77 Cal.App.3d 169, 143 Cal.Rptr. 398

JAMES H., a Minor, Petitioner,
v.
THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; THE PEOPLE, Real Party in Interest.

Civ. No. 19283.
Court of Appeal, Fourth District, Division 2, California.
Jan. 26, 1978.

SUMMARY

A petition was filed under Welf. & inst. Code. § 602, alleging that a minor had committed forcible rape. The People filed a notice of motion (Welf. & Inst. Code, § 707, subd. (b)) to declare the minor not a fit and proper subject for the juvenile court. Prior to the proposed Welf. & Inst. Code, § 707, subd. (b), proceedings, the trial court had appointed a psychiatrist to examine the minor as to his possible diminished capacity at the time of the alleged offense. The psychiatrist filed a report concluding the minor showed borderline mental retardation and drug dependency, but did not suffer from diminished capacity at the time of the offense, and was competent to cooperate with counsel in presenting a defense. However, a psychologist to whom the minor had been referred by the psychiatrist, concluded the minor was not presently able to understand the nature and purpose of the proceedings against him, was not able to cooperate with counsel, and was legally incompetent to stand trial. The minor's counsel then objected to proceeding with the Welf. & Inst. Code, § 707, subd. (b), hearing on the ground the minor was incompetent. The trial court overruled the objection, stating that incompetency was not an issue. The minor then filed a petition for a writ of prohibition.

The Court of Appeal, treating the petition as one for a writ of mandate, granted the writ. The court held that in the absence of any statutory procedure for so doing, the juvenile court has the inherent power to determine a minor's mental competence to understand the nature of proceedings pending under Welf. & Inst. Code, § 707, subd. (b), and to assist counsel in a rational manner at that hearing. Accordingly, it directed the trial court to advise on the record as to whether it entertains a doubt as to the minor's present capacity to cooperate with counsel. If no such doubt exists, the trial court is to proceed with the hearing, but if a doubt does exist, it must suspend proceedings and hold a hearing in regard to the minor's present capacity. If, as the result of that hearing, the trial court finds that the minor can cooperate with counsel, it should then reinstate proceedings and proceed with the Welf. & Inst. Code, § 707 hearing. However, if it finds the minor is incapable of cooperating with counsel, it should then institute commitment proceedings under Welf. & Inst. Code § 705. (Opinion by Gardner, P.J., with Kaufman and Morris, JJ., concurring.).

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d)
Delinquent, Dependent and Neglected Children § 17--Proceedings--Right to Counsel--Determination of Minor's Competency.
In the absence of any statutory procedure for so doing, a juvenile court has the inherent power to determine a minor's mental competence to understand the nature of proceedings to declare him not a fit proper subject for the juvenile court Welf. & Inst. Code, § 707, subd. (b)), and to assist counsel in a rational manner at that hearing. Accordingly, on a minor's objection to a Welf. & Inst. Code, § 707, subd. (b), hearing on the ground he was incompetent, the trial court was required to advise on the record as to whether it entertained a doubt as to the minor's present capacity to cooperate with counsel, and if no such doubt existed, to proceed with the hearing. However, if such a doubt did exist, the trial court must suspend proceedings and hold a hearing in regard to the minor's present capacity. If as a result of that hearing the trial court finds the minor can cooperate with counsel, the trial court should then reinstate proceedings and proceed with the Welf. & Inst. Code, § 707, hearing. If the trial court finds the minor is incapable of cooperating with counsel, it should then institute commitment proceedings under Welf. & Inst. Code, § 705.

[See **Cal.Jur.3d**, Delinquent and Dependent Children, § 12; **Am.Jur.2d**, Juvenile Courts and Delinquent and Dependent Children, § 38.]

(2)
Delinquent, Dependent and Neglected Children § 17--Proceedings--Rights to Counsel.

A minor has a right to counsel at a Welf. & Inst. Code, § 707, subd. (b), hearing to declare the minor not a fit and proper subject for the juvenile court. Moreover, such right to counsel means effective counsel. Thus, if the minor cannot effectively communicate or cooperate with his counsel such right is not effective.

(3)
Criminal Law § 211--Trial--Proceedings on Issue of Insanity--At Time of Trial--Due Process.
Due process demands that a person constitutionally entitled to the right of effective counsel be afforded a hearing as to his competency to cooperate with that counsel. Thus, when facts giving rise to a doubt regarding a defendant's present sanity become known to the trial judge, due process requires that the court on its own motion suspend proceedings until the question is determined in a sanity hearing.

(4)
Courts § 5--Inherent and Statutory Powers--Procedure.
Courts have the inherent power to create new forms of procedure in particular pending cases. The power arises from necessity where, in the absence of any previously established procedural rule, rights would be lost or the court would be unable to function.

(5)
Delinquent, Dependent and Neglected Children § 17--Proceedings--Right to Counsel--Mental Competency of Minor--Determination.
In determining whether a minor has the mental capacity to cooperate with his attorney, the test to be used by the court is whether the minor has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.

COUNSEL
Joseph J. Storto for Petitioner.
Byron C. Morton, District Attorney, and James B. Chew, Deputy District Attorney, for Respondent and for Real Party in Interest. ***172**

GARDNER, P. J.

([1a])In this case we hold that in the absence of any statutory procedure for so doing the juvenile court has the inherent power to determine a minor's mental competence to understand the nature of proceedings pending under Welfare and Institutions Code section 707, subdivision (b) and to assist counsel in a rational manner at that hearing.

Under Welfare and Institutions Code section 602, a petition had been filed in the juvenile court alleging that the minor, age 17, had committed forcible rape (Pen. Code, § 261, subd. 3). The real party in interest filed a notice of motion, under Welfare and Institutions Code section 707, subdivision (b), to declare minor not a fit and proper subject for the juvenile court.

Prior to the proposed Welfare and Institutions Code section 707, subdivision (b) proceedings, the court had appointed a psychiatrist, Dr. John McMullin, to examine the minor "due to the possible issue of diminished capacity of minor at the time of the alleged offense." Dr. McMullin filed a report in which he concluded that minor showed borderline mental retardation and had a "long-standing drug dependency ... which will require a structured environment." Dr. McMullin further opined that there was nothing to indicate diminished capacity; that at the time of the offense minor was legally sane; and further that minor was "aware of the nature and the purpose of the charges against him and is, within the limits of his mental capabilities, able to cooperate with counsel in presenting a defense."

