>> PLEASE RISE.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> THE FINAL CASE ON OUR
CALENDAR THIS MORNING IS BOLIN
VERSUS STATE OF FLORIDA.
JUSTICE QUINCE IS RECUSED IN
THIS CASE AND OF COURSE
NATURALLY WOULD NOT
PARTICIPATE.
JUSTICE PARIENTE HAD AN
EMERGENCY.
SHE WILL PARTICIPATE, ALTHOUGH
NOT SIT IN ON ORAL ARGUMENTS.
SHE WILL VIEW THOSE THROUGH
GAVEL TO GAVEL AND PARTICIPATE
IN THE DECISION.
SO WITH THAT, ARE WE READY TO
PROCEED?
>> MAY IT PLEASE THE COURT.
THANK YOU FOR THE EXPLANATION.
I DON'T QUITE FEEL SO
OUTNUMBERED OR POSSIBLY
WONDERING IF I DID SOMETHING
DURING THE BREAK.
>> TAKE NO OFFENSE.
>> FINE.
MAY IT PLEASE THE COURT.
MY NAME IS ANDREA NORGARD.
I AM REPRESENTING MR.^BOLIN IN
APPEAL FROM THE DENIAL OF HIS
MOTION FOR POST-CONVICTION
RELIEF PURSUANT TO 3.851.
THERE WERE TWO ISSUES RAISED IN
BRIEF.
MY INTENT TO ADDRESS BOTH OF
THEM IN ORDER THEY WERE
BRIEFED.
THE FIRST ISSUE ADDRESSED
WHETHER OR NOT MR.^BOLIN'S
TRIAL ATTORNEY FAILURE TO PREVENT

A WITNESS BY THE STATE BY THE NAME OF DANNY FERNS FROM OFFERING AN OPINION THAT A SUBSTANCE THAT HE OBSERVED ON THE GROUND WITHIN A SHORT TIME OF WHEN THIS CRIME WAS ALLEGED TO HAVE OCCURRED WAS BLOOD OR NOT.
THE POSITION TAKEN DURING EVIDENTIARY HEARING AND ON APPEAL, A LAY WITNESS SUCH AS MR.^FERNS, AT THE TIME WHEN MR.^FERNS MADE HIS OBSERVATIONS HE WAS 13 YEARS OLD.
AT THE TIME HE FIRST TESTIFIED OR TESTIFIED IN THE TRIAL THAT IS THE SUBJECT OF THESE PROCEEDINGS HE WAS AT THAT TIME 26 YEARS OLD.
AND MR.^FERNS TESTIFIED THAT HE AS A 13-YEAR-OLD BOY, STILL IN ELEMENTARY SCHOOL, HAD GONE TO THE BUS STOP WHERE HE MET ANOTHER YOUNG MAN BY THE NAME OF PHILLIP BOLIN WHO WAS ACTUALLY MR.^BOLIN'S HALF-BROTHER.
PHILLIP BOLIN APPEARED UPSET AND TOLD HIM SOME THINGS THAT LED THEM TO RETURN TO THIS PIECE OF PROPERTY OFF VALENCIA DRIVE WHERE THERE WERE SOME MOBILE HOMES, CAMPER TRAILERS.
WHILE THEY WERE THERE HE OBSERVED ON THE GROUND A WET, RED SUBSTANCE.
HE TESTIFIED THAT HE ABSOLUTELY KNEW THAT THIS SUBSTANCE WAS BLOOD.
HE OFFERED THE DESCRIPTION, HE DID OFFER SOME DESCRIPTIVE TERMS AS TO WHY HE REACHED THAT

OPINION BUT HE UNEQUIVOCALLY
STATED WHEN ASKED BY THE
PROSECUTOR THAT THIS WAS BLOOD
AND HE WAS ABSOLUTELY SURE OF
THAT FACT.
WHERE MR.^FERNS TESTIMONY WAS
SO CRITICAL IN THIS TRIAL WAS
IN THE MANNER IN WHICH IT
BUTTRESSED THE TESTIMONY OF
PHILLIP BOLIN.
PHILLIP BOLIN HAS BEEN A
PROBLEMATIC WITNESS FOR BOTH
THE DEFENSE AND THE STATE
THROUGHOUT THE THREE TRIALS
THAT THIS CASE HAS UNDERGONE.
PHILLIP BOLIN HAS TESTIFIED,
RECANTED, TESTIFIED, RECANTED,
AND GIVEN MANY DIFFERING
STATEMENTS ABOUT HIS
OBSERVATIONS THAT NIGHT.
>> THIS WAS SUPPOSEDLY THE
SCENE WHERE PHILLIP HAD
TESTIFIED THAT HE SAW THE BODY
AND THE BEATING AND THEN THE
HOSE AND ALL THESE THINGS?
WAS THIS THE TRIAL WHICH THAT
WAS THE TESTIMONY?
>> CORRECT.
PHILLIP BOLIN TESTIFIED AT THAT
TRIAL, IN THE TRIAL IN 2001.
HE DID NOT TESTIFY TO ACTUALLY
PHYSICALLY SEEING THE BODY.
WHAT HE SAID HE SAW SOMETHING
WRAPPED IN A SHEET THAT HE THEN
OBSERVED MR.^BOLIN USE
SOMETHING THAT HE REALLY COULD
NOT IDENTIFY TO STRIKE THIS
THING WRAPPED IN A SHEET.
HE HEARD SOME, SOUNDED LIKE A
PILLOW BEING HIT AND SOME
MOANS.
AND THEN HE SAID HE ASSISTED

