WE WILL NOW MOVE TO THE SECOND CASE ON THE DOCKET.
WHICH IS THE STATE OF FLORIDA VERSUS VERNSON EDWARD DORTCH.
>> GIVE US A SECOND HERE.
YOU MAY PROCEED.
>> THANK YOU, YOUR HONOR.
JOSEPH CORONATO, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE.
THE ISSUE BEFORE THE COURT IS TO RESOLVE A CONFLICT AMONG ALL THE DCAs WHERE THE FOURTH, CONTRARY TO THE DECISION OF THE FIRST, THIRD AND FIFTH DISTRICTS HELD IN EMOTION TO WITHDRAW WE WAS NOT REQUIRED. TO RAISE A CHALLENGE TO THE VOLUNTARY INTELLIGENT NATURE OF THE PLEA.
>> MIA CHAY BROWN 9, THE RECORD SHOWS OCTOBER 15, 2015, 31/2 YEARS AGO, COUNSEL RAISED THE COMPETENCY TO VERNSON EDWARD DORTCH.
STAY WITH ME FOR A SECOND.
HE PLED GUILTY IN 2016.
AS OF THIS DATE, VERNSON EDWARD DORTCH HAS BEEN IN PRISON, HAS BEEN BEHIND BARS FOR ALMOST 31/2 YEARS AND AS WE STAND HERE TODAY, THERE HAS NOT BEEN A JUDICIAL DETERMINATION THAT HE IS COMPETENT TO PROCEED.
AM I CORRECT?
>> CORRECT.
>> SO AS HE SITS IN PRISON TODAY, HE IS DEEMED TO BE NOT COMPETENT TO PROCEED.
>> I DISAGREE WITH THAT.
THERE WAS NEVER AN ADJUDICATION OF INCOMPETENCE BUT THERE WAS ALSO NEVER A REQUEST FOR A HEARING IN THAT SENSE.
>> WE HAVE RULED REPEATEDLY THAT MERELY RAISING INCOMPETENT TO PROCEED IS SUFFICIENT TO FORCE THE PROCEEDINGS TO STOP UNTIL HE OR SHE IS DETERMINED TO PROCEED.

ONCE ON OCTOBER 15, 2015, IT
WAS DETERMINED IT WAS REQUESTED
THAT VERNSON EDWARD DORTCH BE
EVALUATED FOR COMPETENCY.
AS OF THAT DATE HE WAS
INCOMPETENT TO PROCEED UNTIL HE
WAS DETERMINED TO BE COMPETENT.
>> EXAMINATION IS REQUESTED BUT
IF YOU LOOK AT THE ACTUAL
MOTION AND THE MOTION IS REALLY
ULTRA-BARE-BONES.
IT DOESN'T SAY ANYTHING, NO
OBSERVATIONS ON THE PART OF
DEFENSE COUNSEL.
THERE WERE NO OBSERVATIONS IN
THE ORDER THAT FOLLOWED FROM
THE JUDGE.
FOUR LINES OF WHICH THEY CITED
THE RULE 3.210 BE AND WAVED THE
20 DAY REQUIREMENT.
AND THE TRIAL JUDGE ISSUES,
ONLY THE FINDINGS THE EXAMINING
DOCTOR COULD MAKE IN HIS ACTUAL
REPORTS, AND THE LANGUAGE
CONTAINED IN THIS ORDER, THERE
ARE OTHER REASONS, FOR THE
WHOLE COURT TO DETERMINE.
WHAT IS THE RELATIONSHIP GOING
ON BETWEEN THE DEFENDANT AND
HIS COUNSEL?
>> THE DEFENSE COUNSEL CAME IN.
I AM REQUESTING MY CLIENT BE
EVALUATED, YOU APPOINT THE
PSYCHOLOGIST OR WHOEVER,
WHETHER HE IS COMPETENT TO
PROCEED.
THAT IS NOT SUFFICIENT.
>> YES AND NO.
IT IS KIND OF TOUGH.
YES IN THE SENSE HE HAS TO
FOLLOW THE MOTION BUT HE MADE
NO OBSERVATION SO WE DON'T KNOW
WHAT IS WRONG WITH THE
DEFENDANT AT THAT TIME.
THERE WAS NO HE IS MAKING THIS
TYPE OF ACTION OR THAT TYPE OF
ACTION, THAT LEADS ME AS
DEFENSE COUNSEL TO BELIEVE HE
WAS INCOMPETENT AND THERE WERE
NO REASONABLE GROUNDS THAT WERE

JUSTIFYING THAT MOTION THAT
WERE MENTIONED IN THAT NOR WAS
THERE REASONABLE GROUND OR
ANYTHING ELSE OF THAT MATTER
MENTIONED IN THE TRIAL COURT'S
ORDER WHICH IS WHY MOTIONS
WITHDRAW IS IMPORTANT IN THIS
SITUATION BECAUSE THAT GIVES US
APPELLATE LAWYERS THE
OPPORTUNITY TO REVIEW IT AND
THE COURT LIKE YOURSELVES TO
DETERMINE WHAT IS GOING ON, TO
GET INTO THAT MOMENT IN TIME
AND SEE WHAT IS HAPPENING.
WE DON'T HAVE THAT HERE, WE
DON'T HAVE ANYTHING.
ALL I HAVE IS BARE-BONES MOTION
AND BARE-BONES ORDER WAVING THE
ACTUAL HEARING AND THERE'S
PLENTY OF OTHER REASONS THE
TRIAL COURT OF ORDER IT,
THERE ARE OTHER RULES, 3.216
WHICH ALLOWS THEM TO RAISE
CONFIDENTIALLY BETWEEN DEFENSE
COUNSEL AND HIS CLIENT TO
DETERMINE WHETHER IT IS
POSSIBLE ANY INSANITY DEFENSE
OR ANYTHING ELSE THAT IS
HAPPENING HERE --
>> CAN YOU THINK OF ANYTHING
MORE FUNDAMENTAL THAN A
CRIMINAL DEFENDANT BEING
COMPETENT TO ENTER A GUILTY
PLEA, RESULTING IN HIM GOING TO
PRISON?
>> OBVIOUSLY YES.
THERE IS, THAT IS A FUNDAMENTAL
RIGHT BUT THAT IS THE POINT OF
A PLEA HEARING.
WE HAVE A FULL COLLOQUY BY THE
TRIAL COURT.
THE TRIAL JUDGE EVALUATED THE
DEFENDANT, THERE IS COMPLETE
INTERACTION AMONG THE TWO OF
THEM.
THE DEFENDANT WAS HE REQUESTING
THIS OPEN PLEA.
HE WAS ADAMANT HE WANTED THE
PLEA, THIS IS WHAT IS GOING ON.
OBVIOUSLY THE PLEA TRANSCRIPT