Dr. McMullin referred minor to Dr. Stephen Lawrence, a psychologist, for interview and testing. Dr. Lawrence then filed a report in which he, too, concluded that minor was mentally retarded and had a long standing and severe drug dependency (paint sniffing). Dr. Lawrence concluded that the minor had the mental capacity to form the specific intent to kidnap and rape and that he was legally sane at the time of the commission of the offense although he did suffer from some diminished capacity. However, Dr. Lawrence concluded that minor was not presently able to understand the nature and purpose of the proceedings against him, was not presently able to cooperate with counsel in a rational manner and "[h]ence, the defendant is judged presently legally incompetent to stand trial." [1] ***173**

Armed with Dr. Lawrence's report, counsel for minor objected to proceeding with the Welfare and Institutions Code section 707, subdivision (b) hearing on the ground his client was incompetent. The court overruled the

objection, stating that competency was not an issue. Minor filed a petition for writ of prohibition. This court issued an alternative writ.

Minor's position is that although he would come within the framework of Penal Code sections 1367-1368 were he an adult, such procedures do not exist in the juvenile court, and therefore the court is unable to proceed. He asks that we dismiss all pending proceedings.

Real party in interest contends: (1) the issue is premature since the court has not indicated any doubt as to the minor's present competency; and (2) the minor's present competency is not a prerequisite to the court's proceeding with the Welfare and Institutions Code section 707, subdivision (b) hearing. In this respect, the real party in interest argues that the minor will in no way be prejudiced by proceeding with such a hearing even though he cannot cooperate with his attorney. The argument proceeds that if, as a result of the hearing, he is sent to the adult court, proceedings under Penal Code sections 1367-1368 can be instituted. If he is not found unfit under Welfare and Institutions Code section 707, subdivision (b), he will remain in the juvenile court where the question of his mental competency can be thrashed out within the framework of the Juvenile Court Law, i.e., by recourse to Welfare and Institutions Code sections 705 and 6550. (See *In re Michael D.*, 70 Cal.App.3d 522 [140 Cal.Rptr. 1].)

We find neither position acceptable. However, neither do we find any statutory procedure in the Juvenile Court Law which fits this situation. Therefore, we improvise.

The Right To Counsel At A Welfare and Institutions Code Section 707, Subdivision (b) Hearing

([2])Unquestionably, a minor has a right to counsel in the juvenile court. Not only is this established by statute (Welf. & Inst. Code, §§ 700, 679), it has been established as a matter of constitutional due process (*In* ***174** *re Gault* (1967) 387 U.S. 1 [18 L.Ed.2d 431, 87 S.Ct. 498]). It is true that the holding in *Gault* was limited to those proceedings which might result in a commitment to an institution. Nevertheless, the statutory scheme in California, both before and after *Gault*, provides counsel for the minor in all proceedings which require or permit the minor's personal participation. It is true that the attorney of one presently incapable of cooperating with his attorney may contest any issue *susceptible of fair determination without the personal participation of the client*. Such matters as demurrers and Penal Code section 995 motions come within this concept. (See *People v. Superior Court (Hulbert)* (1977) 74 Cal.App.3d 407 [141 Cal.Rptr. 497].) However, Welfare and Institutions Code section 707 proceedings are not such proceedings. The section itself provides that the court may consider not only the probation officer's report but "any other relevant evidence which ... the minor may wish to submit."

The Right To Counsel Means The Right To Effective Counsel

The right to counsel is meaningless unless that right is construed to mean effective counsel. The United States Supreme Court in *Kent v. United States* (1966) 383 U.S. 541 [16 L.Ed.2d 84, 86 S.Ct. 1045] explicitly referred to a minor's right to effective counsel. (*Kent*, *supra.*, at p. 554 [16 L.Ed.2d at p. 93].) If a person cannot effectively communicate or cooperate with his counsel that counsel rather obviously cannot be effective. "Counsel cannot effectively represent a defendant who is unable to understand the proceedings or to rationally assist him." (*Hale v. Superior Court* (1975) 15 Cal.3d 221, 228 [124 Cal.Rptr. 57, 539 P.2d 817]; see *Chambers v. Municipal Court* (1974) 43 Cal.App.3d 809, 813 [118 Cal.Rptr. 120].)

Competency Hearings Are Required By Principles Of Due Process

([3])Due process demands that a person constitutionally entitled to the right to effective counsel be afforded a hearing as to his competency to cooperate with that counsel. "When facts giving rise to a doubt regarding a defendant's present sanity become known to the trial judge, due process requires that the court on its own motion, suspend proceedings in the case until the question is determined in a sanity hearing." (*People v. Tomas* (1977) 74 Cal.App.3d 75, 88 [141 Cal.Rptr. 453].) *Tomas* relied on *Pate v. Robinson* (1966) 383 U.S. 375 [15 L.Ed.2d 815, 86 S.Ct. 836]; ***175** *Dusky v. United States* (1960) 362 U.S. 402 [4 L.Ed.2d 824, 80 S.Ct. 788]; and *Drope v. Missouri* (1975) 420 U.S. 162 [43 L.Ed.2d 103, 95 S.Ct. 896], which cases hold that failure to afford a defendant a hearing on his present competency to cooperate with his attorney deprives a defendant of his constitutional right to a fair trial.

The Inherent Power Of The Court To Hold Such A Hearing

([1b])Having laboriously determined that the minor is entitled to a competency hearing at a Welfare and Institutions Code section 707, subdivision (b) proceeding and facing the unquestioned fact that the authors of the Juvenile Court Law have simply failed to provide any proceedings comparable to Penal Code sections 1367-1368, the question remaining is whether the court has the inherent power to hold such a hearing. We hold that it does.