IN LIFTING THE SHEET-WRAPPED
BODY INTO THE BACK OF A TOW
TRUCK.
>> WE HEARD -- WHAT WAS BEING
BEATEN?
>> THAT WAS IN ONE OF HIS
STATEMENTS.
QUITE HONESTLY, PHILLIP BOLIN
GIVEN SO MANY DIFFERENT
VERSIONS WHAT HE HEARD.
I'M NOT SURE IF THAT WAS DIRECT
TESTIMONY IN THE TRIAL OR
SUBJECT OF OTHER STATEMENTS HE
MADE IN THE PAST.
>> TESTIMONY WAS THAT THE OPEN
TRUNK AND NOTICED THE,
SOMETHING WRAPPED IN A
HOSPITAL-TYPE BED OR SHEET OR
SOMETHING LIKE THAT.
AND THE FIRST, AND WHAT WAS IN
THERE WAS MOANING.
AND THAT'S WHEN YOUR CLIENT
TOOK OUT A STICK WITH A METAL
POINT AT THE END AND STARTED
BEATING THE BODY.
I GUESS TO FINISH IT OFF.
>> WELL I BELIEVE PHILLIP
BOLIN'S TESTIMONY HE DID NOT
IDENTIFY THE SHEET AS, HOSPITAL
SHEET.
HE SAID IT WAS WRAPPED IN WHITE
MATERIAL.
I DON'T BELIEVE HE SAID IT WAS
A HOSPITAL SHEET.
>> REGARDLESS WHAT HE SAID, THE
POINT IS THAT HIS TESTIMONY WAS
THAT HE HEARD A PERSON MOANING
AND THAT HIS STEPBROTHER THEN
TOOK OUT THIS STICK AND BEAT
THE PERSON UNTIL THERE WAS NO
MOANING ANYMORE?
>> CORRECT.

THAT WAS PHILLIP BOLIN'S
TESTIMONY.
BUT I DO THINK THE COURT SHOULD
NOTE THAT PHILLIP BOLIN AT
PREVIOUS TIMES RECANTED THE
TESTIMONY AND CLAIMED THAT HE
DID NOT SEE THE THINGS THAT HE
TESTIFIED AT TRIAL THAT HE
CLAIMED TO HAVE SCENE SEEN.
HE GONE BACK AND FORTH ON AT
LEAST FIVE DIFFERENT OCCASIONS
WHETHER HE ACTUALLY OBSERVED
THIS OR DID NOT.
SO CLEARLY PHILLIP BOLIN WAS A
WITNESS WHOSE CREDIBILITY WAS
CLEARLY AT ISSUE.
SO, WHAT YOU HAVE TO LOOK AT IN
ASSESSING WHETHER OR NOT THE
ADMISSION OF THIS OPINION
TESTIMONY THAT IS CLEARLY
IMPROPER.
I MEAN THERE IS NO, I DON'T
BELIEVE, ANY RULE OF LAW,
DICTA, HOLDING OR OTHERWISE
FROM THIS COURT THAT WOULD
SUPPORT PHILLIP BOLIN BEING
ABLE TO TESTIFY AS AN EXPERT
WITNESS.
>> THAT IS NOT REALLY THE
ISSUE.
THE ISSUE IS WHETHER A LAY
WITNESS CAN TESTIFY AS TO THIS
PARTICULAR MATTER.
WE KNOW HE IS NOT AN EXPERT.
>> CORRECT.
>> SO THEN THE EXAMINATION OR
THE ANALYSIS HAS TO BE, WHAT
CAN A LAY WITNESS UNDER THESE
CIRCUMSTANCES TESTIFY TO.
THAT'S WHAT THE --
>> CORRECT.
THIS COURT, AGAIN THERE IS

ABSOLUTELY IN MY OPINION, NO
QUESTION THAT HE COULD NOT
OFFER THAT EXPERT OPINION
TESTIMONY OR THAT HE COULD NOT
OFFER LAY OPINION TESTIMONY
THAT WHAT HE SAW WAS ABSOLUTELY
BLOOD.
OVER 100 YEARS AGO --
>> I THOUGHT THE QUESTION ON
THE RECORD WAS IT APPEARED TO
BE BLOOD.
HE SAID ABSOLUTELY.
>> HE ALSO REPEATED SEVERAL
TIMES, WAS THERE ANY DOUBT IN
YOUR MIND IT WAS BLOOD?
NO THERE WASN'T.
>> IT APPEARED TO BE BLOOD.
>> WELL THE QUESTION WAS --
>> THAT'S A STATEMENT ABOUT HIS
PERCEPTION AND, THIS IS, AT THE
TIME, A 13-YEAR-OLD YOUNG MAN
TESTIFYING, RIGHT?
>> NO.
HE WAS 13 AT THE TIME HE MADE
HIS OBSERVATION.
>> AT TRIAL.
>> HE WAS 26 AT TIME OF
TESTIMONY.
>> HE WAS 26 AT THAT TIME OF
THE TESTIMONY.
13 WHEN HE OBSERVED IT.
THE JURY HOWEVER IT GOING TO
UNDERSTAND THAT HE DID NOT DO A
CHEMICAL TEST ON THE SUBSTANCE.
I MEAN THAT'S, THEY'RE GOING TO
UNDERSTAND THIS IS A PERSON WHO
SAW SOMETHING AND BASED ON
COMMON HUMAN EXPERIENCE WAS
CONVINCED, WAS FULLY CONVINCED
THAT WAS BLOOD, WITHOUT ANY
SORT OF SCIENTIFIC TEST TO
VERIFY THAT.

