>> THE COURT NOW PROCEEDS TO
TAKE UP THE CASE OF GORDON V.
THE STATE.
COUNSEL FOR THE APPELLANT.
>> MAY IT PLEASE THE COURT, I'M
STEVE BOLL TIN FROM THE PUBLIC
DEFENDER'S OFFICE IN BARTOW.
I REPRESENT THE APPELLANT,
MICHAEL GORDON.
I'D LIKE TO RESERVE FIVE MINUTES
FOR REBUTTAL.
SEVEN ISSUES IN THE BRIEF.
IF I ARRIVE AT TIME, AND I
ALMOST CERTAINLY WILL, I'LL RELY
ON MY INITIAL REPLY BRIEFS.
I WILL NEED TO ADDRESS THE
HOUSTON CASE WHICH THE STATE
CITED AS ADDITIONAL AUTHORITY AT
3:30 P.M. ON FRIDAY.
OTHER THAN THAT, WHATEVER I
DON'T GET TIME TO ARGUE, I'LL
RELY ON THE BRIEFS.
RACIALLY DISCRIMINATORY
PREEMPTORY STRIKE HARMS THE
LITIGANT, THE JUROR, THE JUROR'S
COMMUNITY AND PUBLIC AT LARGE.
-- OF RACIALLY DISCRIMINATORY
STRIKES IS IMPORTANT THAT
JUSTICE BREYER WOULD HAVE
ELIMINATED PREEMPTORY CHALLENGES
ALTOGETHER.
THE MAJORITY OF THE U.S. SUPREME
COURT WAS NOT READY TO GO THAT
FAR, BUT THEY HAVE MADE IT CLEAR
IN A SERIES OF DECISIONS DATING
BACK TO 2002, MILLER, L.,
SNYDER, FOSTER AND FLOWERS, HAVE
CONTEXTUAL REASONS FOR THE
EXERCISE OF PREEMPTORY
CHALLENGES WILL NOT BE TOLERATED
OR SWEPT UNDER THE RUG.
THE ENTIRE RECORD OF VOIR DIRE
MUST BE CONSIDERED UNDER
TOTALITY OF THE CIRCUMSTANCES
TEST TO DETERMINE WHETHER THE
REASON IS GENUINENESS OR
PRETEXTUAL.
THAT SERIES OF DECISIONS HAS A
MADE IT CLEAR THAT THE REVIEW OF
COURT IS NOT TO PUT ON BLINDERS,
NOT TO RESTRICT THE VIEW, ONLY
TO EVIDENCE THAT WAS
SPECIFICALLY CITED TO THE TRIAL

COURT.
>> COUNSEL, CAN I-- I'M SORRY
TO INTERRUPT YOU.
CAN I ASK YOU ABOUT PRESERVATION
AND YOUR ARGUMENT FOR WHY WHAT
COUNSEL SAID HERE WAS ENOUGH
UNDER-- TO SATISFY THE TEST SET
OUT IN THE 2020 JOHNSON
DECISION?
BECAUSE IT SEEMS LIKE THE, IF,
YOU KNOW, PART OF THE RULE THERE
IS YOU HAVE TO, YOU KNOW, PUT
THE COURT ON NOTICE AS TO, YOU
KNOW, WHY YOU WOULD SAY IT'S A
PRETEXT.
I MEAN, OBVIOUSLY, THE REASONS
GIVEN-- THE TWO REASONS GIVEN
WERE BOTH FACIALLY RACE NEUTRAL,
AND SO THE QUESTION BECOMES ARE
THEY PRETEXTUAL.
I DON'T REALLY SEE ANYTHING IN
HERE WHERE COUNSEL, ESPECIALLY
AS TO THE I'M NOT GOD THING--
AND I UNDERSTAND WHERE IF YOU
READ WHAT THE JUROR SAID, I
UNDERSTAND THE ARGUMENT FOR WHY
THE PROSECUTOR WAS MAYBE
MISCHARACTERIZING WHAT SHE SAID
OR WHATEVER, BUT AS FAR AS JUST
THE PRESERVATION ISSUE AND
PUTTING THE TRIAL COURT ON
NOTICE, I'M HAVING A HARD TIME
SEEING HOW TRIAL COUNSEL
SATISFIED WHAT WE SAID IN
JOHNSON WAS NECESSARY.
>> MY UNDERSTANDING OF JOHNSON
IS THAT NOW-- IT WAS NOT
COMPLETELY CLEAR BEFORE JOHNSON
WHETHER TWO OBJECTIONS WERE
REQUIRED OR THREE.
JOHNSON MADE IT CLEAR THAT IT'S
THREE WHICH IS CONSISTENT WITH
THE FLORIDA DECISION.
YOU NEED TO OBJECT TO THE STRIKE
THE OF THE JUROR AND IDENTIFY
THEIR RACE, GENDER OR WHATEVER
THE BASIS OF THAT IS.
AT THAT POINT THE OPPOSING
PARTY, THE PARTY THAT IS
EXERCISING THE STRIKE HAS TO
EXPLAIN THE REASONS.
THEN JOHNSON SAYS YOU HAVE TO
CONTEST THE REASONS.
YOU HAVE TO PUT THE TRIAL COURT

ON NOTICE THAT YOU'RE CONTESTING
THE REASON.
AND THEN THE THIRD PRESERVATION
ELEMENT IS YOU HAVE TO REMOVE
THE OBJECTION BEFORE THE JURY IS
SWORN TO MAKE IT CLEAR THAT YOU
ARE, YOU STILL HAVE-- ARE NOT
SATISFIED WITH THE JURY--
[INAUDIBLE]
>> ISN'T THERE, COUNSEL, IN THAT
WE DON'T KNOW ALL OF THE RACES
OF THE JURORS RELEVANT TO
DETERMINING THE DISPROPORTIONATE
IMPACT OF THE PROPOSED STRIKE
HERE.
ISN'T THAT CORRECT?
>> THAT IS CORRECT.
BUT THERE'S-- I ARGUED THIS
ISSUE ON THE SAME JUROR, OKAY?
THIS JUROR, KIMBERLY JAMES.
THE STATE PEREMPTORILY STRUCK
HER TWICE, AND--
[INAUDIBLE]
BASED ON THE STRIKE OF THE SAME
INJURY.
AND THE REASON I DID THAT IS
BECAUSE I DIDN'T WANT THE
COMPARATIVE ANALYSIS ISSUE WHICH
IS CONSTITUTIONAL, BUT I DIDN'T
WANT TO BLEED INTO THE FIRST
ISSUE WHICH IS EVEN IF YOU DON'T
DO COMPARATIVE ANALYSIS, I
CONTENDED THAT IT'S REQUIRED,
BUT EVEN IF YOU DON'T DO IT,
THESE REASONS LOOK AT THE
QUESTIONS OF JUROR JAMES AND THE
ANSWERS SHE GAVE--
[INAUDIBLE]
ARE SO CLEARLY PRETEXTUAL, YOU
DON'T NECESSARILY NEED THE--
>> COULD YOU TELL ME THOUGH
WHERE, WHERE IN THE RECORD DOES
IT SHOW THAT AT THE TRIAL LEVEL
THE COURT WAS TOLD, YOU KNOW,
THIS IS PRETEXTUAL AND HERE'S
WHY IT'S THE PRETEXTUAL.
>> WELL, I DON'T WANT TO GET--
>> WHICH IS, IS THAT REQUIRED?
I MEAN, BEFORE WE GET TO WHETHER
IT'S THERE, WOULD YOU AGREE THAT
JOHNSON REQUIRES THAT?
>> I WOULD-- IT'S NOT A SIMPLE
YES OR NO QUESTION EVEN AS TO
WHAT JOHNSON REQUIRES, AND