([4])Courts have the inherent power to create new forms of procedure in particular pending cases. "The ... power arises from necessity where, in the absence of any previously established procedural rule, rights would be lost or the court would be unable to function." (Witkin, Cal. Procedure (2d ed.) Courts, § 123, p. 392.) This right is codified in Code of Civil Procedure section 187 which provides that when jurisdiction is conferred on a court by the Constitution or by statute "... all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code." (See also Code Civ. Proc., § 128, subd. 8.) As the Supreme Court said in *People v. Jordan*, 65 Cal. 644 at page 646 [4 P. 683], "[i]n the absence of any rules of practice enacted by the legislative authority, it is competent for the courts of this State to establish an entire Code of procedure in civil cases, and an entire system of procedure in criminal cases, ..." (See also *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 813 [31 Cal.Rptr. 316, 382 P.2d 356], recognizing the inherent power of courts to adopt "'any suitable method of practice ... if the procedure is not specified by statute or by rules adopted by the Judicial Council."')

In *In re M. G. S.*, 267 Cal.App.2d 329 [72 Cal.Rptr. 808], the court had no difficulty whatsoever in applying the defense of legal insanity in juvenile court proceedings even though no statutory mention is made of ***176** that defense, nor does there exist in juvenile court proceedings any statutory procedures similar to Penal Code section 1026 et seq.

Throughout the years following *Kent* and *Gault*, juvenile courts throughout the nation have been improvising procedures to comply with newly announced constitutional mandates pending action by the Legislature. California has been lucky. Due to the 1961 juvenile court reform, the California legislative program has kept abreast of the constitutional imperatives. (See Gardner, *Gault and California*, 19 Hastings L.J. 527.) But even so, during the period from *Gault* to the present many situations have arisen which have demanded improvisation to meet changing constitutional requirements. Without any fuss or commotion, the juvenile courts have done so without recourse to the Legislature or to the reviewing courts. They have done so without any evangelistic illusions of judicial wisdom. They have simply been forced to rely on their inherent powers to formulate procedures which have not yet attained legislative approval. Such is the instant case.

The Solution

([1c])Having determined that the court has the power and the duty to delve into the problem of a minor's capacity to cooperate with his attorney, what happens next?

As the real party in interest points out, the court has not as yet made a determination that a doubt exists as to the minor's capacity or ability to cooperate with his attorney. All the court has before it are the reports of some behavioral scientists and those reports are not consistent. Thus, the first order of business is for the court, on the record, to make a determination as to whether such a doubt exists in the court's mind. If the court finds that no such doubt exists, it shall then proceed with the section 707, subdivision (b) hearing.

However, if the court does entertain such a doubt, then it should immediately suspend proceedings and conduct a hearing into the question of the minor's present competence. ([5])In making that determination, the court may borrow from Penal Code section 1367 and use as a yardstick the definition of incompetency set forth in that section, i.e., that the minor, by reason of mental disorder or developmental disability, is unable to understand the nature of the proceedings taken against him and assist counsel in the conduct of those proceedings in a rational manner. (See *People v. Aparicio*, 38 Cal.2d 565 [241 P.2d 221].) ***177** Or the court may be guided by the statement of the United States Supreme Court in *Dusky*, *supra.*, that the test is whether the minor has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as

well as a factual understanding of the proceedings against him. To anyone but a hairsplitting semanticist, the two tests are identical.

([1d])If the court finds that the minor is capable of cooperating with his counsel, the court should then proceed with the section 707, subdivision (b) hearing. If, however, the court finds that the minor cannot cooperate with his counsel, resort should then be made to existing juvenile court proceedings under Welfare and Institutions Code section 705, wherein a minor who is mentally disordered may be committed to an approved facility for care and treatment under Welfare and Institutions Code section 6550. While the legal pigeonhole of "mentally disordered" is not identical with the test of mental competency to aid counsel, unquestionably the psychiatric treatment available for one mentally disordered would also be aimed at restoring the minor to such a condition that he could eventually be able to aid his counsel in further proceedings. If, after treatment, he is found to be so capable then he would be returned to the juvenile court for further proceedings. In the meantime, if he has passed his 18th birthday, no jeopardy is attached and he can be processed through the adult court. If his condition is as irremediable as Dr. Lawrence indicates, the juvenile court should probably undertake a long term commitment program under one of the many civil commitment proceedings for the mentally ill.

In order to effect all of this we construe the petition for writ of prohibition as a petition for writ of mandate. So construed, we grant the petition and direct the court as follows:

(1) Advise on the record as to whether it entertains a doubt as to the defendant's present capacity to cooperate with counsel.

(2) If no such doubt exists, proceed with the Welfare and Institutions Code section 707 hearing.

(3) If such doubt does exist, suspend proceedings and hold a hearing in regard to the defendant's present capacity. ***178**

(4) If, as the result of that hearing, the court finds that the minor can cooperate with counsel, the court should then reinstate proceedings and proceed with the Welfare and Institutions Code section 707 hearing.

(5) If the court finds that the minor is incapable of cooperating with counsel, the court should then institute proceedings under Welfare and Institutions Code section 705.

Kaufman, J., and Morris, J., concurred. ***179**

Footnotes

1 Dr. Lawrence concluded that the organic brain damage is irreversible. Thus, if Dr. Lawrence's legal conclusions are correct, society is faced with an individual who can go through life committing crimes for which he is legally responsible, but who can never be successfully prosecuted for those crimes.

54 Cal.App.4th 1346, 63 Cal.Rptr.2d 455, 97 Cal. Daily Op. Serv. 3580, 97 Daily Journal D.A.R. 6081

In re PATRICK H., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent,
v.
PATRICK H., Defendant and Appellant.

No. A074385.
Court of Appeal, First District, Division 4, California.
May 12, 1997.

SUMMARY

In juvenile court proceedings against a minor charged with criminal-type conduct (Welf. & Inst. Code, § 602), in which the juvenile court found that the minor was incompetent to stand trial, the court committed the minor to a mental facility for a 90-day evaluation pursuant to Pen. Code, § 1370. After the minor was found incompetent, the court continued the commitment. (Superior Court of Napa County, No. JV11102, Herbert W. Walker, Judge.)