BETWEEN THE TWO OF THEM --
>> HE WAS REPRESENTED AT THE TIME.
>> BY MULTIPLE DEFENSE COUNSEL.
>> WHAT WAS THE TIME BETWEEN THE MOTION THAT WAS MADE IN THE PLEA HEARING?
>> BETWEEN THE MOTION OF THE PLEA HEARING?
TEN MONTHS GIVE OR TAKE.
>> WERE THERE TWO CASES?
>> THERE WERE TWO CASES.
>> THE MOTION WAS MADE IN ONE OF THE CASES.
>> THE REGIONAL CASE OF HAVE TO CASE.
>> WITH THE PLEA TAKEN IN THE SAME CASE?
WAS IT TAKEN, WERE CHARGES IN BOTH CASES RESOLVED AT THE PLEA HEARING?
>> YES, IT WAS A UNIVERSAL PLEA.
>> WAS THERE ANY INDICATION ON THE RECORD AT THE PLEA COLLOQUY THE DEFENDANT WAS INCOMPETENT?
>> KNOW.
>> IT WAS TRADITIONAL PLEA COLLOQUY?
>> VERY TRADITIONAL PLEA COLLOQUY.
>> IT DID NOT SEEM TO BE THAT I SAW, MAYBE I MISSED IT, THAT THE JUDGE DID WHAT MOST JUDGES DO AND ASK ABOUT COERCION OR ANY MENTAL HEALTH ISSUES.
WITH THAT MISSING FROM THE COLLOQUY?
>> I DON'T SPECIFICALLY CALL IT BEING MENTIONED IN THEIR BUT IT DIDN'T STAND OUT TO ME IN THE PLEA TRANSCRIPT.
>> IS IT ANYWHERE ELSE IN THE RECORD?
A DISCUSSION OF THOSE THINGS?
>> KNOW.
ABSOLUTE NOT.
>> WHAT ABOUT THE PLEA FORM?
>> YES.
THE INITIAL NEXT TO IT.

>> YOU DISCUSS PRESSURE AND
PRIOR MENTAL HEALTH HISTORY?
>> YES.
>> THE QUESTIONS OF THE PLEA
COLLOQUY, HAVE YOU REVIEWED
THAT FORM?
>> OF COURSE.
>> HAVE YOU READ IT OR SOMEONE
READ IT TO YOU?
>> YES.
>> WHAT WERE THE ANSWERS?
>> IN THE AFFIRMATIVE.
>> WITH THEIR INDICATIONS OF
THE COUNTRY?
>> NO INDICATION.
>> BUT HE HAD READY TO HIS
CLIENT?
CLIENT UNDERSTUDY?
>> YES.
>> LET ME ASK YOU THIS.
AFTER THE PLEA WAS ENTERED THE
APPOINTED COUNSEL WOULD HAVE 30
DAYS OF NOTICE OF APPEAL,
CORRECT?
>> YES.
>> AND 30 DAYS TO FILE THE
MOTION TO WITHDRAW PLEA IF
COUNSEL HAD ANY GOOD FAITH
BASIS TO QUESTION THE
COMPETENCY OF THE DEFENDANT AT
THE TIME OF THE PLEA?
>> YES.
>> EITHER COULD HAVE HAPPENED?
>> YES.
>> IF WE RULE AS THE FOURTH
DISTRICT DID HERE, IT WOULD
ALLOW AN ATTORNEY WITH NO GOOD
FAITH BASIS TO QUESTION THE
COMPETENCY OF THE PLEA TO
NONETHELESS PREVAIL ON APPEAL
JUST BASED ON WHAT IS NOTHING
MORE THAN A TECHNICALITY.
WHEN THE PLEA COLLOQUY,
QUESTIONS AND ANSWERS DID
ADDRESS MENTAL HEALTH AND THERE
WAS NO INDICATION ANY
COMPETENCY ISSUE.
>> EXACTLY OUR POINT.
IT IS ALMOST A PER SE
REVERSIBLE TECHNICAL ISSUE THAT

THEY RULED HERE.
THAT LEADS TO THE IMPORTANCE OF THIS COURT'S DECISION IN ROBINSON VERSUS STATE WHICH IS THERE IS A PROCEDURE.
THE PROCEDURE IS YOU HAVE TO FILE A MOTION TO WITHDRAW A PLEA AND THIS COURT HAS STATED IN MULTIPLE CASES THERE ARE NO EXCEPTIONS TO THAT RULE.
>> JUST SO I'M CLEAR AND I WANT TO MAKE SURE WHERE YOU ARE.
IF A MOTION TO EXAMINE A DEFENDANT TO DETERMINE WHETHER HE IS COMPETENT TO PROCEED OR NOT IS FILED AND IT JUST SITS THERE, NO ACTION IS TAKEN ON IT AND LATER ON, A YEAR LATER OR WHATEVER A DEFENDANT PLEADS GUILTY TO THE NEGOTIATED PLEA OR WHATEVER.
GUESS WHAT YOU ARE SAYING?
THE MOTION TO DETERMINE COMPETENCY IS WAIVED.
WE CAN SPECULATE FROM THE MERE FACT THAT COUNCIL DECIDED TO TAKE THE PLEA TO RECOMMEND THE PLEA THAT NOW I REALLY THINK HE IS COMPETENT.
>> IN THIS CASE YES.
THE FACTS PRESENTED IN THIS CASE I WOULD SAY YES TO THAT QUESTION.
I DON'T THINK IT IS SOMETHING THAT CAN BE DETERMINED EVERYTHING A TIME.
IT IS SOMETHING EVALUATE A CASE TO CASE BASIS THAT WAS BASICALLY THIS COURT'S REASONING IN VERNSON EDWARD DORTCH -- REALLY YOU HAVE TO LOOK AT THE FACTS.
WE DON'T HAVE MUCH TO GO OFF OF AND THAT IS WHY --
>> THE ANSWER TO THE QUESTION IS YES AND ISN'T IT NOT AN UNUSUAL CIRCUMSTANCE, THERE IS A SUPPRESSION MOTION FILED BUT NEVER CALLED FOR HEARING AT ANY PARTICULAR TIME AND THERE IS