THE JURY WOULD OBVIOUSLY
UNDERSTAND THAT, CORRECT?
>> WELL, HOWEVER THOUGH THAT IS
NOT THE SOLE CRITERIA FOR
DECIDING WHETHER OR NOT
MR.^FERNS HAD THE ABILITY TO
TESTIFY IN THE MANNER THAT HE
DID.
THIS COURT HAS MADE IT CLEAR
AND, AGAIN, THE LAST ISSUED
OPINION THAT I COULD FIND FROM
THIS COURT ON THIS VERY ISSUE
WAS IN 1898 WHERE THE IDENTICAL
ISSUE WAS BEFORE THE COURT
ABOUT WHETHER A LAYPERSON COULD
STATE THAT A SUBSTANCE THEY SAW
WAS BLOOD.
AND OF COURSE, NO, THEY CAN
NOT. THEY CAN DESCRIBE IT.
>> 97.1 OF EVIDENCE CODE.
>> CORRECT.
>> HOW A LAY PERSON CAN TESTIFY
WHAT HE OR SHE PERCEIVES IN
FORM OF INFERENCE OR AN
OPINION.
NOW, WE HAVE ALLOWED PEOPLE TO
TESTIFY HOW FAST SOMEBODY IS
GOING IN A CAR.
HOW FAST WAS HE GOING?
HE MUST HAVE BEEN GOING OVER
50, OVER 60, OVER 70.
WE ALLOW PEOPLE TO TESTIFY AS
TO WHETHER SOMEBODY ODOR OF
ALCOHOL EMINATING FROM
SOMEONE'S MOUTH WAS ALCOHOL.
DIDN'T HAVE TO GO THROUGH A
TEST TO SEE IF THERE WAS
ALCOHOL.
THERE ARE CERTAIN THINGS, SO
BLATANT, SO OBVIOUS THAT A
LAYPERSON CAN COME TO A
CONCLUSION ON.

ALL THIS YOUNG MAN TESTIFIED TO
WAS THAT WHAT HE WAS TAKEN TO
THE SCENE THAT MORNING BY HIS
CLASSMATE, WHAT HE SAW APPEARED
TO BE BLOOD.
ARE YOU SURE?
ABSOLUTELY.
APPEARED TO BE BLOOD.
WHY CAN'T A LAYPERSON TESTIFY
TO SOMETHING THAT LOOKED LIKE
BLOOD?
>> BECAUSE IN GANTLING, THIS
COURT SPECIFICALLY SAID THAT
THEY CAN'T GIVE THAT NEXT STEP
OPINION.
AND I BELIEVE MR.^FERNS'S
STATEMENT THAT HE ABSOLUTELY
SAW BLOOD TAKES IT BEYOND THE,
IT JUST APPEARED TO ME TO BE
BLOOD.
IT IS VERY CLEAR, FOR EXAMPLE,
YOU KNOW, AND AGAIN, I FOCUSED
ON THE ISSUE AT HAND WHICH WAS,
A TESTIMONY ABOUT A SUBSTANCE
WHICH YOU CAN NOT IMMEDIATELY
IDENTIFY WITHOUT SUBSEQUENT
TESTING.
AS THIS COURT HAS POINTED OUT
IN OTHER OPINIONS, YOU KNOW,
WHAT AN, EXPERT DOES IN THESE
TYPE OF SITUATIONS IS, YOU HAVE
TO DO A CONFIRMATORY TEST.
WE HAVE, WE HAVE IN THOUSANDS OF CASES
EACH YEAR CRIME SCENE TECHNICIANS
AND LAB ANALYSTS WHO ARE
PRESENTED AS EXPERTS AND
TESTIFY BASED ON TESTING THEY
DO THAT'S WHEN YOU CAN CONFIRM
WHAT TYPE OF SUBSTANCE THIS IS.
>> IN CERTAIN CASES WHATEVER IT
IS IT MIGHT --
[INAUDIBLE]