The Court of Appeal set aside that portion of the trial court's order continuing the minor's commitment under Pen. Code, § 1370, and otherwise affirmed. The court held that the juvenile court erred in committing the minor to a mental facility for a 90-day evaluation pursuant to Pen. Code, § 1370, which is applicable to adults found incompetent to stand trial. Once the juvenile court found that the minor could not cooperate with his counsel, it should have turned to Welf. & Inst. Code, § 705, and proceeded under either Welf. & Inst. Code, § 6550, or Pen. Code, § 4011.6, whichever was appropriate. Under Welf. & Inst. Code, § 6551, the jurisdiction of the juvenile court is suspended during the time the minor is subject to the jurisdiction of the court in which a Lanterman-Petris-Short Act (LPS) petition for civil commitment is filed. Under Pen. Code, § 4011.6, however, the juvenile court may retain concurrent jurisdiction over the minor during the LPS proceedings. Thus, rather than issuing a 90-day commitment order, the appropriate step at that time would have been to refer the minor to a facility for 72-hour treatment and evaluation. The juvenile court also erred in continuing the Pen. Code, § 1370, commitment after the minor was found incompetent. A finding of incompetence in a juvenile proceeding should not result in a confinement order or its equivalent; a juvenile is not committed as incompetent to proceed with Welf. & Inst. Code, § 602, proceedings, but on a wholly independent basis and after wholly independent procedures. (Opinion by Reardon, J., with Anderson, P. J., and Poché, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
Delinquent, Dependent, and Neglected Children § 106--Delinquent Children--Dispositions--Mentally Incompetent Minor.
In juvenile court proceedings against a minor charged with criminal-type conduct (Welf. & Inst. Code, § 602), in which the juvenile court found that the minor was incompetent to stand trial, the court erred in committing the minor to a mental facility for a 90-day evaluation pursuant to Pen. Code, § 1370, which is applicable to adults found incompetent to stand trial. Once the juvenile court found that the minor could not cooperate with his counsel, it should have turned to Welf. & Inst. Code, § 705, and proceeded under either Welf. & Inst. Code, § 6550, or Pen. Code, § 4011.6, whichever was appropriate. Under Welf. & Inst. Code, § 6551, the jurisdiction of the juvenile court is suspended during the time the minor is subject to the jurisdiction of the court in which a Lanterman-Petris-Short Act (LPS) petition for civil commitment is filed. Under Pen. Code, § 4011.6, however, the juvenile court may retain concurrent jurisdiction over the minor during the LPS proceedings. Thus, rather than issuing a 90-day commitment order, the appropriate step at that time would have been to refer the minor to a facility for 72-hour treatment and evaluation. The court also erred in continuing the Pen. Code, § 1370, commitment after the minor was found incompetent. A finding of incompetence in a juvenile proceeding should not result in a confinement order or its equivalent; a juvenile is not committed as incompetent to proceed with Welf. & Inst. Code, § 602, proceedings, but on a wholly independent basis and after wholly independent procedures.

[See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 44.]

COUNSEL

Paul Bernstein for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Ronald

A. Bass, Assistant Attorney General, Stan M. Helfman and Christopher J. Wei, Deputy Attorneys General, for Plaintiff and Respondent. ***1348**

REARDON, J.

At issue in this case are the placement alternatives available to a juvenile court once it has found that a mentally disordered minor accused of criminal-type misconduct is unable to assist in his or her defense. (See *James H. v. Superior Court* (1978) 77 Cal.App.3d 169 [143 Cal.Rptr. 398] (*James H.*).)

In April 1995, the Napa County District Attorney filed a juvenile court petition pursuant to Welfare and Institutions Code[1] section 602 against the 16-year-old appellant, Patrick H. The petition contained one allegation of burglary of a vehicle (Pen. Code, § 459); two allegations of assault upon a peace officer with a semiautomatic firearm (Pen. Code, § 245, subd. (d)(2)); one allegation of attempted murder of a peace officer (Pen. Code, §§ 664, subd. (e)(1), 187); and one allegation of assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b)). The district attorney alleged several "serious felony" and "use of firearm" enhancements. (Pen. Code, §§ 1192.7, subd. (c)(8), 12022.5, subds. (a) & (d).) Pursuant to section 707, subdivision (b), the district attorney requested that appellant be declared unfit to be dealt with under the juvenile court law.

At the time of the alleged offenses, Patrick was a patient at Napa State Hospital. At a hearing in June 1995, defense counsel expressed a doubt concerning his client's mental competence to stand trial. The juvenile court appointed an expert to examine the minor. In October 1995, the court found that he was incompetent to stand trial. Following an evaluation, the court, acting pursuant to Penal Code section 1370, ordered that appellant remain committed to Napa State Hospital.

After several hearings, the juvenile court in April 1996, acting pursuant to section 705, ordered that the minor be evaluated pursuant to Penal Code section 4011.6 to determine whether he had a mental disorder or was developmentally disabled, and if so, whether as a result of the disorder, he was a danger to others, or to himself, or was gravely disabled. Following an evaluation, the county mental health department found that appellant was gravely disabled as a result of a mental disorder and met the criteria for involuntary hospitalization pursuant to section 5150.

On May 20, 1996, the juvenile court ordered the Los Angeles County Department of Health and Human Services to file a petition for conservatorship pursuant to section 5150. Over defense objection, the court also ordered that the minor continue to be held pursuant to Penal Code section 1370. ***1349**

Patrick appeals from the order committing him pursuant to Penal Code section 1370.

I. Statement of Facts

Patrick is a profoundly deaf minor who was voluntarily admitted to Napa State Hospital when he was 10 years old. He was later declared a dependent child of the Los Angeles County Juvenile Court. At the time of the alleged offenses, he was 16 years old.

According to reports in the clerk's transcript, Patrick escaped from Napa State Hospital on March 17, 1995, entered a locked sheriff's patrol car, and removed a semiautomatic rifle. When Sergeant Doug Koford came out of the sheriff's office, Patrick pointed the rifle at him. Koford pulled out his revolver and Patrick ran away. Koford pursued him and radioed for assistance. Napa Police Officer Tim Cantillion, accompanied by a civilian passenger, drove up in his vehicle. Patrick pointed the rifle at Cantillion and his passenger. Cantillion stopped his vehicle, pulled out his revolver, and shot Patrick twice. Patrick was arrested, treated for his injuries, and was then transported back to Napa State Hospital.