HERE'S WHY.
JOHNSON SAYS THAT EVEN IF
THERE'S NO, NOTHING WHATSOEVER
SAID AFTER THE STATE GIVES THE
REASON OR AFTER THE CHALLENGING
PARTY GIVES THE REASON, EVEN IF
NOTHING WHATSOEVER IS SAID,
THERE'S A FOOTNOTE IN JOHNSON
BUT NO--
[INAUDIBLE]
SAYS THE TRIAL JUDGE CAN
FORCE-- THAT'S WHAT HAPPENED.
IN OTHER WORDS, THE FIRST, THE
I'M NOT GOD REASON IS GIVEN.
DEFENSE COUNSEL SAID I DON'T
THINK THAT'S A SUFFICIENT
RACE-NEUTRAL REASON.
MAYBE THAT WASN'T ENOUGH TO
COMPLY WITH JOHNSON AND
FLOYD ALTHOUGH HE DID CONTEST
THE REASON.
BUT THE FACT IS THE JUDGE,
KNOWING FULL WELL THAT HE WAS
SUPPOSED TO MAKE A-- DETERMINE
WHETHER THIS WAS GENUINE
PRETEXTUAL RACE DISCRIMINATION,
HE DID THAT, AND HE CONCLUDED
THAT I CAN'T FIND THAT THIS
REASON WAS GENUINE WHICH IS
COMPLETELY SUPPORTED BY THE
RECORD.
SO WHAT JUDGE HART DID WAS
EXACTLY WHAT THIS COURT
BASICALLY SAID HE CAN DO, MAYBE
SHOULD DO.
SO JUDGE HART KNEW THAT HE WAS
SUPPOSED TO MAKE A YEN WIN, AND
HE DID, AND HE FOUND THE FIRST
REASON NOT TO BE GENUINE.
THE SECOND REASON--
>> I'M CURIOUS AS TO HOW YOU
KNOW THAT FROM THE RECORD.
IF WE'RE SPECULATING, YOU COULD
SAY WHAT JUDGE HART DID WAS HE
WAS CONFUSED BECAUSE OF THE WAY
THE ISSUE WAS PRESENTED, THE
OBJECTION WAS PHRASED THAT DID
NOT ASK HIM TO MAKE A
GENUINENESS FINDING.
BUT LATER WHEN FURTHER OBJECTION
WAS MADE, HE TOOK EIGHT DAYS,
AND HE STUDIED AND RESEARCHED
THE ISSUE.
MAYBE HE THEN CAME TO THE

CONCLUSION, OH, OKAY.
THEN HE RULES AND SAYS, YEAH, I THINK THIS IS GENUINE LOOKING AT EVERYTHING.
THAT COULD ARE HAVE EQUALLY HAVE BEEN WHAT HAPPENED--
>> I DON'T THINK THAT'S CORRECT.
ON THE FIRST OBJECTION, LET ME FIND IT HERE, WHAT HE SAID.
ON THE FIRST OBJECTION, THE I'M NOT GOD OBJECTION, HE SUMS UP BY SAYING THE COURT MUST BE SATISFIED THAT UNLESS THE ARTICULATED REASON IS GENUINE, THE COURT SHOULD DENY THE PREEMPTORY CHALLENGE.
THAT'S FOOTNOTE ONE IN JOHNSON.
OKAY?
THEN, OKAY: SO THE STATE HAS MADE THEIR OBJECTION.
JUDGE HART, AND HE PROBABLY SHOULDN'T HAVE DONE THIS, WELL, IF ANYBODY HAS ANY OTHER REASONS THEY WANT ME TO CONSIDER.
AT THAT POINT, YOU KNOW, IT'S NOT UNCOMMON FOR THE STATE OR FOR THE CHALLENGING PARTY TO SAY I'VE GOT THREE REASONS, I'VE GOT FOUR REASONS.
SOME OF THESE CASES THAT ARE U.S. SUPREME COURT CASES, THERE'S SIX OR EIGHT REASONS.
THE PROSECUTOR DIDN'T SAY ANYTHING ABOUT THE COUSIN EVEN AT THE POINT WHEN JUDGE HART SAYS ANYBODY GOT ANY OTHER REASONS.
AND--
>> I BUT I DO WANT TO GET BACK TO JUSTICE MUNIZ'S QUESTION, BUT-- SO IF YOU LOOK AT THIS AS TWO SEPARATE INSTANCES, WOULDN'T YOU AGREE THAT WE HAD A RACE-NEUTRAL REASON, AND NONE OF US WERE THERE.
JUDGE HART COULD HAVE CONCLUDED THAT, I MEAN, IF HE HAD RULED THAT, IF HE HAD OVERRULED THE OBJECTION, THERE WOULD BE NO BASIS FOR ANY KIND OF A APPELLATE RELIEF.
HE COULD HAVE GONE EITHER WAY, AND ON THIS RECORD-- I MEAN, IF HE FOUND IT WAS GENUINE, IF HE

DIDN'T FIND IT WAS GENUINE--
>> I DON'T AGREE THAT IF HE HAD
OVERRULED THE FIRST OBJECTION
THAT THAT WOULD HAVE BEEN THE
END OF IT.
THE FACT IS THE ARGUMENT IS MUCH
STRONGER THAT HE GRANTED-- HE
DISAGREED WITH THE REASON AND
FOUND IT NOT TO BE GENUINE ON
THE FIRST ONE--
>> ON THE FIRST ONE COULDN'T
THE, I MEAN, THE JUROR-- I
MEAN, WE WEREN'T IN THE
COURTROOM, BUT THE JUROR-- I
MEAN, WHAT THE JUROR SAID AT
FIRST, IT'S NOT MY JOB, I'M NOT
GOD, IT'S INCONSISTENT WITH WHAT
THE JUROR SAID RIGHT AFTER THAT.
THE JUROR SAID TWO DIFFERENT
THINGS.
>> I DISAGREE.
I THINK IF YOU LOOK CAREFULLY AT
THE VOIR DIRE ON THAT, WHAT
HAPPENED WAS THE PROSECUTOR
ASKED, YOU KNOW, HAVE YOU
THOUGHT ABOUT THE DEATH PENALTY,
ARE HAVE YOU HAD ANY
CONVERSATIONS ABOUT IT.
THE JUROR SAID, WELL, SOMETIMES
I'LL BE WATCHING TV, I'LL BE
WATCHING A CRIME STORY ON TV,
AND THEY'LL TALK ABOUT IT.
I'M NOT THERE TO LOOK AT THE
EVIDENCE, I'M NOT GOD.
CLEARLY, THIS IS NOT AMBIGUOUS.
WHAT SHE'S TALKING ABOUT IS SHE,
YOU KNOW, THIS IS NOT A COURT
PROCEEDING.
SHE'S NOT DECIDING, SHE'S NOT
CLAIRVOYANT, OKAY?
SHE'S WATCHING A NEWS STORY, SHE
DOESN'T KNOW IF IT SHOULD BE
DEATH OR NOT.
IMMEDIATELY AFTER THAT, OKAY,
WHAT WERE YOUR THOUGHTS WHEN YOU
SAW IT ON THE NEWS?
SOMETIMES IT'S MERITED AND
SOMETIMES IT'S NOT.
THERE AGAIN, I'M NOT THERE TO
LOOK AT THE EVIDENCE TO SEE
WHETHER THE PERSON SHOULD DIE,
YOU KNOW?
I'M NOT GOD.
OKAY.