YOU HAVE SOMETHING THAT IS
ELEMENT OF THE CRIME ITSELF.
THAT IS NOT THIS SITUATION.
>> BUT, NO, IT IS NOT THAT
SITUATION IN THIS CASE.
HOWEVER AT THAT WAS A CRITICAL
PIECE OF EVIDENCE BECAUSE BY
THE TIME MR.^FERNS TESTIFIED
THERE WAS NO OPPORTUNITY TO DO
ANY TYPE OF TESTING.
AND TO GO BACK TO, I BELIEVE IT
WAS, JUDGE LABARGA'S ANALOGY
ABOUT VEHICLES SPEEDING OR
SOMETHING LIKE THAT, THAT WOULD
BE SOMETHING A PERSON COULD
TESTIFY AS A LAY WITNESS WHAT
THEY OBSERVED.
BUT THEY COULD NOT CONCLUSIVELY
STATE IT IS MY OPINION THAT
THEY WERE TRAVELING AT THE
SPEED OF.
THAT IS SIMPLY SOMETHING BEYOND
THE KIN TO USE, TO QUOTE THE
LANGUAGE FROM THE ADDITIONAL
AUTHORITY IN THE STATE OF
FLORIDA, IS BEYOND THE KIN OF
AN AVERAGE PERSON'S
UNDERSTANDING.
THE PROBLEM IN THIS CASE IS, IS
THAT DANNY FERNS'S TESTIMONY
WAS SO IMPORTANT IN TERMS OF
CORROBORATION --
>> DOESN'T ALL THIS, ASSUMING
THERE IS ACCURACY IN WHAT
YOU'RE SAYING, HE WAS GOING TO
BE ABLE TO TESTIFY TO WHAT?
CAN HE TESTIFY THAT IT APPEARED
TO HIM TO BE BLOOD AND JUST
LEAVE IT AT THAT?
>> WHAT HE WOULD HAVE BEEN ABLE
TO TESTIFY TO UNDER GANTLING
THAT HE COULD DESCRIBE WHAT HE

SAW.
IN OTHER WORDS HE COULD SAY, IT WAS RED.
IT APPEARED WET.
IT APPEARED THIS BIG.
BUT THAT WAS WHERE HE WOULD HAVE TO STOP.
>> BUT DOESN'T GANTLING REALLY DEAL WITH, WHAT THE COURT WAS DOING IN GANTLING WAS APPROVING TESTIMONY TO COME IN.
THEY WEREN'T, THEY WEREN'T SAYING SOMETHING CAME IN THAT SHOULDN'T HAVE COME IN.
I THINK YOU'RE REALLY STRETCHING GANTLING A LITTLE BIT THERE BEYOND THE ACTUAL HOLDING IN THAT CASE.
SO IT IS YOUR POSITION THAT HE COULD NOT SAY, WELL IT LOOKED LIKE TO ME IT WAS BLOOD?
>> THAT WOULD, HE COULD HAVE SAID I THOUGHT IT WAS OR IT APPEARED TO BE.
>> OKAY.
>> HE COULD NOT SAY ABSOLUTELY.
>> IF HE COULD SAY THAT AND IN THE WHOLE CONTEXT HERE, HOW IS THAT REALLY, I MEAN, THAT WAS WHAT WAS GOING TO COME IN EVEN UNDER YOUR THEORY.
SO IT SEEMS TO ME THAT THE IMPACT OF THIS IS GOING TO BE VERY MINOR BECAUSE THE JURY IS GOING TO UNDERSTAND, ANYWAY, THAT THAT'S JUST HIS OPINION ABOUT WHAT HE SAW AND IT'S NOT A SCIENTIFICALLY VERIFIED FACT.
>> BUT THE FACT OF WHAT IT WAS, WAS CRUCIAL TO THE CASE WHICH PLAYS INTO THE SECOND ISSUE WHICH WAS, THERE WAS TESTIMONY

THAT COULD HAVE BEEN PRESENTED
TO HAVE EXPLAINED THAT THIS WAS
NOT NECESSARILY BLOOD BUT IN
FACT COULD HAVE BEEN RED SPRAY
PAINT UNDER THE TIMELINE THAT
EQUIPMENT HAD BEEN BEING
PAINTED IN THAT AREA IN WHICH A
TIME PERIOD RED PAINT WAS BEING
USED.
SO IF YOU LOOK AT TWO ISSUES
TOGETHER, WHAT YOU HAVE IS, A
STATEMENT FROM A WITNESS WHO IS
REALLY, I MEAN HE IS THE MOST
CREDIBLE EYEWITNESS TO ANYTHING
THAT OCCURRED, SIMPLY BECAUSE,
FROM THE DATE WHEN THESE
OFFENSES ACTUALLY OCCURRED
UNTIL THE FIRST TRIAL, A PERIOD
OF SIX YEARS ELAPSED.
THERE WAS NO WAY FOR DEFENSE
COUNSEL TO HAVE GONE BACK AND
DONE ANYTHING BECAUSE THERE WAS
NO CRIME SCENE EVIDENCE
COLLECTED.
THIS WAS NOBODY --
>> DID THE GRANDMOTHER TESTIFY
THAT THE FATHER WORKS IN A
CARNIVAL.
HAS CARNIVAL EQUIPMENT AND HE
HAD SPRAY-PAINTED THE CARNIVAL
EQUIPMENT IN THAT PARTICULAR
LOCATION?
>> NO, SHE DID NOT.
THAT IS A MISTAKE OF FACT IN
THE TRIAL JUDGE'S ORDER.
GERTRUDE BOLIN ONLY TESTIFIED
THAT HOSES WERE REMOVED.
NOWHERE IN HER TRIAL TESTIMONY
IN THE, IN THE DEFENSE CASE ON
THE GUILT PHASE DID SHE TESTIFY
ABOUT SPRAY PAINTING.
SHE ONLY TESTIFIED ABOUT THE