II. Procedural Facts

During pretrial proceedings, defense counsel on June 16, 1995, expressed a doubt concerning Patrick's mental competence to stand trial and requested the court to appoint an expert to examine him. The juvenile court granted counsel's request "under [Penal Code section] 1368 or its juvenile equivalent."[2]

The court appointed Dr. Peggy Kelly, a neuropsychologist at the Center on Deafness, University of California, San Francisco. In an amended report, Dr. Kelly concluded that Patrick had the ability to understand the charges before him, but he was not able to comprehend the

personal implications of criminal proceedings, nor was he able to cooperate with counsel in his own defense.

In October 1995, based on Dr. Kelly's report, the juvenile court found the minor incompetent to stand trial. The court referred him to the community program director of the Napa County Conditional Release Program for a ***1350** placement evaluation.[3] The community program director recommended that Patrick "remain committed to Napa State Hospital in order to regain trial competency."

On November 21, 1995, the juvenile court stated it had read and reviewed the "report pursuant to Section 1370." Citing *James H.*, *supra*, 77 Cal.App.3d 169, defense counsel objected, arguing that once the juvenile court found Patrick not competent to stand trial as defined in Penal Code section 1367, it should no longer follow the statutory scheme for adult criminal proceedings (Pen. Code, § 1368 et seq.). Instead, counsel argued that the juvenile court should apply existing juvenile procedures under section 705,[4] which section provides that if a minor is believed to be mentally disordered, the court should proceed as provided in section 6550[5] or Penal Code section 4011.6.[6] Alternatively, since the Los Angeles County Juvenile Court had ongoing dependency jurisdiction over Patrick, counsel ***1351** suggested that the Napa County Juvenile Court should transfer the entire matter to Los Angeles for proceedings in that county. When the juvenile court indicated its intent to commit appellant to Napa State Hospital for a three-month evaluation, counsel expressed his opinion "that the statutory scheme would allow the Court to commit him to Napa State Hospital for a seventy-two hour evaluation for them to make a determination as to whether he's gravely disabled, whether he's a danger to himself or to others, or whether he is developmentally disabled. But I don't think that the statutory scheme would allow the Court to commit him to Napa State Hospital for a three month period of time. [¶] The Court: Okay. [¶] I disagree. Anything further?" The court then ordered Patrick to remain committed to Napa State Hospital "pursuant to Section 1370 of the Penal Code ... for the purpose of being treated in order to regain his trial competency." The record does not show if the minor sought review of that order at that time.

In February 1996, Napa State Hospital reported Patrick was not yet competent to stand trial and recommended that he "be retained at this facility for further care and treatment." On March 7, 1996, defense counsel asked the court to reconsider its procedures and elaborated on the legal basis for his request. He concluded that "... since there is no statutory scheme that has been adopted by the legislature applicable to juvenile court proceedings, I think James H. is the law in this area." (Original underscore.) When the court asked what it should do, defense counsel suggested that "... it really makes sense to transfer this case to Los Angeles pursuant to their ongoing dependency jurisdiction and allow them to do the best they can to find an appropriate placement for Patrick." The court stated that defense counsel's request was "very thoughtful" and "should be taken very seriously ...." It continued the matter so the prosecutor could respond to counsel's procedural arguments. ***1352**

By the next hearing, the court had developed a concern over the status of the unadjudicated section 602 matter if commitment proceedings were pursued. Defense counsel suggested the section 602 case would remain in a suspended status based on the minor's incompetency. (See § 6551; fn. 5, *ante*.) The court was also concerned about the willingness of Los Angeles authorities to establish an LPS conservatorship and to treat the minor with a view toward regaining trial competency. The court again continued the matter to permit defense counsel to consult with Los Angeles authorities and to give the prosecutor more time to brief the procedural issues.

In April 1996, Napa State Hospital reported that the minor continued to manifest a mental illness interfering with his ability to assist in his defense. It reported that he was making progress toward attaining competency "and may attain this goal within three years." The state hospital recommended that he be retained at its facility "for further care and treatment."

Meanwhile, the prosecution submitted its points and authorities responding to the procedural issues raised by the defense. The prosecution agreed that section 705, providing that the juvenile court proceed against a mentally disordered minor under section 6550 or Penal Code section 4011.6, applied. But whereas the defense emphasized section 6550, the prosecution argued that a Penal Code section 4011.6 placement was required in this case.[7] The prosecution therefore requested "that the minor be placed, per Penal Code section 4011.6, for evaluation and treatment under Welfare and Institutions

Code [section] 5150 and that the local mental health director be ordered to prepare an evaluation and report concerning the minor and his course of future treatment. This report should address, among other things, whether the minor is gravely disabled, a danger to self, or a danger to others."

At an April 11, 1996, hearing, each side suggested the court start by invoking section 705. The court defended the position it had been taking: "It seems to me the placement that Patrick has at this time is where he should be.... I don't think we need at this point in the case a Welfare [and] Institutions Code proceeding under [section] 5150 or any other situation regarding his status. I just don't see the need for conservatorship at this point." The court believed that it had the inherent power under ***1353** Penal Code sections 1368 and 1370 to act as it had. It explained: "I'm not committing him. *I'm simply making the same order I would in any other case concerning an adult where he has been found not competent to stand trial.* I'd simply refer him to placement or treatment until he regains his trial competency." (Italics added.)

Ultimately, however, the court decided that since counsel were in agreement, it would order the minor to be evaluated pursuant to Penal Code section 4011.6 and section 5150 as to whether he had a mental disorder or was developmentally disabled, and if so, whether as a result he was currently a danger to others, or to himself, or was gravely disabled. The court requested reports from both the Napa State Hospital and the Napa County Mental Health Department.

In its report, Napa State Hospital concluded appellant had a mental disorder and, as a result, there was reason to believe he was gravely disabled and a danger to others. It did not believe that Patrick was developmentally disabled. In its report, the county mental health department commenced its report by stating that since Patrick was currently committed to the state hospital "under PC 1370, this opinion should be considered hypothetical." But continuing with its evaluation, the department stated its belief that appellant was not a danger to himself or others due to his mental illness, but acknowledged that this lack of dangerousness was "dependent on the highly structured and well-supervised environment provided by [his] hospital setting." [8] The department concluded that appellant could not care for himself, was gravely disabled as a result of a mental disorder and that "he would meet the criteria for involuntary hospitalization pursuant to Section 5150 of the W&I Code if the PC 1370 hold were dropped." It recommended that the case be "referred to the Los Angeles County Department of Social Services or Mental Health for a conservatorship investigation or residential placement."