DO YOU THINK YOU WOULD HAVE ANY
DIFFICULTIES VOTING FOR DEATH?
NO I WOULDN'T SAY THAT, BUT I
WOULD WANT TO SEE THE EVIDENCE.
PROSECUTOR: I'M JUST ASKING YOU
BECAUSE YOU USED THE TERM I'M
NOT GOD, AND I UNDERSTAND SOME
PEOPLE HAVE RELIGIOUS BELIEFS,
AND THEY'RE ENTITLED TO THAT.
MS. JAMES: IT HAS NOTHING TO DO
WITH RELIGION, IT'S JUST HOW I
AM AS A PERSON.
I WANT TO SEE THE EVIDENCE.
IF IT WARRANTS DEATH, SO BE IT.
IF IT WARRANTS LIFE, LIFE.
WOULD YOU BE MORE INCLINED TO DO
LIFE IN PRISON VERSUS THE DEATH
PENALTY?
LIKE I SAID, I'D HAVE TO LOOK AT
THE EVIDENCE.
OKAY.
YES, IT'S A MUST.
THEN THEY GO INTO DOES SHE
BELONG TO ANY ORGANIZATIONS
THAT-- NO, I CAN'T SAY THAT.
IF TOMORROW WERE ELECTION DAY
AND YOU WERE BEING ASKED TO
DETERMINE IF THE DEATH PENALTY
WERE TO BE RETAINED IN THIS
STATE, WHAT WOULD YOUR VOTE BE?
YES.
SO SHE MAKES IT AS CLEAR AS IT
CAN BE THAT SHE'S NOT TALKING
ABOUT RELIGION ARE, THAT SHE'S
NOT TALKING ABOUT-- HAVE A
RELIGIOUS BELIEF THAT SAYS I
CAN'T IT IN JUDGMENT ON
SOMEBODY.
SHE'S SAYING REPEATEDLY I AM A
PERSON WHO WANTS TO LOOK AT THE
EVIDENCE.
I COULD GO DEATH, I COULD GO
LIFE, IT DEPENDS ON THE
EVIDENCE.
THE I'M NOT GOD STATEMENT WHICH
THE PROSECUTOR TOOK COMPLETELY
OUT OF CONTEXT WAS IN REGARD TO
WHAT DO YOU THINK WHEN YOU'RE
WATCHING IT ON THE NEWS.
WELL, I DON'T KNOW, I'M NOT GOD,
I'M NOT CLAIRVOYANT.
BUT SHE MADE IT VERY CLEAR WHAT
SHE WOULD DO AS A JUROR.
THE PROSECUTOR DIDN'T EVEN THINK

THAT WAS A GOOD ENOUGH, GOOD ENOUGH REASON TO SAY WHEN HE FIRST CHALLENGED THE JUROR.
>> SO IF WE RULE IN YOUR FAVOR ON THIS POINT THOUGH, ON PRESERVATION, WE'RE SETTING A PRECEDENT THAT WHEN YOU TELL A TRIAL COURT, QUOTE-UNQUOTE, IT'S NOT A SUFFICIENT RACE-NEUTRAL REASON, THAT THE COURTS ARE SUPPOSED TO KNOW THAT THAT'S CODE FOR, YOU KNOW, IT'S NOT RACE NEUTRAL, AND IT'S PRETEXTUAL, AND IT'S NOT GENUINE.
I MEAN, CAN YOU EXPLAIN HOW THAT, HOW THAT PUTS THE COURT ON NOTE AS TO WHAT THE PROBLEM IS? OBVIOUSLY, WHETHER SOMETHING IS RACE NEUTRAL IS A SEPARATE QUESTION FROM WHETHER WHAT IS SAID IS A PRETEXT OR NOT GENUINE.
>> WELL, AGAIN, I THINK THAT THE FIRST OBJECTION TO THE I'M NOT GOD, POSSIBLY THAT WASN'T SUFFICIENT UNDER JOHNSON.
BUT JUDGE HART DID EXACTLY WHAT FOOTNOTE ONE IN JOHNSON SAYS DO. THE SECOND ONE, THE SECOND-- AT WHICH POINT LOOK AT THE PRETEXTUAL TIMING THAT MILLER, L. SAYS--
>> I KNOW, BUT YOU'RE GETTING INTO THE SUBSTANCE OF WHETHER IT WAS PRETEXTUAL, AND I'M ASKING YOU AS PRESERVATION.
>> I DON'T THINK--
>>-- LAWYERS BE ABLE TO TELL A TRIAL COURT IT'S NOT A SUFFICIENT RACE-NEUTRAL REASON, THE COURTS ARE SUPPOSED TO UNDERSTAND THAT THAT'S CODE FOR THESE OTHER CONCEPTS THAT ARE REALLY THE ONES THAT YOU'RE TALKING ABOUT.
>> I'M SAYING THAT THE RESPONSE TO THE I'M NOT GOD COMMENT WHICH WAS THAT'S NOT A SUFFICIENT RACE-NEUTRAL REASON--
[INAUDIBLE CONVERSATIONS]
>>-- THAT THE TRIAL LAWYER SAID THE SECOND TIME.
>> ON THE SECOND ONE, ON THE

AFTERTHOUGHT REASON ABOUT THE COUSIN, THE OBJECTION WHICH THE PROSECUTOR SAID VERY BRIEFLY AND THEN MOVED ON TO REHASH THE I'M NOT GOD ONE, THE ONE ABOUT THE COUSIN THE PROSECUTOR SAID, WELL, YOU HAD A COUSIN THAT GOT 25 YEARS, AND WE'RE CONCERNED ABOUT HER ABILITY TO GIVE THE STATE A FAIR SHOT.
AND THE DEFENSE LAWYER REPLIED BY SAYING SHE SAID IT WAS A FAIR SENTENCE.
A FAIR SENTENCE, I THINK, IS WHAT SHE SAID.
CONTESTED THE REASONS IN PRETTY MUCH THE SAME TERMS AS THE PROSECUTOR GAVE.
I BELIEVE A FAIR READING OF THE U.S. SUPREME COURT CASES IN MILLER, L. AND FOSTER AND SNYDER MAKES IT VERY CLEAR THAT YOU DON'T RESTRICT REVIEW BY BASICALLY LOOKING AT ONLY THE FOUR CORNERS OF THE REASON THE TRIAL LAWYER GAVE.
IN THE FLOWERS CASE THEY TALK ABOUT THE OUTCOME IN THIS CASE--
[INAUDIBLE]
THE OUTCOME DEPENDS ON WHETHER WE LOOK AT THE STRIKE IN ISOLATION ARE OR WHETHER WE LOOK AT THE WHOLE PICTURE AND OUR PRECEDENTS REQUIRE THAT WE LOOK AT THE WHOLE PICTURE, AND THEY'RE RIGHT BECAUSE THAT'S THE PRECEDENT IN MILLER, L., FLOWERS AND FOSTER.
WAS THIS A PRETEXTUAL REASON--
THEY DO NOT WANT A GAME OF--
[INAUDIBLE]
AND, YOU KNOW, AGAIN, YOU NEED TO LOOK AT THE WHOLE PICTURE BOTH IN ISSUE ONE AS TO WHAT WAS SAID, WHAT JUROR JAMES ACTUALLY SAID WHICH IS SO DIFFERENT FROM WHAT THE PROSECUTOR CAST IT AS.
AND THEN, NUMBER TWO, COMPARISON VIA THE OTHER JURORS.
I BELIEVE IT WAS JUSTICE COURIEL A WHILE AGO ASKED WE DON'T KNOW THE RACE OF THE JURORS, AND THAT'S ABSOLUTELY TRUE.

I MEAN, I KNOW THE RACE OF THE OTHER JURORS, BUT THAT'S OUTSIDE THE RECORD.
I TRIED TO GET THE POINT TO GRANT MY MOTION TO RECONSTRUCT THE RECORD, AND I STAND BY THAT.
I ASKED THE COURT TO RECONSIDER, I STAND BY THE CONSTITUTIONAL ARGUMENTS THERE.
AND, YOU KNOW, SO TO THE EXTENT THAT WE DON'T KNOW THE RACE OF THE OTHER JURORS, I WOULD RELY ON THE JAMERSON V. REYNOLDS CASE ON THAT.
ON THE QUESTION, COURT MIGHT ASK THE QUESTION OF WHETHER MILLER, L. SAYS--
[INAUDIBLE]
>> THERE IS, I THINK THAT DOESN'T THAT TAKE US THOUGH TO A SORT OF A PLACE WHERE WE'RE QUESTIONING OUR ABILITY TO SUBSTITUTE OURSELVES FOR THE JUDGMENT OF THE TRIAL COURT IN THE TRIAL COURT HERE ON THE BASIS OF A TOTALITY OF CIRCUMSTANCES THAT WE DO NOT HAVE BEFORE US, RIGHT?
YOU'VE JUST SORT OF POINTED TO IT.
MADE A DECISION AND I GUESS MY QUESTION IS, WHAT DEFERENCE DOES THAT DECISION DO WHEN WE HAVE A RECORD LIKE THIS WHERE THERE WERE, YOU KNOW, WE'VE BEEN TALKING ABOUT THE I'M NOT GOD.
I THINK A LITTLE LOST IN THE SHUFFLE IS THE SENTENCE WHERE SHE SPEAKS RIGHT BEFORE THAT WHERE SHE CHANGES HER VIEWS.
THE COURT FINDS, YOU KNOW, THERE'S A WHOLE COUSIN THING.
THE COURT FINDS BASED ON THE TOTALITY OF THE CIRCUMSTANCES WHAT IT FINDS.
I GUESS MY QUESTION IS TELL ME WHY WE SHOULD SUPPLANT OUR JUDGMENT FOR THE TRIAL COURTS GIVEN ALL OF THOSE FACTS.
>> THE JUDGE HAS A CERTAIN AMOUNT OF DISCRETION, BUT IT'S NOT LIMITED DISCRETION-- IT IS LIMITED DISCRETION AS THE U.S. SUPREME COURT--