ULTIMATELY AND ALL SUBSIDIARY
MOTIONS THAT ARE PENDING ARE
WAIVED, YOUR WAVING YOUR
RIGHTS.
>> THAT THE POINT OF A PLEA,
YOUR WAVING FUNDAMENTAL RIGHTS.
WHICH WILL BRING US TO OUR
SECOND POINT.
THE MOST TO WITHDRAW PLEA IS
OUR FIRST JURISDICTIONAL ISSUE
AND THE STATE WOULD PRESENTED
TO YOUR HONORS THERE BUT THE
SECOND IS IF THIS COURT FINDS
THERE WERE PROPER GROUNDS FOR
THE APPEAL THE STATE IS
REQUESTING THE PROPER REMEDY TO
DO THAT WOULD BE
RELINQUISHMENT.
THIS COURT IN STATE VERSUS
FOWLER DETERMINED THE FACTS OF
THE CASE ARE LITTLE DIFFERENT
THAN HERE.
THE DEFENDANT WAS PRIOR
ADJUDICATED AND COMPETENT IN
FOWLER.
>> THAT I GO BACK?
FOR OPPOSING COUNSEL SEEMS TO
SUGGEST AND I THINK HE WILL
ARGUE IN A FEW MINUTES, THIS
FALLS UNDER THE EXCEPTION FOR
JURISDICTIONAL PURPOSES AS
PROVIDED BY LAW AND TELL ME WHY
THAT IS WRONG.
>> I DON'T LIKE THAT.
>> I KNOW YOU DON'T LIKE IT.
>> I'M TRYING TO FABRICATE IT?
IT GETS US TO THE SAME POINT,
TRYING TO FIGURE OUT WHAT IS
GOING ON.
IT IS FORM OVER SUBSTANCE.
>> IF HE IS NOT WRONG, THIS
DOES FALL UNDER THE PROVIDED BY
LAW EXCEPTION I AGREE.
THROUGH DIRECT APPEAL AND
MOTION TO WITHDRAW PLEA.
DOES THIS FALL UNDER THE
EXCEPTIONAL NOT?
>> I MY NOT BEING CLEAR?
>> THE RULE SAYS YOU CAN NEVER
APPEAL A PLEA FOR TWO THINGS,

WHAT IS A RESERVATION OF
RIGHTS.
THE OTHER IS IF IT IS A SUBJECT
MATTER JURISDICTION ISSUE, IF
THERE'S A SENTENCING ERA, IF
THE PLEA IS INVOLUNTARY, OR AS
OTHERWISE PROVIDED BY LAW.
MY QUESTION IS WHY IS THIS NOT
AS OTHERWISE PROVIDED BY LAW?
>> WHAT COUNSEL IS IMPLICATING
HERE IS THE IMPLICATIONS OF
THAT SUGGEST YOU ARE ENTITLED
TO A FUNDAMENTAL REVIEW OF
EVERY PLEA COMING OUT AND TO ME
IT TAKES IT BEYOND THE SCOPE OF
WHAT THE RULE IS SET IN PLACE
FOR.
THE RULE WAS SET IN PLACE FOR
VERY SPECIFIC TYPE --
>> WHAT I READ COUNSEL A THING
IS WHAT WE SAID, IT IS A
FUNDAMENTAL RIGHT THAT ONE HAVE
COMPETENCY HEARING, THESE
PROCEDURES LAID OUT WHEN
PROPERLY RAISED, THERE WAS A
PROPERLY RAISED MOTION, THEY
DIDN'T GO THROUGH THOSE THINGS
AND SO THIS IS ONE OF THOSE
AREAS AS OTHERWISE PROVIDED BY
LAW THAT ALLOWS FOR AN APPEAL
DESPITE THE APPEAL WAIVER.
THAT IS WHAT I UNDERSTAND YOUR
OPPOSING COUNSEL TO BE SAYING
AND TELL ME IF I'M WRONG.
>> YOU ARE CORRECT ON THE ISSUE
HE IS RAISING.
>> WISE THAT WRONG?
>> IT IS PRESUPPOSING A LOT OF
DIFFERENT THINGS.
ONE, IT IS PRESUPPOSING TO ME
THE FUNDAMENTAL RIGHT THAT IS
AT ISSUE IS HE WAS DETERMINED
INCOMPETENT AT SOME TIME.
HE IS PRESUMED MENTALLY
COMPETENT.
>> WHAT THE PROPER MOTION IS
RAISED IS ENTITLED TO CERTAIN
PROCEDURES.
>> VERNSON EDWARD DORTCH HAD A
DIFFERENT SET OF FACTS IN FRONT

OF IT.
HE WAS A PRIOR LEE ADJUDICATED INCOMPETENT.
THIS WAS ABOUT RESTORING HIS COMPETENCE.
THAT IS NOT REALLY APPLICABLE BECAUSE WE DON'T HAVE A PRIOR ADJUDICATION OF INCOMPETENCE.
WHAT WE HAVE GOING ON HERE IS ALMOST A QUESTION AS TO WHETHER I NEED TO RAISE THAT ISSUE.
THE FACTS THAT ARE PRESENTED, IS THERE A RELATIONSHIP ISSUE BETWEEN DEFENSE COUNSEL AND THE DEFENDANT?
IS THERE ANOTHER WAY WE ARE RAISING THIS ON BEHALF OF DEFENSE?
WE ARE GETTING TO THAT POINT, BUT A LITTLE TOO SOON.
IT REQUIRES A LOOK AT WHAT WAS ACTUALLY PRESENTED TO THE COURT HERE.
>> I DON'T DISAGREE THAT IT IS BEST TO HAVE A FACTUAL LAYING OUT OF THESE THINGS, THAT YOUR POINT.
MY POINT IS YOU SAID THIS IS THE JURISDICTIONAL BAR THAT THE ONLY WAY YOU WIN THAT ARGUMENT IS IF THIS IS NOT AS OTHERWISE PROVIDED BY LAW.
>> WHAT ARE SOME OTHER EXAMPLES OF WHAT OTHERWISE PROVIDED BY LAW MIGHT BE REFERRING TO?
>> TOUGH TO SAY EXACTLY WHAT THAT WOULD BE.
I AM NOT SURE HOW TO ANSWER THAT QUESTION.
OTHERWISE PROVIDED BY LAW IS A CATCH ALL PHRASE.
I DON'T NECESSARILY KNOW ANYTHING OFF THE TOP OF MY HEAD.
>> LET'S LOOK AT SOME EXAMPLES.
WE SEEM TO SUGGEST EVEN THOUGH I DON'T KNOW WE SAID IT THIS WAY THE DOUBLE DEBRIS VIOLATIONS ARE SOMETHING THAT CAN BE BROUGHT UP.