In subsequent hearings, defense counsel agreed that the court should pursue an appropriate LPS commitment, but he continued to object to any commitment purporting to be made pursuant to Penal Code section 1370. [9] Moreover, the community program director pointed out to the court that so ***1354** long as there was a Penal Code section 1370 hold on the minor, Los Angeles County authorities would be reluctant to pursue a section 5150 petition. The court expressed concern, however, that absent its commitment order, the minor could be released before any petition was filed in Los Angeles.

On May 20, 1996, the juvenile court ordered that the Los Angeles County Department of Health and Human Services, within 10 days, file a section 5150 conservatorship petition regarding the questions of the minor's ability to provide for his food, clothing and shelter and whether the minor was a danger to himself or others. [10] It also ordered that appellant continue to be held pursuant to Penal Code section 1370, as previously ordered. The minor appealed.

III. Discussion

([1]) Appellant contends the juvenile court erred "in committing [him] as an adult rather than as a juvenile." He argues that "when the dust settled" after several months of hearings and evaluations, "the court made *both* the 1370 commitment and the LPS referral" (original italics) pursuant to Penal Code section 4011.6 and section 5150. He does not object to the LPS referral, but does object to the juvenile court's commitment order under Penal Code section 1370.

In the juvenile court, the district attorney agreed with the defense that the court should act pursuant to section 705 but, instead of resorting to section 6550 as suggested by the minor, it successfully urged the court to proceed under the alternative provisions in Penal Code section 4011.6. The prosecutor did not make any recommendation concerning the juvenile court's commitment order under Penal Code section 1370.

At this level, the Attorney General argues that there is nothing in the statutes or case law standing for the proposition that once a juvenile is found incompetent, civil commitment proceedings under section 6550 or Penal Code section 4011.6 are the *exclusive* remedies available. He concludes that nothing "prohibits the juvenile court from interposing in a juvenile proceeding, the proceedings for committing an adult adjudged to be mentally ***1355** incompetent. Thus, the juvenile court properly exercised its inherent powers and continued treatment of appellant under section 1370."

In *James H.*, *supra*, 77 Cal.App.3d 169, the Court of Appeal held that absent any statutory procedure for doing so, a juvenile court has the inherent power to determine a minor's mental competence to understand the nature of the pending proceedings and to assist counsel in a rational manner at that hearing. (*Id.* at p. 172.) Absent a statute or statewide Judicial Council rule on the subject, the Court of Appeal exercised *its* inherent power to formulate a suitable procedure when a minor's mental competence is at issue. (*Id.* at pp. 175-176.)

In *James H.*, the Court of Appeal ruled that if the juvenile court entertains a doubt as to the minor's capacity or ability to cooperate with his attorney, "then it should immediately suspend proceedings and conduct a hearing into the question of the minor's present competence. *In making that determination, the court may borrow from Penal Code section 1367 and use as a yardstick the definition of incompetency set forth in that section*, i.e., that the minor, by reason of mental disorder or developmental disability, is unable to understand the nature of the proceedings taken against him and assist counsel in the conduct of those proceedings in a rational manner." (*James H.*, *supra*, 77 Cal.App.3d at p. 176, italics added.) If, as a result of that hearing, the court finds that the minor can cooperate with counsel, the court should then reinstate the pending proceedings. (*Id.* at pp. 177, 178.)

"If, however, the court finds that the minor cannot cooperate with his counsel, resort should then be made to existing juvenile court proceedings under Welfare and Institutions Code section 705, wherein a minor who is mentally disordered may be committed to an approved facility for care and treatment under Welfare and Institutions Code section 6550." (*James H.*, *supra*, 77 Cal.App.3d at p. 177.)

Under the facts in *James H.*, it was appropriate for the juvenile court to proceed under section 6550. As section 6550 makes clear, the evaluation procedures set forth in the sections which follow "are not triggered unless the juvenile court has initially found the minor to be a person described by section [300], 601, or 602." (*In re Vicki H.*, *supra*, 99 Cal.App.3d at p. 496, fn. 5.)

In contrast, the juvenile court in *In re Mary T.*, *supra*, 176 Cal.App.3d 38 proceeded under Penal Code section 4011.6. In that case, the issue was ***1356** whether it was error for the juvenile court to suspend the section 602 proceedings and order the initiation of civil commitment proceedings under Penal Code section 4011.6 without first requiring a prima facie showing that the minor fell within the jurisdiction of the juvenile court under section 602. (*In re Mary T.*, *supra*, at pp. 40-41.) In deciding that issue, the Court of Appeal observed: "In an adult proceeding, a finding of present incompetence results in an immediate suspension of the criminal proceedings. The next issue is simply whether the defendant should be confined in a state hospital or other facility or released on an outpatient status. (Pen. Code, § 1370, subds. (a)(1) and (a)(2).) [¶] A finding of incompetence in a juvenile proceeding under the authority of *James H. v. Superior Court*, *supra*, 77 Cal.App.3d 169, however, does not next result in a confinement order or the equivalent. The finding of present incompetence of a juvenile at most results in a referral for evaluation for possible initiation of civil commitment proceedings under applicable provisions of the Lanterman-Petris-Short Act...." (*Id.* at p. 43, citing Pen. Code, § 4011.6; see also § 6550.)[11] The Court of Appeal commented further: "In juvenile cases, any resultant commitment is independently based on the civil commitment standards and will cease or endure based on those standards, no matter what disposition is made in the section 602 proceedings. [¶] ... In effect, a juvenile is not committed as incompetent to proceed with section 602 proceedings, but on a wholly independent basis and after wholly independent procedures." (*Id.* at p. 44.)