>> AND NOBODY IS SAYING THAT IT ISN'T.
I GUESS MY POINT IS, YOU KNOW, WITHOUT CREATING SORT OF THE STRAWMAN--
[LAUGHTER]
BECAUSE NOBODY IS SAYING THAT, HELP ME UNDERSTAND WHY THIS IS THE CASE WHERE WE OVERRIDE THE TRIAL COURT'S DECISION.
>> WELL, THE FIRST THING I'VE GOT TO SAY IS I HAVE TO TAKE ISSUE WITH YOUR STATEMENT THAT SHE CHANGED HER MIND ABOUT LOOKING AT THE EVIDENCE.
YES, THERE'S A STATEMENT-- THE STATEMENT THAT SHE SAYS I'M NOT THERE TO LOOK AT THE EVIDENCE.
WHAT WERE YOUR THOUGHTS WHEN YOU SAW IT ON THE NEWS?
WELL, SOMETIMES IT'S MERITED AND SOMETIMES IT'S NOT.
THERE AGAIN, I'M NOT THERE TO LOOK AT THE EVIDENCE TO SEE WHETHER THE PERSON SHOULD DIE, YOU KNOW?
I'M NOT GOD.
SHE'S CLEARLY IN CONTEXT TALKING ABOUT WATCHING IT ON THE NEWS.
AND AS SOON AS THE CONVERSATION SHIFTS TO ANYTHING ABOUT THE COURTROOM, SHE UNEQUIVOCALLY, REPEATEDLY SAYS I'M THERE TO LOOK AT THE EVIDENCE.
SHE DIDN'T CHANGE HER MIND, THIS IS JUST A DIFFERENT CONTEXT ABOUT THE QUESTION.
AND I WOULD ALSO POINT OUT IN THAT REGARD LOOK AT THE FOSTER CASE WHERE THEY'RE TALKING ABOUT JUROR-- ONE OF THE REASONS THE PROSECUTOR GAVE WAS BASED ON HE WAS A MEMBER OF THE CHURCH OF CHRIST, AND THE PROSECUTOR WAS OF THE OPINION THAT THE CHURCH OF CHRIST HAS VIEWS ALONG THOSE LINES, NEGATIVE VIEWS OF THE DEATH PENALTY.
THERE'S NO SHOWING THAT THE PARTICULAR JUROR WOULD HAVE THOSE VIEWS.
IN THIS CASE IF THE PROSECUTOR WAS CONCERNED ABOUT RELIGION, HE ASKED, YOU KNOW, SOME PEOPLE

HAVE THESE RELIGIOUS VIEWS.
SHE SAYS THAT'S NOT WHAT I'M TALKING ABOUT AT ALL.
COULD NOT HAVE BEEN MORE CLEAR.
THAT, THAT, YOU KNOW, ANOTHER EXAMPLE.
IF YOU LOOK AT THE FLOWERS MISSISSIPPI SUPREME COURT CASES, ONE OF THE JURORS THAT TODAY TALK ABOUT, BURNSIDE-- HE WAS NOT THE ONE THEY REVERSED IT ON.
SHE WAS AN EXAMPLE OF A JUROR WHO DID, IN FACT, HAD ONE OF THOSE-- MY RELIGION TELLS ME, I DON'T LIKE TO SIT IN JUDGMENT.
YOU'VE SEEN THAT IN VOIR DIRES, I'VE SEEN THAT IN VOIR DIRES, THAT'S A THING.
BUT THE PROSECUTOR TWISTED IT HERE, TOOK IT OUT OF CONTEXT, AND THIS IN ITSELF IS INDICATIVE OF PRETEXT AS IS COMING UP WITH THE SECOND REASON ABOUT THE COUSIN AFTER JUROR JAMES WAS ALREADY SEATED.
I'VE GOT A BACK STRIKE THE HERE AFTER EIGHT MORE JURORS, IT WAS NINE MORE JURORS DISCUSSED.
WELL, NUMBER ONE, IT'S NOT A BACK STRIKE, AND THE STATE SEEMS TO WANT TO CHARACTERIZE MY ARGUMENT AS BEING THAT I'M COMPLAINING ABOUT AN IMPROPER BACK STRIKE.
NO, THAT'S NOT WHAT I'M DOING.
IF THAT HAD BEEN PRESERVED, MAYBE I'D ARGUE THAT AS A BACKUP ISSUE, BUT THAT'S NOT WHAT I'M ARGUING.
I'M ARGUING AS IN MILLER, L., THE PRETEXTUAL TIMING OF THIS IS AN INDICATION OF WHAT THE PROSECUTOR WAS DOING.
NOW, AGAIN, AM I SAYING THE PROSECUTOR WAS A RACIST?
I HAVE NO BASIS TO SAY THAT.
I'M SURE THAT IN TODAY'S AMERICA THERE ARE RACIST LAWYERS, PROSECUTORS, DEFENSE LAWYERS, CIVIL LITIGATORS, BUT THAT'S NOT WHAT BATSON IS ABOUT.
BATSON WAS ABOUT WAS THE STRIKE EXERCISED AGAINST THIS JUROR FOR RACIAL INSTANCE.

THIS IS A CASE WHERE WE HAVE A
BLACK DEFENDANT, TWO INNOCENT
WHITE VICTIMS.
IF THE PROSECUTOR WAS THINKING I
JUST DON'T WANT TOO MANY BLACKS
ON THIS JURY, THEN THEY HAVE TO
BE-- DOESN'T HAVE TO BE --
SO MAYBE I WILL LET ONE SIT.
AND MAYBE I WILL USE BOUNDARIES
ON OTHERS.
LOOK AT SANDERS -- SANCHEZ, ONE
RACIALLY MOTIVATED STRIFE IS
ONE TOO MANY.
SO AGAIN, OUR POSITION IS THE
DIRECTION OF THE US SUPREME
COURT IS NOT TO PUT ON
BLINDERS.
PROBABLY NOT, WOULD THEY OBJECT
3 TIMES --
>> SAY THAT THATSON IS CORRECT
AND WHAT IS BEING PROTECTED IS
A CRITICAL ONE OR IMPORTANT
ONE, IT IS NOT YOUR CLIENT'S
RIGHT.
PROPERLY SEATED FAIR AND
IMPARTIAL JURY, TALKING JURY
SEE ELECTION ISSUES BUT AT THE
END OF THE DAY YOUR CLIENT HAD
AN IMPARTIAL JURY.
IN THIS CONTEXT WHERE CLIENTS
ASKING, AND BASED ON CLAIM
THE FAIRNESS OF HIS TRIAL,
ESPECIALLY APPROPRIATE IN THAT
CONTEXT WITH PRESERVATION
REQUIREMENTS THAT MAKE SURE,
AND CLEARLY UNDERSTAND THE
ARGUMENTS BEING MADE THAT WILL
BE MADE ON APPEAL.
>> THE FACT THAT BATSON IS
DESIGNED NOT JUST TO PROTECT
LITIGANTS INTEREST BUT ALSO TO
PRESENT, PROTECT THE JURORS
INTEREST, THE JURORS
COMMUNITIES INTEREST IN THE
PUBLIC INTEREST IS ALL THE MORE
REASON NOT TO HAVE --
>> WHY DID ACCOUNTABLE TRIAL
JUDGE ON NOTICE, IN SUPPORT OF
THE POSITION THE TRIAL JUDGE
HAS THE INFORMATION NECESSARY,
THE BEST DECISION POSSIBLE
BEFORE TRYING TO GET THE CASE
REVERSED.
>> LOOKING AT MY NOTES TO SEE