REMOVAL OF HOSES.
IN THE POST-CONVICTION HEARING
MR.^BOLIN TESTIFIED, MR.^BOLIN,
SR., TESTIFIED THAT HE DID THE
PAINTING AND HE WAS THE ONE WHO
ALSO REMOVED THE HOSES.
BUT AT THE TRIAL WHETHER OR NOT
THERE HAD BEEN PAINTING IN THAT
AREA OR NOT WAS NEVER EVIDENCE
BEFORE THE JURY.
>> JUSTICE PERRY HAS A QUESTION.
>> I'M SO SORRY.
>> IT WAS ANSWERED.
I HAD THE SAME QUESTION JUSTICE
CANADY HAD.
YOUR SUGGESTION THAT A
13-YEAR-OLD HAS TO BE A BLOOD
EXPERT TO TESTIFY THAT WHAT HE
SAW APPEARED TO BE BLOOD.
YOU AREN'T SAYING THAT, ARE
YOU?
AND SURELY, IF YOU'RE SAYING
THAT, THE JURY, BY THIS MERE
OBSERVATION COULD SEE THAT YOU
KNOW, HE IS A 13-YEAR-OLD.
HE PROBABLY HAD SOME KNOWLEDGE
OF BLOOD, OF WHAT BLOOD LOOKED
LIKE BUT HE CERTAINLY WASN'T
TESTIFYING AS EXPERT FACT THAT
IT WAS BLOOD BUT APPEARED TO BE
BLOOD?
>> I DISAGREE --
>> OKAY.
>> ON THE APPEARED.
I BELIEVE BY CONTENT OF HIS
RESPONSE ABSOLUTELY HE WAS
CERTAIN IT WAS BLOOD.
THE RESPONSE WENT FURTHER THAN
THE QUESTION.
IF HE HAD SAID, YES, I THINK IT
WAS, THAT WOULD BE A DIFFERENT
RESPONSE THAN, ABSOLUTELY, I

SAW BLOOD.
I BELIEVED I SAW BLOOD.
HE WAS NOT EQUIVOCAL IN ANY
MANNER IN HIS RESPONSES ABOUT
WHAT THE SUBSTANCE WAS.
AND THERE IS A DISTINCTION.
THE EVIDENCE CODE MAKES A
DISTINCTION.
THAT'S WHY A CRIME SCENE
TECHNICIAN, WHO CERTAINLY HAS
MORE EXPERIENCE AND WOULD FALL
CLOSER INTO THE CATEGORY OF A
EXPERT WITNESS THAN MR.^FERNS
WOULD, DOES NOT TESTIFY THAT
THEY SAW BLOOD AT THE SCENE.
THEY TESTIFIED THEY SAW
APPARENT BLOOD AND THEN, THE
SEROLOGIST OR THE LAB PERSON
WHO DOES CONFIRMATORY TESTING
COMES IN AND TESTIFIES, DID YOU
RECEIVE AS PART OF EVIDENCE IN
THIS CASE A SUBSTANCE THAT WAS
APPEARED TO BE BLOOD?
YES, I DID.
WHAT DID YOU DO WITH THAT
SUBSTANCE?
I PERFORMED THIS TEST,
THIS TEST AND THIS TEST.
>> AND CAN YOU STATE IN YOUR
EXPERT OPINION WHAT THE RESULT
OF THOSE TESTS WAS?
YES I CAN CONFIRM THIS WAS
BLOOD.
THAT IS THE EVIDENTIARY PROCEDURE
THAT THE EVIDENCE CODE REQUIRES
WHEN YOU ARE DEALING WITH A
SUBSTANCE THAT REQUIRES EXPERT
TESTIMONY FOR IDENTIFICATION.
I MEAN CLEARLY, YOU KNOW, AND
IF WE RECOGNIZE THAT FOR
INDIVIDUALS SUCH AS CRIME SCENE
TECHNICIANS AND EXPERIENCED

POLICE OFFICERS, THE SAME RULE
OF LAW OUGHT TO APPLY TO
13-YEAR-OLD KIDS AND IT WASN'T
USED IN THIS CASE.
WHEN YOU COMBINE THAT WITH THE
FACT THAT THERE WAS A FAILURE
TO THEN PRESENT THE EVIDENCE OF
OSCAR BOLIN, SR., WHICH OFFERED
AN ALTERNATIVE EXPLANATION AS
TO WHAT THIS RED SUBSTANCE ON
THE GROUND WAS, THEN YOU HAVE
THE PREJUDICIAL ERROR.
>> YOU'RE SAYING THAT THE TRIAL
JUDGE MADE A MISTAKE WHEN HE
PUT IN HIS ORDER THAT THIS
EVIDENCE WAS SUBMITTED BY
TRUDY, THE STEPMOTHER?
THAT IN FACT OSCAR, SR. THIS
SPRAY-PAINTED CARNIVAL
EQUIPMENT THREE OR FOUR WEEKS
PRIOR, DIFFERENT COLORS OTHER
THAN RED PAINT IN THE GRASS?
>> OSCAR BOLIN, SR. TESTIFIED
AT TRIAL IN 1996.
>> I'M TALKING ABOUT, YOU'RE
SAYING THE TRIAL JUDGE MADE A
MISTAKE WHEN HE PUT THAT IN HIS
ORDER?
>> YES, HE DID.
OSCAR BOLIN, SR. DID NOT
TESTIFY AT ALL IN THE 2001
TRIAL.
>> NOT TRUDY.
>> TRUDY DID NOT ADDRESS
PAINTING IN THE 2001 TRIAL.
IN THE '96 TRIAL OSCAR BOLIN,
SR. DID TESTIFY, AND DID
TESTIFY ABOUT PAINTING.
IN 2001 HE DOES NOT TESTIFY AT
ALL.
TRUDY TESTIFIES INSTEAD OF
BOLIN, SR., BUT TRUDY DOES NOT