Turning to the facts in this case, when counsel first expressed his doubt concerning the minor's competency to stand trial in June 1995, the juvenile court granted counsel's request to appoint an expert to examine the minor "under 1368 or its juvenile equivalent." Based

on the expert's evaluation, the court in October 1995 found Patrick was unable to comprehend the personal implications of the criminal proceedings and was unable to cooperate with counsel in his own defense, and concluded that he was not competent to stand trial at that time. It referred Patrick to the community program director for placement evaluation. To this point, the juvenile court was in substantial compliance with the procedures suggested in *James H.*

At a November 1995 hearing, the court began by indicating it had read, reviewed and considered the recommendations in the community program ***1357** director's evaluation report "pursuant to Section 1370." Defense counsel immediately objected. He described the *James H.* procedures at some length and urged the court to apply them in this case. When the court indicated its intent to commit Patrick to Napa State Hospital for a three-month evaluation, counsel argued that the juvenile scheme allowed for a seventy-two hour evaluation, but not a three-month evaluation. The juvenile court disagreed, and ordered Patrick to remain committed to Napa State Hospital for 90 days "pursuant to Section 1370 of the Penal Code ... for the purpose of being treated in order to regain his trial competency."

As the juvenile court later explained, "I'm simply making the same order I would in any other case concerning an adult where he has been found not competent to stand trial." By so ordering, the juvenile court erred. Once the juvenile court "borrow[ed] from Penal Code section 1367 and use[d] as a yardstick the definition of incompetency set forth in that section" (*James H.*, *supra*, 77 Cal.App.3d at p. 176), it should no longer have continued with the adult statutory scheme. Instead, once the court found that the minor could not cooperate with his counsel, it should have turned to section 705 and proceeded under either section 6550 or Penal Code section 4011.6, whichever was appropriate (*In re Mary T.*, *supra*, 176 Cal.App.3d at p. 43 [Pen. Code, § 4011.6]; *James H.*, *supra*, 77 Cal.App.3d at p. 177 [§ 6550]). Rather than issuing a 90-day commitment order, the appropriate step at that time would have been to refer Patrick to a facility for 72-hour treatment and evaluation. [12]

Three months later, in February 1996, Napa State Hospital reported that the minor was not yet competent to stand trial and recommended continued retention at that facility for further care and treatment. At a March hearing, defense counsel asked the court to reconsider its procedures, to follow *James H.* and, in terms of treatment for his client, asked the court to transfer Patrick's case to Los Angeles to allow that juvenile court to find an appropriate placement pursuant to LPS procedures. Although defense counsel was commended for the quality of his argument, the court in the short run maintained the status quo.

More evaluations and hearings followed. Although the prosecution eventually agreed with the defense concerning the procedural issues, the juvenile ***1358** court in the meantime had become concerned about the status of the pending section 602 proceedings if the LPS procedures were followed.

Concerning the status of the pending section 602 proceedings, the two statutory schemes cited in section 705 seem to be in conflict. Under section 6551, the jurisdiction of the juvenile court is *suspended* during the time the minor is subject to the jurisdiction of the court in which the LPS petition is filed. (§ 6551; see fn. 5, *ante*.) Under Penal Code section 4011.6, however, the juvenile court may retain *concurrent* jurisdiction over the minor during the LPS proceedings. (Pen. Code, § 4011.6; see fn. 6, *ante*.)

In *In re Robert B.* (1995) 39 Cal.App.4th 1816 [46 Cal.Rptr.2d 691], Division One of this court dealt with some of the conflicts in those sections. It concluded that section 6551 and Penal Code section 4011.6 "should be considered complementary, rather than as providing alternative procedures. Together, the sections authorize the juvenile court to refer persons within its jurisdiction for 72-hour evaluation or treatment after which, in appropriate cases, the provisions of the LPS Act may be invoked, pursuant to which the minor may be detained in a mental health facility for a longer period of time." (*In re Robert B.*, *supra*, 39 Cal.App.4th at pp. 1822-1823.) Reconciling the sections, the court held: "The juvenile court retains concurrent jurisdiction over the minor during the LPS proceedings, unless the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of the minor. In such a case the juvenile court's jurisdiction is suspended during such time as the minor is subject to the jurisdiction of the court overseeing the LPS proceedings." (*Id.* at p. 1823.)

In this case, the juvenile court was on notice that the mental health agencies were reluctant to proceed under

LPS so long as the court retained a Penal Code section 1370 hold over Patrick. In its LPS evaluation, the county mental health department stated its opinion should be "considered hypothetical" since Patrick was currently committed under Penal Code section 1370. At the May 20, 1996, hearing, the county community program director told the court there would be a problem if it ordered Los Angeles authorities to file a conservatorship petition "in that Los Angeles County won't do that as long as the other hold is in effect." Defense counsel suggested the commitment order needed to be withdrawn. But the juvenile court remained apprehensive that Patrick could be released before Los Angeles agencies could act. Thus, in ordering that the Los Angeles Department of Health and Human Services file a section 5150 conservatorship petition within 10 days, the ***1359** juvenile court also ordered that Patrick "continue to be held pursuant to Section 1370 PC as previously ordered." [13]

To the extent the juvenile court continued its order that Patrick remain committed pursuant to Penal Code section 1370, it erred. In an adult proceeding, a finding of present incompetence results in an immediate suspension of the criminal proceedings and the next issue is simply whether the defendant should be confined in a state hospital or other facility or be placed on an outpatient status. (Pen. Code, § 1370, subd. (a)(1), (2).) But a finding of incompetence in a juvenile proceeding should not result in a confinement order or its equivalent. (*In re Mary T.*, *supra*, 176 Cal.App.3d at p. 43.) In effect, a juvenile is not committed as incompetent to proceed with section 602 proceedings, but on a wholly independent basis and after wholly independent procedures. (*In re Mary T.*, *supra*, at p. 44.) At the time of the May 20, 1996, order, Patrick had already spent six months at the state hospital under the guise of Penal Code section 1370 "for the purpose of being treated in order to regain his trial competency," notwithstanding the fact that the mental health experts and the court thought it unlikely he would ever reach the required level of competency. Once Patrick was found incompetent, the juvenile court should have referred him for an early evaluation for possible initiation of LPS civil commitment proceedings. (See §§ 705, 6550; Pen. Code, § 4011.6.)