WHAT I HAVE IN ADDITION TO WHAT WAS PRESENTED I THINK I SAY TO THE CASE WHERE TEXAS APPELLATE COURT JUDGE, COMMENTATORS DESCRIBED MILLER'S CASE, IF YOU PUT REQUIREMENTS THAT ESSENTIALLY REQUIRES --
>> IT WHAT?
>> MILLER ELSE PUT TEETH IN BATS AND THE COURT, TO MAKE SURE BATSON DOESN'T BECOME TOOTHLESS WHICH REQUIRES THE TRIAL JUDGE TO MAKE THE APPELLATE ARGUMENT, THE TRIAL LAWYER TO MAKE THE APPELLATE ARGUMENT -- I WILL GIVE YOU AN ANALOGY.
LOTS OF THINGS THAT ARE REVIEWED IN TOTALITY IN THIS CIRCUMSTANCE, PROBABLE CAUSE FOR ARREST AND SURGE, WAS A PERSON IN CUSTODY WITH CONCESSION VOLUNTARY OR NOT, PRETRIAL ID OR SUGGESTION, GLAD ENOUGH TO COME IN AND ALL THOSE DEAL WITH ID, FACTORS AND SOLO FACTORS, NONEXCLUSIVE LIST OF 5 OR 6 FACTORS TO BE LOOKED AT TO MAKE THE DETERMINATION.
WHILE THE APPELLATE COURT IS REVIEWING THAT, AND THE STONEWALL FACTORS, THAT THE DEFENSE LAWYER IS ARGUING.
THE EVIDENCE, THOSE ARE NOT GROUNDS FOR THE INJUNCTION.
THAT IS THE CONTEXTUAL RACIALLY DISCRIMINATORY STRIKE AND A FAIR READING OF THE SUPREME COURT CASES MENTIONED IN MY BRIEF THAT DISCUSS THOSE CASES IS THE APPELLATE COURT IS SUPPOSED TO REVIEW THE ENTIRE RECORD AND NOT REVIEW ITSELF ONLY TO WHAT WAS SPECIFICALLY POINTED OUT.
I WOULD POINT OUT THAT JUSTICE THOMAS DISSENTED IN ALL FOUR CASES AND THE CASES WERE 6-3-7-2 AND 6-1-1.
THEY WERE NOT THAT CLOSE BUT JUSTICE THOMAS DESISTED AT THE CENTER.
THE STATE TRIBAL ALLIANCE LOOKED AT THE VIEW.

JUSTICE THOMAS MAKES THE SAME POINT THE COURT IS CONCERNED ABOUT, THAT THIS WAS NOT SPECIFICALLY POINTED OUT TO THE JUDGE.
THE MAJORITY GOES THE OPPOSITE WAY.
>> YOU ARE WELL INTO REBUTTAL TIME.
YOU CAN KEEP GOING BUT YOU ARE INTO IT.
>> I AM AFRAID I WILL USE UP MY REBUTTAL TIME AND RELY ON MY BRIEFS WHICH INCLUDE CALIFORNIA, TEXAS, I NEED TO ADDRESS THE CASE THE STATE CITED AN HOUR AND A HALF BEFORE THE END OF THE LAST ARGUMENT WHICH WAS THE HOUSTON CASE, THE HOUSTON CASE WAS A 2006 CASE.
NUMBER ONE, HOUSTON CASES THE REASONS GIVEN BY THE PROSECUTOR WERE FORTHRIGHT AND NON-EVASIVE, PRETTY DIFFERENT.
THE HOUSTON CASE TRIES TO DISTINCTION MILLER BY SAYING, HOUSTON CAME OUT, AND WAS AN OLD CASE TO TRY UNDER SWAIN.
THE TRIAL LAWYER HAS TO POINT OUT THE RISK, HOUSTON TAKES INTO CONSIDERATION FLOWERS WHICH WERE TURNED, THE CASE OF KESSLER WHICH IS OVER THE AUTHORITY TODAY, THAT SITUATION PROVIDES A BETTER BASIS FOR COMPARATIVE ANALYSIS AND FINALLY, FOOTNOTE 9 IN THE STATE'S HOUSTON CASE IS BACKWARDS WHAT THE COURT SAID ABOUT THE DIFFERENCE BETWEEN EVIDENCE AND THE ARE HE IS ABOUT THE EVIDENCE, 180 DEGREES BACKWARDS, THE FACT THAT MILLER SAID THE EVIDENCE, THE EVIDENCE IN THE TRIAL COURT RECORD IS WHAT THE APPELLATE COURT IS SUPPOSED TO CONSIDER AND PROBABLY USED UP ALL MY TIME BUT SO BE IT.
>> YOU ACTUALLY HAVE TWO MINUTES REMAINING.
>> TWO MINUTES FOR REBUTTAL.
COUNSEL?
>> MAY IT PLEASE THE COURT, I

AM ASSISTANT ATTORNEY GENERAL
WALTER -- RICK BUCKWALTER.
AS THE COURT NOTED IN THIS
CASE, GORDON NEVER PRESERVED
THE ARGUMENTS HE NOW DESIRES TO
MAKE BEFORE THIS COURT BY
RAISING THEM WITH THE TRIAL
COURT AT THE TIME THE ISSUE
ROSE.
EXCUSE ME.
HE RAISES NUMEROUS ARGUMENTS AT
THIS POINT, NONE RAISED BY THE
TRIAL COURT WHERE THERE WAS AN
OPPORTUNITY FOR THE TRIAL COURT
TO EXAMINE THAT ISSUE.
THIS COURT HAS CONSISTENTLY
HELD THAT THE ARGUMENTS ARE
WAIVED IF NOT RAISED AT THE
TIME.
SPECIFICALLY HE DID NOT BELIEVE
THE EXPLANATION PROVIDED -- THE
SECOND TIME BACK STRUCK
SUCCESSFULLY AND RAISE THE SAME
EXACT ARGUMENT, THE EXPLANATION
BEING PROVIDED BY THE STATE'S
RACE NEUTRAL, DIDN'T ADD AN
ADDITIONAL COMMENT AT THE POINT
THAT HE THOUGHT, STATED THAT
THE DOOR -- THE JUROR THOUGHT
THE SENTENCE PROVIDED WHICH WAS
25 YEARS IN PRISON WAS A FIRST
SENTENCE.
HOWEVER, GIVEN THIS COURT'S
PREVIOUS DECISIONS ON THIS TYPE
OF ISSUE THOSE ARE THE TWO
ARGUMENTS, AND ANY OTHER
ARGUMENTS RAISED TODAY ARE
WAIVED.
THIS COURT STATED IN ORDER TO
REVERSE THE TRIAL COURT, BASED
ON ARGUMENTS THAT WERE RAISED
FIRST, IT WAS NOT RACE NEUTRAL
AND THE EXPLANATION, FURTHER
STATEMENT THAT THE JUROR
THOUGHT THE SENTENCE WAS FAIR,
NEITHER ONE DEMONSTRATES, THE
TRIAL COURT IS ERRONEOUS IN
ALLOWING THE STRIKE.
THE DEFENDANT ARGUES -- STRIKE
THAT.
THE DEFENSE ARGUES THAT MILLER
REQUIRES THIS COURT TO PERFORM
THE COMPARATIVE ANALYSIS.
NOWHERE IN THE HOLDING OR

