICIENT IF WE FOUND ERROR AS TO HER?
>> AS YOU STATED THAT IS CORRECT.
BUT I WOULD SUBMIT THE OTHER TWO SHOULD HAVE BEEN LEFT FOR CAUSE, BEEN DISMISSED FOR CAUSE AS WELL.
ONE, MR. MONGAS WAS CONCERNED ABOUT THE 25 YEARS AND ALSO WITH REGARD TO MISS ROUTE SAT ON JURY, HER HUSBAND THROUGH HOME INVASION WAS TAKEN, WAS KIDNAPPED.
THAT IS SUFFICIENT ENOUGH TO SAY SHE SHOULD NOT SIT ON THIS JURY RAY.
THAT IS ALL I HAVE.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS NOW IN RECESS.