>> CORRECT.
>> THAT THE CONSTITUTIONAL
RIGHT.
>> - ANY VIOLATION.
>> IS THIS THE NATURE OF THAT?
>> I DON'T SEE IT BEING THAT
FAR.
>> WHAT ABOUT TG, DEPRIVATION
OF COUNSEL FOR A JUVENILE IS
SOMETHING OTHERWISE PROVIDED BY
LAW?
>> RIGHT.
YOU HAD AN ISSUE IN TERMS OF
BEING COUNSELED BY A JUVENILE
BEING COUNSELED, A JUVENILE
BEING COUNSELED, PERIOD.
THAT RAISES A DIFFERENT
COMPLETELY AND UTTERLY
DIFFERENT SET OF FACTS.
>> ONE POTENTIALLY NOT
COMPETENT TO MAKE THESE
DECISIONS, NOT THE EQUIVALENT
OF SOMEONE NOT REPRESENTED BY
COUNSEL OR JUVENILES NOT
REPRESENTED BY COUNSEL.
>> MORE OF A PROPER WAIVER OF
THAT ISSUE.
WHETHER THE COURT LETTER PROPER
FACTUAL BASIS IN ORDER FOR THAT
COUNSEL TO MAKE A DEFENDANT IN
THIS CASE A JUVENILE TO MAKE AN
INFORMED DECISION WHETHER TO
DISCHARGE HIS COUNSEL OR NOT
AND I THINK JUVENILES ARE
DIFFERENT PERIOD.
THIS COURT SAID IT WAS A
LIMITED EXCEPTION THEY ARE
CREATING AND AFFIRM THAT
ROBINSON WAS WHAT THE COURT
WANTED TO MOVE FORWARD.
I HOPE THAT ANSWERS YOUR
QUESTION.
>> YOU ARE NOW INTO YOUR
REBUTTAL TIME.
>> I WILL CONTINUE ON REBUTTAL.
>> YOUR HONORS, BENJAMIN
EISENBERG ON BEHALF OF THE
RESPONDENT, VERNSON EDWARD
DORTCH.
THE ISSUE IS NOT WHETHER MY

CLIENT IS OR IS NOT INCOMPETENT
BECAUSE WE DON'T KNOW.
THE QUESTION IS WHETHER
ADEQUATE PROCEDURES WERE
FOLLOWED TO DETERMINE WHETHER
OR NOT HE IS INCOMPETENT.
THERE IS A NOTION THE DATE
DECADES EARLIER TO THE UNITED
STATES TO BRING COURT DECISIONS
ABOUT ROBINSON AND MISSOURI,
THE US SUPREME COURT SAID
FAILURE TO SERVE PROCEDURES
ADEQUATE TO PROTECT THE
DEFENDANT'S RIGHT NOT TO BE
TRIED AND CONVICTED WHILE
INCOMPETENT TO STAND TRIAL
DEPRIVED HIM OF DUE PROCESS
RIGHT TO A FAIR TRIAL.
THIS COURT RECOGNIZED THAT IN
DOWDY -- DOHERTY.
THE PROCEDURES OUTLINED IN
CRIMINAL PROCEDURE 3.20,
DEPRIVED THE DEFENDANT OF DUE
PROCESS RIGHT TO A FAIR TRIAL.
>> THAT DOESN'T ANSWER THE
QUESTION.
WE HAVE SOMETHING ELSE AT PLAY
HERE.
I WANT TO ASK BEFORE I GO
THERE.
YOU SEEM TO SUGGEST IF IT IS A
FUNDAMENTAL ERROR, THAT IS
REVIEWABLE UNDER THE AS
PROVIDED BY LAW STANDARD.
CORRECT?
>> WITH A CERTAIN LIMITATION
THAT FUNDAMENTAL ERRORS CAN BE
RAISED UNDER THIS SUBSECTION AS
LONG AS IT PERTAINS
CONTEMPORANEOUSLY WITH THE
PLEA.
ONCE A DEFENDANT ENTERED A PLEA
OF GUILTY, THE ONLY POINT
AVAILABLE FOR APPEAL CONCERN
ACTIONS THAT TOOK PLACE
CONTEMPORANEOUSLY.
>> THAT WE GO TO THE
VOLUNTARINESS OF THE PLEA.
>> WEATHER DUE PROCESS WAS
FILED.

AND WHETHER THE SPECIFICS ON IT
AND ATTORNEY-CLIENT PRIVILEGE
--
>> IF ONE CANNOT VOLUNTARILY
PLEAD GUILTY, THAT IS THE WHOLE
POINT, AS JUSTICE LAWSON SAID
FOR A JUDGE TO CONDUCT AN
INQUIRY TO MAKE SURE IT IS A
VOLUNTARY PLEA.
A DEFENDANT, FALLEN TERRIBLY
AND INTELLIGENTLY ENTERING INTO
THE PLEA.
>> I AGREE IT IMPRISONS ON
VOLUNTARINESS AND INTELLIGENT
THIS BUT WHETHER OR NOT SOMEONE
HAS LEGAL ABILITY TO COME INTO
IT.
AS THE US SUPREME COURT
RECOGNIZED FOR ALABAMA, IT IS
MORE THAN A CONFESSION.
IT IS BASICALLY NOTHING LEFT
THE WE DO.
>> IT IS THE SAME THING FOR
COERCION.
THEY ARE NOT DOING IT OF THEIR
FREE WILL AND TO RAISE A SERIES
DUE PROCESS CONCERNS.
>> IT IS A DEPRIVATION OF DUE
PROCESS.
IT IS RAISED ON GROUNDS AND DUE
PROCESS VIOLATION.
IT MAKES A FUNDAMENTAL ERROR.
>> IN ROBINSON WITHOUT VERY
NARROW GROUNDS, YOU CAN'T
APPEAL TO THESE EXCEPTIONS, AND
IN TG, YOU ARE OPPOSING
COUNSEL'S CORRECT, WE CARVED
OUT AN EXCEPTION, WE
ESSENTIALLY SAID THE RULE
STANDS AND THERE IS NO OTHER
EXCEPTION TO THAT.
WHERE DOES THAT LEAVE US?
>> THE RULE OF ROBINSON DOES
STAND IN THE RULE OF ROBINSON
APPLIED BUT THERE WAS REVERSAL
BECAUSE THE ERROR WAS
FUNDAMENTAL.
>> THE COURT WAS CAREFUL, WE
EMPHASIZE THAT IN ALL CASES
INVOLVING A CHALLENGE TO THE