DECISION ITSELF THAT THE
SUPREME COURT EVER STATES THAT
THE APPELLATE COURT, IF THAT IS
NOT RAISED --
>> YOU HAVE A STRONG ARGUMENT
ON PRESERVATION.
IF WE DON'T AGREE WITH YOU ON
THE PRESERVATION THING AND
LOOK, JURORS GIVE A MEANDERING
ANSWER AND SAY SOME THINGS THAT
ARE PROBLEMATIC AND OTHER
THINGS THAT MAY FIX THE PROBLEM
AND THE FIGHT IS OVER, IN THIS
CASE, THIS CHORE, AND -- TO
COMMUNICATE THE IDEA THAT THEY
FAIRLY IMPARTIALLY WORKED AT
THE EVIDENCE, IF YOU POINT TO
SOMETHING IN THEIR ANSWERS THAT
WOULD SUPPORT THE IDEA THAT
WOULD BACKUP THE PROSECUTOR
RELYING ON THOSE THINGS, IT IS
HARD WORK READING THE ANSWERS
TO FIND ANY FAULT WITH WHAT SHE
SAID?
>> FROM YOUR STATEMENT THAT SHE
MAKES THAT SHE SAYS SHE'S NOT
GOD IN OUR CASE, IN A MURDER
CASE IN WHICH SHE MAY BE
SITTING IN SENTENCE IN
DETERMINING WHETHER OR NOT --
>> ISN'T IT OVERWHELMINGLY
CLEAR WHEN SHE SAID THAT, SHE
WAS TALKING ABOUT WHAT SHE SAW
ON TV, NOT WHAT SHE WAS DOING
IN COURT.
THE CONTEXT OF THAT IS ENTIRELY
DIFFERENT, IT SEEMS LIKE THE
ONLY WAY TO UNDERSTAND THAT IS
SHE IS SAYING I DON'T KNOW WHAT
HAPPENED.
I AM NOT OMNISCIENT.
I AM SEEING THIS ON TV, WHO
KNOWS?
ISN'T THAT THE MOST REASONABLE
WAY TO UNDERSTAND IT?
>> THAT IS THE DEFENSE'S
POSITION, WE DON'T SEE IT THAT
WAY.
AT THE TIME SHE IS ASKED BY THE
PROSECUTOR WHETHER SHE SAW THE
DISCUSSION ON TV AND WHAT SHE
THINKS ABOUT, HER RESPONSE IS
I'M NOT GOD.
I DON'T THINK THERE'S ANY

PROSECUTOR'S HEAD WOULD NOT
SNAP AROUND UPON HEARING THAT
WHEN GIVEN THE QUESTION THAT
WAS ASKED THAT THIS WAS A
MURDER CASE.
AND SO I DON'T THINK THAT IT IS
UNREASONABLE AT ALL FOR A
PROSECUTOR TO BE CONCERNED UPON
HEARING THAT AND TO GO AHEAD
AND MOVE TO STRIKE THE JUROR.
TAKING INTO CONSIDERATION --
>> IT WAS ALREADY RED BY THE
FENCE -- DEFENSE, BUT
STRUGGLING THE SAME WAY JUSTICE
CANNADY IS, DO YOU REMEMBER THE
THOUGHT ABOUT THE DEATH
PENALTY, THE PROSECUTOR ASKED,
MAYBE WATCHING THE NEWS OR
SOMETHING, BEING ON A CRIME OR
SOMETHING LIKE THAT.
OTHER THAN THAT NO.
THE QUESTION IS WHAT WAS YOUR
THOUGHT WHEN YOU SAW IT ON THE
NEWS AND THE ANSWER WAS
SOMETIMES IT IS NARRATIVE,
SOMETIMES NOT.
I'M NOT THERE TO LOOK AT THE
EVIDENCE AND SEE WHETHER THE
PERSON SHOULD DIE, I AM NOT
GOD.
I DON'T SEE HOW YOU FAIRLY READ
THAT ANY OTHER WAY THAN IN
RESPONSE TO THE QUESTION WHAT
WERE YOUR THOUGHTS WHEN YOU SAW
IT ON THE NEWS?
THAT QUESTION WAS ASKED.
>> THAT IS THE QUESTION THAT
WAS ASKED BUT STILL, IT IS
AMBIGUOUS TO THE EXTENT THAT
SHE WAS ASKED WHAT ARE YOUR
THOUGHTS WHEN YOU SEE IT ON THE
NEWS?
DO YOU KNOW WHAT THE FACTS ARE
IN HER RESPONSE IS I AM NOT
GOD, THE QUESTION IS WHAT DO
YOU THINK, BECAUSE SHE DOESN'T
NORMALLY THINK THAT.
>> EVEN IF IT WAS AMBIGUOUS
THERE ARE FOLLOW-UP QUESTIONS
SO EVEN IF YOU ARE RIGHT THAT
IT WAS AMBIGUOUS ALL OF THE
FOLLOW-UP, IT IS CLEAR THAT SHE
IS A MODEL JUROR IN HER ANSWER,
DECIDING THIS ON THE EVIDENCE.

THERE IS NO RELIGIOUS CONCERN
THAT WOULD PREVENT HER FROM
DOING IT.
>> WITH ALL DUE RESPECT THE WAY
I INTERPRET THAT RESPONSE IS
SHE HAS CONCERNS ABOUT HER
ABILITY, STATED JUDGMENT ON AN
INDIVIDUAL IN A MURDER CASE,
THE STATEMENT THAT SHE'S NOT
GOD.
IN ADDITION TO THAT, IN
ADDITION TO THAT, THERE IS THE
SECOND BASIS FOR THE STRIKE
WHICH IS HER COUSIN'S
CONVICTION WHEN SHE WAS
SENTENCED TO 25 YEARS AND THE
TRIAL JUDGE RULING ON THE CASE
STATED HE WAS TAKING INTO
CONSIDERATION THE TOTALITY OF
THE CIRCUMSTANCES, PARTICULARLY
THE SECOND BASIS, THE SECOND
EXPLANATION PROVIDED BY THE
STATE WHICH SUGGESTS THE COURTS
TAKE INTO CONSIDERATION BOTH
REASONS PROVIDED BY THE STATE
OF THE STATE DID REASSERT THE
REASON THE SECOND TIME AROUND.
>> THE SECOND REASON IS EVEN
MORE IMPLAUSIBLE THAN THE
FIRST.
SHE SAID ANYTHING EVERYONE
COULD POSSIBLY SAY TO
COMMUNICATE THE IDEA THAT SHE'S
TRYING TO BE FORTHRIGHT AND
INTO THE QUESTION AND GO ABOVE
AND BEYOND BUT IT IS NOT GOING
TO HAVE ANY EFFECT ON HER.
AGAIN, THIS JUROR, WE READ
STUFF ALL THE TIME WHERE
LAWYERS ARE TRYING TO CONFUSE
JURORS INTO SAYING STUFF THAT
IS A PROBLEM AND EVERYBODY IS
TRYING TO RE-ABILITY, THIS
JUROR SAID EVERYTHING WE WANT
PEOPLE TO BE ABLE TO
ARTICULATELY COMMUNICATE IN
THESE SITUATIONS.
>> ALTHOUGH THE COURT MAY FEEL
DECISION MADE BY THE PROSECUTOR
MAY NOT HAVE BEEN A WISE ONE I
SUPPOSE THE TERM I WOULD USE TO
DESCRIBE WHAT THE COURT IS
CONCERNED ABOUT THE ISSUE ISN'T
WHETHER IT WAS A GOOD OR SMART