ADDRESS PAINTING.
SHE ONLY ADDRESSES HOSES BEING
REMOVED.
SHE DOES NOT TALK ABOUT WHAT
HER HUSBAND DID OR DIDN'T DO
REGARDING PAINTING.
>> YOU'RE WELL INTO REBUTTAL.
>> I KNOW.
>> YOU WANT TO TOUCH ON THE SECOND
ISSUE?
>> I DO IN RESPONSE WITH
MR.^AKE'S --
>> DO IT NOW SO HE ARGUE A
POINT.
SO HE HAS OPPORTUNITY TO
ADDRESS IT.
>> WE'RE GOOD AT THIS POINT.
>> OKAY.
>> MAY IT PLEASE THE COURT.
STEPHEN AKE FOR THE STATE OF
FLORIDA.
WE'RE HERE ON THE DENIAL OF A
CLAIM OF INEFFECTIVE ASSISTANCE
OF COUNSEL AND I HAVEN'T HEARD
ANY TESTIMONY AS TO WHAT
COUNSEL TESTIFIED TO AT
EVIDENTIARY HEARING.
I THINK THAT IS VERY IMPORTANT
IN ANALYZING THIS ISSUE.
THE ATTORNEY, JOHN SWISHER,
THAT WAS REPRESENTING
MR.^BOLIN, TESTIFIED THAT HE
HAD READ THE PREVIOUS TRIAL
WHERE COUNSEL HAD OBJECTED TO
THIS BLOOD TESTIMONY AND IT HAD
BEEN OVERRULED.
SO, WE ALSO SUPPLEMENTED THAT
IN THE REGARD AND THAT RECORD
AND THAT'S PART OF THE RECORD.
THE QUESTION AS TRIAL TO
MR.^FERNS WAS, DID THIS APPEAR
TO BE BLOOD?

AND HIS ANSWER WAS NO DOUBT, I KNEW IT WAS.
HE HAD TESTIFIED HE HAD SEEN, HE KNEW WHAT COLOR BLOOD WAS. HE HAD SEEN IT BEFORE PRIOR THIS OBSERVATION AND PROSECUTOR ASKED HIM TWO QUESTIONS WHETHER IT APPEARED TO BE BLOOD.
THE ANSWERS WERE ABSOLUTELY NO DOUBT, I KNEW IT WAS.
COUNSEL TESTIFIED HE DIDN'T RECALL SPECIFIC REASONING FOR NOT OBJECTING TO THAT BUT THAT HE HAD READ THE PREVIOUS RECORD WHERE THAT OBJECTION HAD BEEN MADE AND HAD BEEN OVERRULED.
AND TRIAL COUNSEL ALSO TESTIFIED THAT HE KNEW IT WAS COMMON PRACTICE IN THAT CIRCUIT FOR JUDGES TO ALLOW LAY WITNESSES TO TESTIFY THAT, TO THEIR OBSERVATIONS SOMETHING WAS INDEED BLOOD.
SO I THINK WHEN YOU LOOK AT THIS YOU HAVE TO ANALYZE IT UNDER AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AS OPPOSED TO WHAT COUNSEL IS REALLY TRYING TO ARGUE ALMOST MORE LIKE DIRECT APPEAL ISSUE WHETHER OR NOT A LAY WITNESS CAN TESTIFY TO THIS.
YOU HAVE TO ANALYZE IT UNDER THE INEFFECTIVE ASSISTANCE OF COUNSEL AND WHETHER TRIAL ATTORNEY PERFORMED EFFICIENTLY AND WHETHER THERE WAS ANY PREJUDICE.
AND AS TRIAL COURT DID IN HIS ORDER, OBVIOUSLY THERE'S NO PREJUDICE IN THIS CASE BECAUSE EVEN IF THE MR.^SWISHER HAD

OBJECTED OR ANYTHING, IT WOULD
HAVE BEEN CLARIFIED THIS WAS A
13-YEAR-OLD BOY.
HE DIDN'T PERFORM ANY
SCIENTIFIC TESTING ON THIS. THIS
WAS JUST BASED ON HIS COMMON
EXPERIENCE AND KNOWLEDGE OF
BLOOD AND IT APPEARED TO BE
BLOOD.
THAT'S WHAT WOULD HAVE CAME OUT
OF IT.
COUNSEL TALKS ABOUT HOW
CRITICAL DANNY FERNS WAS AND I
WOULD CONTEST THAT ALSO AND
NOTE THAT THIS COURT ON THE
APPEAL IN THIS CASE WHEN
ANALYZING THE SUFFICIENCY OF
THE EVIDENCE NEVER EVEN
DISCUSSES DANNY FERNS'S
TESTIMONY AT ALL.
HE IS NOT EVEN MENTIONED IN THE
OPINION IN THAT REGARD.
SO GRANTED HE DID CORROBORATE
PHILLIP BOLIN'S TESTIMONY BUT
IT WAS CERTAINLY NOT KEY TO THE
STATE'S CASE.
AS, THE COURT NOTED PHILLIP
BOLIN --
>> GOING BACK TO THE OPINION
TESTIMONY FOR A SECOND.
YOU DO REALIZE THAT IF WE AGREE
WITH YOU THAT THERE WILL BE A
SUPREME COURT OPINION SAYING
THAT A LAYPERSON CAN IDENTIFY
BLOOD ON A GARMENT ON THE RUG.
>> THERE ALREADY IS, YOUR
HONOR.
FLOYD VERSUS STATE WHICH IS
CITED IN HER BRIEF THIS COURT
SAYS --
>> 1990.
>> EXCUSE ME.