VOLUNTARINESS OF THE PLEA, I AM
A MEETING A FEW THINGS, THE
PROCEDURE OF ROBINSON SHOULD BE
FOLLOWED.
>> I AGREE BUT FUNDAMENTAL
ERROR DOES NOT ARISE THAT
OFTEN.
>> I WANT TO TALK ABOUT
FUNDAMENTAL ERROR.
IS THERE A DIFFERENCE BETWEEN A
WAIVER AND RIGHT TO PLEA, AND
WHAT IS REVIEWABLE AND
UNPRESERVED.
>> IT CAN BE WAIVED BUT THE
PROBLEMS --
>> THE WAIVER OF RIGHT TO
APPEAL.
ARE THOSE TWO CONCEPTS?
>> IN A SITUATION WHERE SOMEONE
MAY NOT BE INCOMPETENT THAT
PERSON CAN'T MAKE THE DECISION.
>> TAKE THAT OUT OF IT.
IS THERE A DIFFERENCE BETWEEN I
WAIVE MY RIGHT TO APPEAL VERSUS
I DID NOT OBJECT RAISING AND
UNPRESERVED ERROR UNDER THE
FUNDAMENTAL ERROR DOCTRINE.
>> THERE IS A DIFFERENCE
BECAUSE YOU'RE NOT ALLOWED TO
BRING THE APPEAL AT ALL.
>> IS THAT WHAT HAPPENED?
>> HE NEVER WAIVED HIS RIGHT TO
APPEAL.
>> LET'S LOOK AT THE PLEA
COLLOQUY.
PAGE 12, 87, OF THE RECORD.
YOU'RE GIVING UP YOUR RIGHT TO
APPEAL THAT THERE IS NO APPEAL
IN LEGAL SENTENCE.
YES, YOUR HONOR.
>> THE CLIENT MAY OR MAY NOT BE
INCOMPETENT.
IS PAID
>> IS THAT A WAIVER OF RIGHT TO
APPEAL?
>> I DON'T BELIEVE SO BECAUSE
IT WAS NOT A PLEA AGREEMENT
WHERE THE DEFENDANT AGREED JUST
BECAUSE THE JUDGE SAID THAT,
THE PLEA AGREEMENT AND THIS

COURT HELD THAT THE RIGHT TO
APPEAL FROM A PLEA, NOT PART OF
THE PLEA AGREEMENT BUT WHETHER
OR NOT IT IS.
>> THE EXCEPTION, IN 1.40.
>> I AGREE.
AS THE SUPREME COURT HELD
DECADES AGO, THEY MADE A
SIMILAR ARGUMENT THAT THE
DEFENDANT WAIVED A COMPETENCY
HEARING OF THE SUPREME COURT
SAID IT IS CONTRARY TO ARGUE
THE DEFENDANT MAY BE
INCOMPETENT BUT KNOWINGLY OR
INTELLIGENTLY WAIVED HIS RIGHT
TO HAVE THE COURT DETERMINE HIS
COMPETENCY TO STAND TRIAL AND
THE SAME APPLIES HERE.
HERE YOU HAVE A DEFENSE
ATTORNEY WHO AFTER SPEAKING
WITH THE DEFENDANT DETERMINES
THERE IS SOMETHING TO CAUSE THE
DEFENSE TO BELIEVE THAT PERSON
IS INCOMPETENT.
THEY INSTITUTED PROCEDURES OF
3.20.
THE ORDER REFERENCE IS 3.20 B
AND SAYS DOCTORS APPOINTED FOR
PURPOSES OF COMPETENCY PURSUANT
TO FLORIDA CRIMINAL PROCEDURE
3.20.
THAT IS THE RULE THAT IS
IMPLICATED HERE AND THIS COURT
RECOGNIZED IN DOWDY AND --
DOHERTY.
THE RULE DOES NOT HAVE
DISCRETION.
IT USES TERMS LIKE SHALL AND
IMMEDIATELY.
AS THIS COURT HELD IN DOHERTY,
THE REQUIREMENTS OF THAT RULE
ARE REQUIRED, THEY ARE
NECESSARY AND CANNOT BE WAIVED.
>> LET ME ASK YOU AND UNRELATED
ISSUE.
I DO KNOW THAT ALL DEFENDANTS
ARE PRESUMED TO BE CONFIDENT
UNTIL.
IS THAT UNTIL THERE IS A
COMPETENCY DETERMINATION OR

UNTIL THE MOTION IS FILED
REQUESTING?
WHAT IS THE UNTIL?
>> UNTIL SOMEONE HAS RAISED THE
ISSUE.
>> THE LAW IS VERY SPECIFIC BUT
I DON'T REMEMBER WHAT THE UNTIL
IS.
I THINK IT IS UNTIL THERE IS
DETERMINATION OF INCOMPETENCE
THAT A PERSON IS LEGALLY
PRESUMED TO BE COMPETENT.
I'M PRETTY CONFIDENT THAT IS
THE LAW.
>> I BELIEVE THEY ARE BUT AT
THE SAME TIME --
>> THE DEFENDANT WOULD BE
LEGALLY PRESUMED COMPETENT AT
THE TIME OF THE PLEA HEARING.
>> I BELIEVE SO.
>> HE HAS STILL BEEN DENIED DUE
PROCESS ONCE SOMEBODY QUESTIONS
THE COMPETENCY OF THE
DEFENDANT, THAT NEEDS TO BE
RESOLVED.
>> THAT IS BECAUSE THE
PROCEDURAL RULE SAYS THAT IS TO
BE RESOLVED BUT IN TERMS OF
LEGAL PRESUMPTION I AM PRETTY
CONFIDENT CASE LAW IS YOUR
PRESUMED COMPETENT UNTIL THERE
IS A DETERMINATION OTHERWISE
AND THEN YOUR PRESUMED
INCOMPETENT UNTIL THERE IS A
DIFFERENT DETERMINATION.
THAT IS THE WAY THE LAW IS
BLACK LETTER LAW.
>> AS THE JUSTICE STARTED TO
MENTION --
>> YOU HAVE A DEFENDANT
ENTERING A PLEA WHO WOULD BE
PRESUMED COMPETENT.
I UNDERSTAND THERE'S A RULE
THAT ONCE THE ISSUE IS RAISED
IT NEEDS TO BE DETERMINED.
YOU ALSO HAVE A POINT OF
COUNSEL THAT WOULD HAVE A DUTY
TO RAISE COMPETENCY IF HE HAD
ANY BASIS TO BELIEVE THE
DEFENDANT WAS INCOMPETENT.