DECISION BUT WHETHER OR NOT,
THE DECISION-MAKING THAT STRIKE
AND IN THIS PARTICULAR CASE
THERE JUST ISN'T -- THE
ARGUMENTS THAT SHOULD HAVE BEEN
RAISED WHICH THE DEFENSE NOW
WISHES TO RAISE WEREN'T AT THE
TIME RAISED.
>> ON THE ISSUE ABOUT I'M NOT
GOD, DOESN'T YOUR ARGUMENT
BOILED DOWN TO THE FACT THAT IN
A DEATH CASE OF THE JUROR IN
ANY CONTEXT UTTERS THAT PHRASE,
THAT IS LIKE WAVING A RED FLAG
AT THE PROSECUTOR, MAY NOT EVEN
BE THE MOST REASONABLE REACTION
OF THE PROSECUTOR BUT IS A
GENUINE CONCERN THE PROSECUTOR
HAS WHEN THEY HEAR THAT KIND OF
PHRASE IN THE CONTEXT OF A
DEATH PENALTY CASE.
>> THAT IS EXACTLY RIGHT.
I DON'T THINK ANY PROSECUTOR'S
HEAD WOULDN'T SNAP AROUND ON
HEARING THAT BECAUSE THAT IS A
CONCERN.
REGARDLESS OF ANYTHING ELSE SHE
MAY HAVE STATED, THE PROSECUTOR
HEARD THOSE WORDS AND RESPONDED
TO THOSE WORDS.
I DON'T THINK WE CAN SAY THAT
IS NOT A REASONABLE RESPONSE BY
THE PROSECUTOR.
IT DOESN'T SHOW ANY INDICATION
THE PROSECUTOR IS ACTING IN A
DISCRIMINATORY MANNER.
ALSO CONSIDER THE FACT THAT NOT
ONLY DID SHE MAKE THAT
STATEMENT BUT SHE IS THE ONLY
JUROR WHO BOTH HAS AN ISSUE
WITH REGARD TO THE CONVICTION
IN THE SENTENCE AS WELL AS
HAVING MADE THAT KIND OF
COMMENT I THINK WHEN WE LOOK AT
THE TOTALITY OF THE
CIRCUMSTANCES HERE, ANY
PROSECUTOR WOULD SHOW CONCERN
AND MOVE TO STRIKE THE JUROR
AND THAT HAPPENED IN THIS CASE.
EVEN AFTER THE COURT INITIALLY
FINDS NOT SUFFICIENT BASIS FOR
THE STRIKE BUT THE STATE COMES
BACK AND REASSERTS THAT THE
SECOND TIME AROUND NOTING YOU

ALREADY PULLED ON THIS AND NEED
TO CONSIDER THIS.
IT IS SOMETHING THE STATE IS
CONCERNED ABOUT.
AS FAR AS THE ARGUMENT THAT
REQUIRES THIS COURT TO GO AHEAD
AND PERFORM A COMPARATIVE
ANALYSIS, YOU HAVE TO BEAR IN
MIND IN THIS PARTICULAR CASE WE
HAVE A PROCEDURAL, A PROCEDURAL
BAR BASED ON THE FAILURE OF THE
DEFENDANT TO RAISE THE ISSUE
LIKE THAT WASN'T THE ISSUE,
THAT WASN'T THE ISSUE.
THERE WERE NO PROCEDURAL BARS
TO THE SUPREME COURT DOING THE
COMPARATIVE ANALYSIS AND IN
FACT IN LOUISIANA, IN THE
LOUISIANA CASE RAISED BY GORDON
THERE IS A FOOTNOTE, FOOTNOTE 2
IN THAT CASE WHERE THE SUPREME
COURT NOTES THAT THERE WAS NO
PROCEDURAL BAR RAISED IN THAT
CASE AND THAT IN FACT THE STATE
SUPREME COURT ACTUALLY WENT
AHEAD AND GAVE WHEN EVEN THOUGH
THAT WASN'T RAISED AT THAT
LEVEL.
THOSE CASES ARE DISTINGUISHABLE
FROM THIS CASE THAT THERE WERE
NO PROCEDURAL BARS AS THERE IS
HERE.
AND OF COURSE THERE IS GOOD
REASON FOR THIS COURT TO HAVE
DETERMINED PREVIOUSLY THAT THE
DEFENDANT SHOULD BE REQUIRED TO
RAISE THAT ISSUE AT THE TRIAL
COURT LEVEL BECAUSE AT THAT
POINT IS THE ONLY POINT WHERE
DURING THE TRIAL WHEN THE
PROBLEM OCCURS THAT THE PROBLEM
CAN BE CORRECTED.
THE COURT IS PLACED ON NOTICE,
THE STATEMENT CAN PROVIDE
EXPLANATIONS AND WHEN THAT
OCCURS HERE WE ARE SEVERAL
YEARS LATER AFTER THE DEFENSE
HAS HAD AN OPPORTUNITY TO SPEND
SEVERAL WEEKS AT A MINIMUM
GOING THROUGH THE RECORD MINING
FOR DIFFERENT ISSUES WHICH
DOESN'T HAPPEN AT THE TRIAL
COURT LEVEL, THE DEFENSE'S
OBLIGATION TO GO AHEAD AND MAKE

THE OBJECTION AND MAKE THE
PROPER ARGUMENTS THAT ALLOW THE
COURT TO RULE IN ITS FAVOR,
THAT WASN'T DONE SO WHAT WE ARE
LEFT WITH IS THE TWO OBJECTIONS
THAT WERE RAISED, THAT IT
WASN'T RACE NEUTRAL AND SHE
FELT IT WAS A REASONABLE
WARFARE SENTENCE AND THE
STANDARD FOR REVERSING THE
TRIAL COURT IS DISCRETION BY
THE TRIAL COURT THEY MADE A
CLEARLY ERRONEOUS DECISION,
CAN'T THEY THAT THE DECISION
NATION THE DEFENSE HAS GONE
AHEAD AND DONE THAT.
IF THERE ARE NO FURTHER
QUESTIONS --
>> I HAVE A QUESTION ON THE
ISSUES BUT WASN'T ADDRESSED IN
THE INITIAL ARGUMENT, ISSUE 7.
THE ATTEMPTED FIRST-DEGREE
MURDER OF THE DEPUTIES RELATED
TO THE DEFENDANT'S ESCAPE FROM
THE HOME IN WHICH THE MURDER
VICTIMS LIVED AS HE CRASHED
THROUGH THE GARAGE DOOR AND
TRIED TO GET AWAY DRIVING FAST
DOWN THE ROAD.
TELL ME WHAT THE RELATIONSHIP
WHERE THOSE TWO DEPUTIES, WHAT
THE RECORD SHOWS ABOUT THOSE
TWO DEPUTIES IN RELATIONSHIP TO
THE CAR, WHAT THE RECORD SHOWS
ABOUT WHAT THE DEFENDANT WOULD
HAVE KNOWN ABOUT THEIR
RELATIONSHIP TO THE CAR THAT HE
WAS DRIVING.
>> FIRST OF ALL IN REGARD TO
ONE OF THE OFFICERS STATE THAT
THE END OF THE DRIVEWAY THAT HE
TRIPS AND FALLS IN THE ROAD.
THE OTHER DEPUTIES IT IS LESS
CLEAR FROM THE RECORD PRECISELY
WHERE THE DEPUTY IS BUT
SOMEWHERE IN THE FRONT YARD A
FEW FEET FROM THE DRIVEWAY,
THAT IS WHAT THE RECORD SEEMS
TO REFLECT.
BURSTING THROUGH THE GARAGE ONE
OF THE DEPUTIES TRIES TO GET OUT
OF THE WAY, THE CAR COMES IN
HIS DIRECTION AT THAT POINT IN
TIME.