>> FLOYD VERSUS STATE, 1990.
>> 1990, RIGHT.
THAT CASE DEALT WITH LAW
ENFORCEMENT OFFICER TESTIFYING
TO BLOOD ON OBJECT.
THIS COURT SAID SPECIFICALLY
THAT IS WITHIN THE PERMISSIBLE
RANGE OF LAY OBSERVATION AN
ITEM WAS BLOOD ON TISSUE
BOX I BELIEVE IT WAS.
THIS COURT INDEED HAS SAID THAT
I DON'T THINK LAY WITNESSES
HAVE A PROBLEM IDENTIFYING A
SUBSTANCE AS BLOOD IN A GIVEN
CIRCUMSTANCE.
I DON'T THINK YOU CAN MAKE A,
YOU KNOW, ANY KIND OF
BRIGHT-LINE RULE AS TO WHEN
THEY CAN TESTIFY.
IF SOMEBODY SEE SOMEBODY GET
SHOULD OR STABBED AND SEES THEM
BLEEDING OBVIOUSLY THEY WILL BE
ABLE TO TESTIFY THAT'S BLOOD.
IF THEY SEE THEM LEAVE A PUDDLE
OF BLOOD ON THE GROUND THEY
WILL BE ABLE TO SAY, YEAH, THEY
SAW A PUDDLE OF BLOOD.
I DON'T SEE ANY PROBLEM WITH A
LAY WITNESS UNDER 90.7001
TESTIFYING IN THEIR OPINION THE
SUBSTANCE APPEARED TO BE BLOOD.
THE SECOND ISSUE DEALT WITH
THE, QUOTE, UNQUOTE,
ALTERNATIVE EXPLANATION FOR
WHAT THIS SUBSTANCE WAS FROM
OSCAR RAY BOLIN, SR..
AGAIN THIS IS AN INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM.
THE TRIAL ATTORNEY TESTIFIED AT
LENGTH AT EVIDENTIARY HEARING
WHY HE DID NOT CALL OSCAR RAY
BOLIN, SR. TO TESTIFY ABOUT

THIS SPRAY PAINT.
HE GAVE FIVE REASONS AS TO WHY
HE DIDN'T DO THIS.
I SUBMIT THOSE ARE ALL
SUPPORTED BY THE EVIDENCE
IN THIS CASE.
OF THE POST-CONVICTION COURT
MADE ERROR IN HIS ORDER,
GERTRUDE BOLIN TESTIFIED TO THE
SPRAY PAINT,
THAT DID NOT TAKE PLACE.
GERTRUDE BOLIN TESTIFIED AS TO
HOSES AND AS THE TRIAL ATTORNEY
MENTIONED AT EVIDENTIARY
HEARING, THE STATE IN CLOSING
ARGUMENT MADE LIGHT OF THAT AND
JURY WAS LAUGHING ABOUT
GERTRUDE BOLIN'S TESTIMONY.
THAT WAS BASICALLY HIS
REASONING FOR NOT CALLING OSCAR
RAY BOLIN, SR., HE WAS A
FATHER, BIASED WITNESS,
OBVIOUSLY AND THAT HE WAS NOT A
GOOD WITNESS.
THE TRIAL ATTORNEY HAD
CONFERRED WITH HIM AND FOUND
THAT HE WAS NOT CREDIBLE AND
ALSO HAD TALKED TO BOTH OSCAR
RAY BOLIN AND ROSALEE BOLIN AND
THEY HAD BOTH JOINTLY MADE THAT
DECISION ALSO THAT HE WOULD NOT
BE A GOOD WITNESS.
THOSE WERE A COUPLE OF REASONS
THAT COUNSEL GAVE WHY HE DID
NOT PRESENT OSCAR RAY BOLIN,
SR..
I WOULD SUBMIT THOSE REASONS AS
THE TRIAL COURT FOUND WERE
TACTICAL DECISION NOT SUBJECT
TO ATTACK IN THIS CASE.
IF THERE ARE NO FURTHER
QUESTIONS.