>> AND HE DID.
>> THE PLEA COLLOQUY, THERE'S A LAWYER REPRESENTING THIS PERSON WHO WOULD HAVE A DUTY AT THAT POINT TO SAY JUDGE, HOLD ON, I HAVE REASON TO BELIEVE MY CLIENT MAY NOT BE COMPETENT AND THEY WOULD HAVE AN OBLIGATION TO RAISE AT THE PLEA HEARING AND THAT IS TRUE.
>> CORRECT BUT THEY HAVE ALREADY CHALLENGED --
>> THE JUDGE HAS LEGAL ALLEGATION TO STOP EVERYTHING IF THE JUDGE DURING THE PLEA COLLOQUY HAS ANY INDICATION IF IT IS AND COMPETENT.
>> THE TRIAL JUDGE IN THIS CASE DIDN'T ARE IN ORDER TO DETERMINE COMPETENCY BECAUSE ONE OF THE PARTIES THAT IS DEFENSE COUNSEL FELT THERE WERE REASONS.
>> TALK ABOUT WHAT IS GOING ON AT THE PLEA HEARING AND PROTECTIONS OTHER THAN THE RULE THAT ARE THERE TO ASSURE A PERSON WHO IS INCOMPETENT AT THE TIME OF PLEA HAS ALL THE PROTECTIONS, WE HAVE A PRESUMPTION BUT WE ALSO HAVE AN ATTORNEY AND THE JUDGE WHO ARE DUTY-BOUND TO RAISE THE LAW AT THE HEARING IF THERE IS ANY REASON TO BELIEVE THE PERSON IS NOT COMPETENT.
>> THEY WERE DUTY-BOUND TO FOLLOW THE RULES --
>> IT IS DIFFERENT QUESTION BUT THEY WERE DUTY-BOUND TO RAISE THE ISSUE DURING THE COMPETENCY HEARING AND GET THE ISSUE ADDRESSED IF THERE WAS ANY INDICATION AT THE TIME THE DEFENDANT WAS INCOMPETENT?
>> I AGREE BUT IT IS CLEAR ON THE FACE OF THE RECORD THAT DEFENSE COUNSEL --
>> YOU HAVE AN APPELLATE COUNSEL, IF HE HAD A GOOD FAITH

BASIS TO BELIEVE THE DEFENDANT
DID NOT VOLUNTARILY ENTER A
PLEA BASED ON COMPETENCY ISSUE.
>> THE PROBLEM IS AS THE
DISTRICT COURT OF APPEAL
INDICATED BY THE TIME IT GETS
TO APPELLATE LAWYER, I WOULD
NOT BE A TO MOVE TO WITHDRAW
THE PLEA BECAUSE TRYING TO
FOLLOW THE WITHDRAWAL PLEA --
>> DOES THAT FOLLOW NOTICE OF
APPEAL?
>> TRIAL COUNSEL, YOU MENTIONED
APPELLATE COUNSEL.
>> HAD APPOINTED COUNSEL.
>> ALSO THE BELIEF RULE 3.20
PROCEDURES --
>> IF YOU HAD A REASONABLE
BASIS TO QUESTION THE
COMPETENCY OF YOUR CLIENT AT
THE TIME OF THE PLEA.
TO RELINQUISH JURISDICTION TO
FILE MOTION TO WITHDRAW THE
PLEA.
>> THE PROBLEM WAS RECOGNIZED
BY THE COURT OF APPEAL, THE
ONLY REMEDY AT THAT POINT FOR
THE DEFENDANT WHO MAY HAVE BEEN
AND MAY STILL BE INCOMPETENT,
TO FILE A 3850 MOTION ON HIS
OWN BECAUSE YOU ARE NOT
ENTITLED TO COUNSEL ON
POSTCONVICTION NOTION.
WE HAVE A DEFENSE COUNSEL WHO
FROM THE GET-GO WAIVED
PROCEDURES OF 3.20 AFTER SAYING
THE DEPARTMENT MET WITH
STANDARDS FOR POTENTIALLY BEING
INCOMPETENT AND THE ERROR THAT
HAPPENED IN THIS CASE IS MORE
EGREGIOUS THAN WHAT THE COURT
IN DOHERTY CAME BACK AND THE
DEFENDANT WAS COMPETENT.
IF THERE'S ANY VALUATION, THE
PROCEDURES ARE FOLLOWED.
>> WE HAVE A PLEA COLLOQUY THAT
IS THE RECORD.
>> THERE ARE ISSUES WITH
INCOMPETENCY.
THERE'S A REASON EXPERTS ARE