AT THE END OF THE DRIVEWAY, COMING DIRECTLY AT HIM, SHOT HIS SHOTGUN AND THE CAR TURNS AWAY.
>> WHEN HE IS SO HOW FAR, WHAT IS THE CLOSEST THE CAR CAME TO HIM?
>> HE ESTIMATES THE CAR CAME WITHIN 10 FEET.
THAT IS WHEN HE SHOT HIS SHOTGUN.
IN OTHER WORDS IT IS COMING DIRECTLY FROM 10 FEET AWAY, NOT 10 FEET TO THE SIDE.
HE'S AT THE END OF THE DRIVEWAY BUT --
>> THE CAR GOT TO THE END OF THE DRIVEWAY BECAUSE THE CAR GOT ONTO THE STREET.
>> IT TURNS AFTER HE WAS SHOT AT.
A NUMBER OF THE OFFICERS UNLOAD THEIR WEAPONS.
>> I AM SURE.
I AM JUST TRYING TO UNDERSTAND, THE DEFENDANT TRYING TO GET AWAY FROM HERE, TRYING TO SEE WHAT SHOWS THAT HE WAS AIMING AT THE OFFICERS WITH THE CAR OTHER THAN JUST GOING DOWN THE DRIVEWAY IT IS A CLEAR ON THE RECORD WHETHER HE WAS BACKING OUT OF GOING OUT FRONT WAYS?
>> THERE ARE DIFFERENT WITNESSES WITH DIFFERENT PERCEPTIONS.
TWO OF THE OFFICERS STATE THAT THE CAR CAME OUT BACKWARDS, OTHERS INDICATE THAT IS NOT THE CASE.
HOWEVER, THE ISSUE HERE WOULD BE ONE OFFICER MOVED AS WELL AND THE CAR STEERS TOWARDS HIM.
EVEN IF THE COURT WERE TO FIND THERE IS INSUFFICIENT EVIDENCE OF ATTEMPTED FIRST-DEGREE MURDER, THERE SHOULD BE SUFFICIENT EVIDENCE, THERE'S CLEARLY SUFFICIENT EVIDENCE OF SECOND-DEGREE MURDER, THAT IS ONE OF THE LESSER INCLUDED THAT WAS READ TO THE JURY, ALSO IMPORTANT AT THIS POINT THAT ALTHOUGH THE ATTEMPTED MURDER

OF THESE OFFICERS WERE USED AS
A BASIS FOR SHOWING AND
AGGRAVATE HER IN THE
SENTENCING, THERE WERE A
COLLECTION OF DIFFERENT BASES
FOR THE VIOLENT FELONY MURDER
AGGRAVATE HER, CONTEMPORANEOUS
MURDERS OF THE VICTIMS AS WELL
AS THE THREE ATTEMPTED
FIRST-DEGREE MURDERS OF LAW
ENFORCEMENT OFFICERS AT THE
TIME OF THE CHASE IN THE ARMED
ROBBERY AS WELL AS ARMED
ROBBERY OF THE POND SHOP ISSUE
AND THE BURGLARY, ASSAULT OR
BATTERY AND PRIOR CRIMES THAT
OCCUR PRIOR TO THIS INSTANCE,
CHARGED WITH AGGRAVATED
BATTERY, FIREARM AND CHARGED
WITH AGGRAVATED BATTERY, AND
FINALLY SEVERAL MONTHS AFTER
THAT, DOMESTIC VIOLENCE CASES
FOLLOWING STRANGULATION OF HIS
GIRLFRIEND BUT EVEN IF THEY
WERE TO FIND THAT, ATTEMPTED
FIRST DEGREE MURDER, THERE IS
SUFFICIENT EVIDENCE, SUFFICIENT
AGGRAVATE HER IS TO UPHOLD THE
DEATH SENTENCE, IN ADDITION TO
THE FELONIES, THE HVAC
AGGRAVATE HER'S FOR THESE WOMEN
AND IN THE COURSE OF THIS TO
ESCAPE IN THE CASE.
ANY FURTHER QUESTIONS FROM THE
COURT, IN THE SENTENCING TRIAL
COURT THANK YOU SO MUCH.
>> I WILL NOW HE REBUTTAL
ARGUMENT.
>> I SPENT TOO MUCH OF MY TIME
INITIALLY ON THAT COMMENT AND
NOT ENOUGH TIME ON THE COUSIN'S
RATIONALE WHICH WAS THE BASIS
FOR JUDGE FARMS ALLOWING THE
SECOND BITE OF THE APPLE.
AS JUSTICE MOON IS POINTED OUT,
THE SECOND IS MORE IMPLAUSIBLE
THAN THE FIRST.
FROM THE COMPARATIVE ANALYSIS
FOR KELLY AND STANLEY, THE
REASON THE PROSECUTOR GAVE WHEN
SHE GAVE WEEKS OF AFTERTHOUGHT
IS ABSOLUTELY INCONSISTENT OR
PREPARATORY STATEMENT TO ALL
THE JURORS WHY SHE WAS ASKING

THE QUESTION IN THE FIRST PLACE, SHE SAID TO THE JURORS I AM ONLY CONCERNED IF IT IS SOMEBODY CLOSE TO YOU, WHERE IMPACTED YOUR LIFE.
YOU WERE INVOLVED IN THE CASE OR THINGS LIKE THAT, MOTHER, SON, DAUGHTER, LIKE THAT, SHE WAS IN THE THIRD ROW AND WORKS DOWN THE SECOND ROW AND SURE JAMES HAS HER HAND UP BECAUSE HIS CONSCIENTIOUS AND THE FIRST WORDS OUT OF HER MOUTH, DIDN'T AFFECT ME, A COUSIN OR FIRST COUSIN, THEN THEY GO INTO IT AT ALL THE QUESTIONS SHOW THAT SHE WAS SOMEBODY THE PROSECUTOR SAID I AM NOT CONCERNED ABOUT, I WASN'T IN COURT, DIDN'T AFFECT ME, I THOUGHT THE TRIAL WAS FAIR, THE SENTENCE WAS FAIR, SHE SAID I THINK IT WAS LIKE THAT.
THE REASON THE PROSECUTOR GAVE WHEN GIVEN AN IMPROPER SECTOR, WAS INCONSISTENT WITH THE PROSECUTOR'S OWN REASON FOR ASKING THE QUESTION AND DIDN'T ASK BECAUSE OF THAT.
SHE ASKED, KELLY WAS CLOSE WITH HER NEPHEW, WITH HIS NEPHEW, SHE ASKED JUROR STANLEY WHO CAME AFTER JAMES ARGUED, FOR STANLEY, BROTHER HAD BEEN IN AND OUT OF JAIL TIME AND REGULATED DEFENSES RELATED TO THIS CASE.
AND HAD TO DO WITH JURORS AND THE COUSINS AND THE REASON, SO CLEAR ON THE RECORD, THE ONLY RESULT TO KEEP THIS FROM GOING ON OVER AND OVER AGAIN, I WILL POINT OUT ALSO IF I HAVE TIME.
>> I WILL GIVE YOU ANOTHER MINUTE.
>> ALL THE CASE -- THE SUPREME COURT AND OTHER STATES, COMPARISON OF LET'S SAY IT IS A BLACK JUROR COMPARISON WITH WHITE JURORS IS THEY ARE ALLOWED TO SERVE.
IN FLORIDA WE NOTE KNOW THE STATE ALLOWED TO SERVE BECAUSE OF BACK STRIKES BECAUSE OF

PROPER BACK STRIKES, BEFORE THE JURY IS SELECTED.
BY THE TIME THEY GOT TO THE QUESTIONING JUROR JAMES RESPONDED.
IN TERMS OF WHAT THE PROGENY REQUIRED, LOOK AT TEXAS, CALIFORNIA, THE NINTH CIRCUIT, THE FOURTH CIRCUIT, THE SIXTH CIRCUIT.
SOME FEDERAL COURTS SAID WHEN THE STATE COURT DOESN'T DO COMPARATIVE ANALYSIS WE WILL DO IT OURSELVES.
WE COULD BE TALKING 5, 6, 8 YEARS DOWN THE ROAD.
THE TIME TO DO IT IS NOW.
I DON'T THINK THIS COURT NEEDS TO GET THE COMPARATIVE JUROR ANALYSIS TO REVERSE THIS CASE BUT ESTIMATE THE COURT WILL RECONSIDER AND ASK THE COURT TO REVERSE CONVICTIONS AND DEATH SENTENCE, THANK YOU.
>> THANK YOU FOR YOUR ARGUMENT IN THIS CASE TODAY, THE COURT WILL PREPARE TO TAKE UP THE FOURTH AND FINAL CASE ON TODAY'S DOCKET.