I ASK THIS COURT TO AFFIRM.
THANK YOU.
>> REBUTTAL?
>> IN RESPONDING TO THE STATE'S POSITION ON THE SECOND ISSUE, THAT THE REASONS THAT MR.^SWISHER GAVE IN THE TRIAL JUDGE IDENTIFIED, I BELIEVE THERE WERE FOUR IN HIS ORDER FOR NOT CALLING MR.^BOLIN.
IF THE COURT LOOKS CLOSELY AT MR.^SWISHER'S TESTIMONY AND AS WAS POINTED OUT IN INITIAL AND REPLY BRIEF EVERY REASON THAT MR.^SWISHER GAVE HE DISREGARDED HIS OWN REASONING AT SOME POINT IN THE CASE.
FOR EXAMPLE, HE TESTIFIED QUITE CLEARLY DURING THE EVIDENTIARY HEARING THAT HE DID NOT EVER RECALL TALKING TO MR.^BOLIN, SR. ABOUT THE PAINTING.
HE ONLY TALKED TO HIM ABOUT PENALTY PHASE.
THE DECISION WAS MADE NOT TO CALL ANY FAMILY MEMBERS AT ALL BECAUSE WE WANT TO SAVE THEM FOR PENALTY PHASE BUT HE STILL CALLED GERTRUDE.
THEN MR.^SWISHER OFFERED UP AS EXPLANATION FOR NOT CALLING OSCAR, SR. WAS THE FACT THAT THEY WEREN'T GOOD WITNESSES AND HE NEEDED, THEY WERE HILLBILLIES, FROM THE HOLLER, THEY WOULDN'T COME ACROSS WELL.
AGAIN HE CALLED GERTRUDE TO TESTIFY.
THE CONVERSATION THAT MR.^SWISHER ACKNOWLEDGED OCCURRED ABOUT WHETHER OR NOT MR.^AND MRS.^BOLIN, THE PARENTS

WOULD BE GOOD WITNESSES OR NOT
WAS STRICTLY DIRECTED AT
PENALTY PHASE.
I THINK THE RECORD IS AMPLY
CLEAR THAT MR.^SWISHER'S
EXPLANATIONS AND EXCUSES FOR
WHY HE DIDN'T USE OSCAR, SR. IN
THE GUILT PHASE IN THIS TRIAL
WERE SIMPLY THOUGHT UP AS AFTER
THE FACT JUSTIFICATION FOR WHY
HE DIDN'T DO WHAT HE NEEDED TO
DO THE FIRST TIME AROUND.
>> WHAT ABOUT THE FACT THAT HE
-- [INAUDIBLE]
>> WELL, AGAIN, WHAT THE
TIMELINE THAT WE'RE LOOKING AT
IS, THAT MR.^BOLIN
SPRAY-PAINTED AND THEN LEFT THE
STATE.
THERE WAS NO SUGGESTION THAT
FALLS INTO THE EXPLANATION.
IF THE SPRY PAINTING HAD
OCCURRED AFTER THE HOMICIDE
HAPPENED, IN OTHER WORDS, IF
MR.^BOLIN TESTIFIED I DIDN'T
LEAVE UNTIL CHRISTMAS,
OBVIOUSLY HIS TESTIMONY WOULD
HAVE BEEN OF NO VALUE.
FOR MR.^BOLIN'S TESTIMONY TO
HAVE MERIT, HE HAD TO HAVE DONE
THE PAINTING BEFORE THE CRIME
AND THAT'S WHAT HE TESTIFIED HE
DID.
I MEAN, YOU KNOW, QUITE
HONESTLY I'VE GOT SPRAY PAINT
ALL OVER MY YARD FROM THE
UTILITY COMPANY THAT'S
BEEN THERE FOR A MONTH
DESPITE ALL THE RAIN.
PAINT CAN LAST ON GRASS LONGER
THAN A COUPLE DAYS.
MR.^BOLIN'S TESTIMONY WAS

ESSENTIALLY, I DID THIS A WEEK
TO TWO BEFORE THIS HAPPENED
BECAUSE WE WERE GONE.
THE HOMICIDE HAPPENED ALLEGEDLY
ON DECEMBER 5th.
THAT WAS THE DATE THAT THE
STATE USED IN THE INDICTMENT.
MR.^BOLIN TESTIFIED IN 1996, WE
LEFT SHORTLY BEFORE
THANKSGIVING.
I BELIEVE THAT THANKSGIVING IS
GENERALLY THE THIRD
THURSDAY OF NOVEMBER.
IT IS ONLY HOLIDAY THAT IS
SPECIFIC, DOESN'T CHANGE YEAR
BY YEAR IN TERMS OF WHEN IT
OCCURS.
SO CLEARLY HE DID THIS
BEFOREHAND.
THERE WAS AN EXPLANATION THAT
CONTRADICTED DANNY FERNS'S
TESTIMONY ABOUT WHAT THAT
SUBSTANCE WAS.
>> WITH THAT, IF YOU BRING YOUR
ARGUMENT TO A CONCLUSION.
YOU'RE BEYOND YOUR TIME.
>> YOUR HONOR WHAT WE WOULD ASK
THE COURT TO DO IN THIS CASE IS
TO REVERSE THE ORDER OF THE
TRIAL COURT AND TO ORDER A NEW
TRIAL FOR MR.^BOLIN.
THANK YOU VERY MUCH.
>> MR.^NORGARD, MR.^AKE, THANK
YOU VERY MUCH FOR YOUR HELP ON
THIS CASE.
THE COURT WILL TAKE THIS CASE
UNDER ADVISEMENT.
THE COURT STANDS IN RECESS.
>> PLEASE RISE.
SUPREME COURT IS NOW
ADJOURNED.