APPOINTED AND THE REASON THE
TRIAL JUDGE HAS TO MAKE THE
DETERMINED BASED ON THE REPORTS
BECAUSE THERE ARE NUANCES TO
COMPETENCY THAT MAY NOT SHOW
ITSELF.
THAT IS WHY THERE ARE MANDATORY
REQUIREMENTS.
IN PAPERS AS ROBINSON WHICH IS
THE SUPREME COURT --
>> THERE MAY BE CLOSE
QUESTIONS, WITH SIGNIFICANT
MENTAL HEALTH ISSUES AS TO
COMPETENCY, I WOULDN'T SAY THAT
IN MOST CASES IT IS A NUANCED
QUESTION, WHETHER WE HAVE
MENTAL CAPACITY TO UNDERSTAND
THE RIGHTS THEY ARE GIVING UP.
AND THE PLEA COLLOQUY TO ENGAGE
WITH THE PERSON AND MAKE A
DETERMINATION.
BEFORE ENTERING THE PLEA.
>> IT DOESN'T ILLUSTRATE
COMPETENCY.
THERE IS NO ORAL QUALITY, WE
DON'T HAVE A RECORD OR ANYTHING
TO SAY THIS PERSON IS COMPETENT
OR PRESUMED THAT.
THE PLEA FORM SAYS THE
DEFENDANT ENTERED THIS PLEA
CONTRARY TO THE ADVICE OF HIS
COUNSEL AND THE TRIAL JUDGE
SAID IS A 3-YEAR MANDATORY
MINIMUM AND THE DEFENDANT KEPT
ASKING THAT HE SERVE NO TIME,
THAT EVERYTHING BE MADE IN
PROBATION.
THERE ARE QUESTIONS IN THAT
REGARD.
AND WHETHER IT IS COMPETENCY
EVALUATION, THE PROCEDURES, IT
IS MANDATORY AS RULE OF LAW
THAT CAME DOWN FOR DECADES
BEGINNING WITH FOWLER AND
CONTINUING WITH DOHERTY.
EVERY DISTRICT COURT OF APPEAL
FOUND WHEN DEFENDANT GOES TO
TRIAL, FUNDAMENTAL ERROR CAN BE
RAISED FOR THE FIRST TIME.
>> IS THE IMPLICATION ONCE THE

DEFENDANT SETS THE PROCESS IN MOTION IT BECOMES NOT WAIVABLE? IT DOESN'T MATTER, IF THEY SAY TO THE JUDGE, THIS EXAMINATION HASN'T HAPPENED AND WE DON'T CARE.
THE IMPLICATION OF WHAT YOU ARE SAYING IS YOU WOULD STILL BE HERE MAKING THE SAME ARGUMENTS BECAUSE ONCE YOU SET THAT EMOTION WE CAN'T TRUST EVERYTHING YOU DO AT THAT POINT.
>> THERE ARE SPECIFIC PROCEDURES THAT ARE MANDATORY, STATES SHALL AND IMMEDIATELY ANSWER TIME REQUIREMENTS.
>> IT IS NOT WAIVABLE.
>> AS THE SUPREME COURT SAID IT IS CONTRARY TO ARGUE THE DEFENDANT MAY BE INCOMPETENTLY BUT WAIVED THE RIGHT TO HAVE HIS COMPETENCY TO STAND TRIAL.
THE DECISION WHETHER THE DEFENDANT WAS COMPETENT WAS NOT FOR TRIAL COUNSEL BUT THE TRIAL JUDGE, TO DO SO BASED ON REPORTS OF THE EXPERTS.
WE KNOW THE TRIAL JUDGE MUST NOT HAVE SEEN ANY REPORTS BECAUSE THERE AREN'T ANY IN THE RECORD.
>> WOULD YOU AGREE, DO YOU AGREE WITH THE REMEDY SUGGESTED BY THE STATE THAT THIS SHOULD BE REMANDED OR RELINQUISHED FOR COMPETENCY DETERMINATION IF YOU HAVE REASONABLE BASIS TO QUESTION THE COMPETENCY OF YOUR CLIENT AT THE TIME?
>> IT IS FOR A COMPETENCY HEARING, AS TO WHETHER RELINQUISHMENT MUST BE THE REMEDY.
AND IT HAS TO BE THE REMEDY IN EVERY CASE.
THEY ARE LIMITED GROUNDS JUST TWO WEEKS AGO.
THE RIGHT TO APPEAL, THE RULES OF CRIMINAL PROCEDURE IS THE

MECHANISM FOR RELINQUISHING --
>> IF POSSIBLE.
IF POSSIBLE.
ONE OF THE PROBLEMS WAS THE ATTORNEY STIPULATED COMPETENCY AND WE DETERMINE THE JUDGE DID NOT HAVE TO ACCEPT THE STIPULATION AND THE JUDGE HIMSELF OR HERSELF BASED ON OBSERVATIONS MAKE A DETERMINATION ON COMPETENCY AND FOR THAT REASON THE JUDGE PLAYS AN INTEGRAL PART IN PROCEEDINGS SO THE ISSUE WOULD BE IF HE SENT IT BACK, WHETHER VERNSON EDWARD DORTCH WAS COMPETENT WHEN HE ENTERED THE PLEA.
IF YOU DON'T HAVE THE SAME JUDGE WHO PRESIDED IN THAT PLEA, YOU DON'T HAVE THE JUDICIAL OBSERVATION AS OF THE TIME THE PLEA WAS ENTERED.
THAT THE ONLY CONCERN I WOULD HAVE.
>> IN DOHERTY AND THE SUPREME COURT, WARNED THE COMPETENCY HEARINGS ARE DIFFICULT EVEN UNDER FAVORABLE SETTINGS.
IS YOUR HONOR POINTED OUT, ALSO, THE REPORTS IN A COMPETENCY DECISION ARE MERELY ADVISORY TO THE COURT WHICH RETAINS THE DECISION WHETHER TO DEFEND ITS COMPETENCY.
HERE THE PROBLEM IS THAT ISSUE WAS NEVER PRESENTED TO THE TRIAL JUDGE BECAUSE IT WAS WAIVED.
WE NEVER HAD A WAY HEARING OR JUDICIAL DETERMINATION AND WE DON'T KNOW WHAT HAPPENED.
IN A PUBLIC DEFENDER TOOK OVER AFTER THE COMPETENCY EVALUATION WAS TAKEN, WE DON'T KNOW IF THIS CASE FELL FOR THE CRACKS.
THE DEFENDANT MAY BE COMPETENT OR INCOMPETENT, EXPERTS NEED TO MAKE THE DETERMINATION ADDED HAVE EXPERT REPORTS.
IT CAN'T BE DONE STRICTLY FROM

A COLD RECORD.
>> IS THE JUDGE ON THE BENCH?
>> I'M NOT SURE IF HE IS IN CRIMINAL OR SWITCHED OUT --
>> IT IS A JUDGE?
>> I'M NOT CERTAIN.
>> THIS ONLY AFFECTS THE CONVICTION WITH REGARD TO THE CASE WHERE COMPETENCY EVALUATION WAS SOUGHT, NOT IN WHAT WE USED TO CALL THE INSIDE CHARGE, THE ASSAULT CHARGE OF A PRISONER.
>> BOTH WERE CONSOLIDATED.
THE ARGUMENT WAS IT AFFECTED BOTH CASES BECAUSE IF HE IS INCOMPETENT TO ENTER A PLEA IN ONE CASE --
>> THE TECHNICALITY, AND THE PRESUMPTION OF COMPETENCY IS NOT VALID.
AND THE MOTION NEVER FILED, AND YOU TECHNICALLY FOLLOW THE RULES IN THE CASE WHERE IT WASN'T FOLLOWED.
>> THAT IS WHAT YOU ARE RELYING ON, A VERY TECHNICAL, THIS HAS TO BE FOLLOWED.
>> THE INSIDE CHARGE AFTER THE REQUEST.
>> OCTOBER 25TH THE COMPETENCY EVALUATIONS, IT CAME OUT, IN MARCH 2016.
>> THE COMPETENCY WAS NEVER RAISED IN THE SECOND CASE.
>> THE THIRD DISTRICT COURT OF APPEAL REVERSED BOTH OF THEM.
THE ALLEGATION IS A TECHNICALITY.
THIS IS A MATTER OF DUE PROCESS.
THE SUPREME COURT, SAID FOR A FEW DECADES, THIS COURT SAID SO IN DOHERTY AS WELL.
IF THE DEFENDANT MAY OR MAY NOT BE INCOMPETENT IT AFFECTS WHETHER THEY CAN MAKE THIS LEGALLY BINDING DECISIONS.
THE NATURE OF COMPETENCY GOES INTO WHETHER THERE IS A COGENT,

LEGALLY BINDING DECISION AND
THEN THERE'S DENIAL OF DUE
PROCESS.
I USED UP ALL MY TIME.
IF THERE ARE NO FURTHER
QUESTIONS I ASKED THE COURT TO
CONFIRM.
>> I AGREE WITH JUSTICE LAWSON
THAT WE ARE PRESUMING A LOT.
NOT ONLY ARE WE PRESUMING HE IS
INCOMPETENT WHEN TALKING ABOUT
WHAT OPPOSING COUNSEL IS
ARGUING BUT ALSO THAT ALL
ATTORNEYS HERE, NOT JUST ONE
DEFENSE COUNSEL, THERE ARE TWO
DEFENSE COUNSEL, TWO TRIAL
LAWYERS AND THE STATE ATTORNEY
WHO ALL DROPPED THE BALL IN
THIS CASE ASSUMING THE ARGUMENT
STANDS.
THERE ARE PLENTY OF OTHER
EXPLANATIONS WE CAN OFFER AS TO
WHY THE EXAMINATION WAS
REQUESTED BY DEFENSE COUNSEL
AND MOVING FORWARD THAT WOULD
BE THE STATE'S POSITION.
THAT'S WHY IT IS IMPORTANT FOR
THE MOTION TO WITHDRAW THE
PLEA.
SO WE CAN LOOK AT WHAT EVERYONE
IS LOOKING AT AT THAT TIME.
>> THE SPECULATION COULD HAVE
BEEN RESOLVED BY HOLDING A
HEARING OR BRINGING UP THE
ISSUE.
WE GET 2 OR 3 OF THESE A WEEK.
NO CASES ALLOWED TO PRECEDENT A
DETERMINATION IS MADE.
IF DEFENSE COUNSEL, YOU RAISE
-- AND THE CLIENT HAVE
COMPETENCY.
THAT RINGS BUILDING MY HEAD,
THERE'S SOMETHING WRONG HERE.
IF SOMEBODY BROUGHT THE BALL,
THIS CASE PROCEEDED UNTIL THERE
IS A DETERMINATION HE WAS
COMPETENT.
THAT IS THE PROBLEM.
>> THAT PLAYS IN ROBINSON
VERSUS STATE.

IF PRESENTED TO THE TRIAL COURT
IN A MOTION TO WITHDRAW THE
PLEA THE TRIAL JUDGE COULD
RECTIFY THE SITUATION ON THE
SPOT.
IF THIS WAS AN ACTUAL ISSUE
THEY WERE WORKING ON, THE TRIAL
JUDGE AT THE FIRST POINT
POSSIBLE COULD HAVE EASILY
CORRECTED THE ISSUE WHICH IS
ANOTHER ARGUMENT.
WE WANT TO KEEP AS MANY THINGS
AS WE CAN TO QUICKLY AND
EVENTUALLY RESOLVE THESE ISSUES
AT THE TRIAL COURT.
>> WHY PUT THE BURDEN ON THE
DEFENSE WHEN IT ALREADY RAISED
THE MOTION?
>> RIGHT.
>> COULD THERE NOT BE A BURDEN
ON THE STATE AS WELL?
A MOTION PENDING BEFORE YOU
TAKE THE PLEA?
>> TO A CERTAIN DEGREE.
>> IS THIS DIFFERENT FROM A FOR
RHETORIC WEST?
IF THERE'S A FOR RHETORIC WEST
-- THERE IS A MOTION PENDING
COULD THERE NOT BE A FOR RETTA
HEARING?
WHAT IF YOU TAKE THE PLEA AND
THERE'S A MOTION?
>> WHAT IS GOING TO HAPPEN TO
THAT CASE?
>> PROBABLY GOING TO GO BACK.
>> IT IS DIFFERENT.
WE ARE TALKING DO PROCESS.
HOW IS THIS DIFFERENT?
>> A LITTLE MORE FACTS.
WE DON'T HAVE ANYTHING.
WE ARE PRESUMING THIS NEEDED TO
GO TO A HEARING AND THIS IS A
MOTION FOR EXAMINATION.
NO HEARING WAS REQUESTED.
THAT IS PRESUMING THE DEFENDANT
WAS HAVING SOME IN COMPETENCY
ISSUES THAT WERE NOT PROPERLY
DOCUMENTED DURING THE MOTION OF
THE TRIAL COURT'S ORDER.
THE TRIAL COURT --

>> YOU ARE INTO OVERTIME.
YOU CAN SUM UP IN 30 SECONDS.
>> WE ASK THIS COURT REVERSED
THE DECISION.
THANK YOU VERY MUCH.
>> WE THANK YOU BOTH FOR THE
ARGUMENT IN THIS CASE.
THE COURT WILL STAND IN RECESS
FOR ABOUT 10 MINUTES.