We conclude that the portion of the juvenile court's order of May 20, 1996, providing for Patrick's continued commitment pursuant to Penal Code section 1370, must be set aside. The juvenile court may retain its jurisdiction over the minor while he is subject to the LPS proceedings. If the minor is detained in a facility pursuant to LPS and if the person in charge of that facility determines that further section 602 proceedings would be detrimental to Patrick's well-being, the juvenile court should then suspend its jurisdiction for such time as the minor is subject to the jurisdiction of the court overseeing the LPS proceedings. (Pen. Code, § 4011.6; see *In re Robert B.*, *supra*, 39 Cal.App.4th at p. 1823.)

IV. Conclusion

That portion of the juvenile court's May 20, 1996, order providing for continued commitment of the minor pursuant to Penal Code section 1370 is set aside. In all other respects, the order is affirmed. Unless otherwise ordered by the Napa County Juvenile Court, that court may retain ***1360** jurisdiction over the minor concurrently with the court exercising jurisdiction over the minor pursuant to section 5150.

Anderson, P. J., and Poché, J., concurred.

Footnotes

1 Unless otherwise stated, section references are to the Welfare and Institutions Code.

2 Defense counsel responded that "the juvenile equivalent" to Penal Code section 1368 was set forth in *James H.*, *supra*, 77 Cal.App.3d 169. He also cited *In re Mary T.* (1985) 176 Cal.App.3d 38 [221 Cal.Rptr. 364]. These cases are discussed in part III, *post*.

3 Under adult criminal procedures, if a defendant is found mentally incompetent, the court must order the community program director or a designee to evaluate the defendant before it makes an order directing that the defendant be confined in a state hospital or other treatment facility or be placed on outpatient status. (Pen. Code, § 1370, subd. (a)(2).)

4 Section 705 provides: "Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally disordered or if the court is in doubt concerning the mental health of any such person, the court may proceed as provided in Section 6550 of this code or Section 4011.6 of the Penal Code." Each of the latter two cited sections provides for civil commitment under the Lanterman-Petris-Short Act (LPS). (§ 5000 et seq.)

5 Section 6550 provides: “If the juvenile court, after finding that the minor is a person described by Section 300, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and proceed pursuant to this article.”

Section 6551 provides, in pertinent part: “If the court is in doubt as to whether the person is mentally disordered or mentally retarded, the court shall order the person to be taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. Thereupon, Article 1 (commencing with Section 5150) of Chapter 2 of Part 1 of Division 5 applies, except that the professional person in charge of the facility shall make a written report to the court concerning the results of the evaluation of the person's mental condition. If the professional person in charge of the facility finds the person is, as a result of mental disorder, in need of intensive treatment, the person may be certified for not more than 14 days of involuntary intensive treatment if the conditions set forth in subdivision (c) of Section 5250 and subdivision (b) of Section 5260 are complied with. Thereupon, Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 of Division 5 shall apply to the person. The person may be detained pursuant to Article 4.5 (commencing with Section 5260), or Article 4.7 (commencing with Section 5270.10), or Article 6 (commencing with Section 5300) of Part 1 of Division 5 if that article applies. [¶] ... [¶] The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for postcertification treatment of an imminently dangerous person or the petition for commitment of a mentally retarded person is filed or under remand for 90 days for intensive treatment or commitment ordered by such court.”

FN6 Penal Code section 4011.6 provides, in pertinent part: “In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation pursuant to Section 5150 of the Welfare and Institutions Code and he or she shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. Upon transfer to a facility, Article 1 (commencing with Section 5150), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), and Article 7 (commencing with Section 5325) of Chapter 2 and Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code shall apply to the prisoner. [¶] ... [¶] A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). [¶] ... [¶] For purposes of this section, the term 'juvenile detention facility' includes any state, county, or private home or institution in which wards or dependent children of the juvenile court or persons awaiting a hearing before the juvenile court are detained.”

7 By its terms, section 6550 first requires the court to find that the minor is a person described by section 300, 601 or 602 before it proceeds further. (See *In re Vicki H.* (1979) 99 Cal.App.3d 484, 496, fn. 5 [160 Cal.Rptr. 294].) Penal Code section 4011.6 does not require that finding. (See *In re Mary T.*, *supra*, 176 Cal.App.3d at p. 44.) The court, of course, made no section 602 finding in this case. The prosecution did not discuss whether the fact that the minor had previously been found to be a person described by section 300 in Los Angeles would suffice for purposes of section 6550. We need not decide that issue in this case.

8 The court disagreed with the department's conclusion that the minor was not a danger to himself or others. “I truly believe, based on the crime charged, that this individual is a danger to others. There's no question about that in my mind.”

9 Defense counsel argued: “I don't think 1370 is an alternative. That's only in the adult court. In the case law that I provided the Court, really I think the only alternative is to either order the filing of the 6500 petition for dangerous developmentally disabled person or to go the route the court has gone so far in requesting a 5150 evaluation. [¶] The 602 petition was filed, and that's just there. The Court has found him incompetent, and I don't think that dismisses that, it just means that the Court now has to follow the scheme that's been laid out in the case authorities, and that is to have a conservatorship established, presumably by Los Angeles County. [¶] If at some point in the future he gains his competency LA can notify us of that and I imagine Napa County could go forward on the 602 petition. [¶] But I don't think 1370 and anything following it is an option for the Court, because it's not set out in the case law, which establishes the competency proceeding in juvenile cases.”

10 The record before us does not indicate how Los Angeles County authorities responded to this order.

11 At this point in its opinion, the Court of Appeal noted that even where they are already wards of the court, “mentally ill minors cannot be committed without compliance with applicable provisions of the Lanterman-Petris-Short Act (§ 5000 et

seq.) or other appropriate procedures affording adequate due process ....” (*In re Mary T.*, *supra*, 176 Cal.App.3d at p. 43, fn. 7, citing *In re Michael E.* (1975) 15 Cal.3d 183 [123 Cal.Rptr. 103, 538 P.2d 231].)

12 Although defense counsel made his position clear to the juvenile court, he did not test that position by seeking timely review of the November 21, 1995, order in this court. In *James H.,* for example, the Court of Appeal granted a petition for writ of mandate to enforce the procedures formulated in that opinion. (*James H.*, *supra*, 77 Cal.App.3d at pp. 177-178.)

13 On November 21, 1995, the juvenile court had previously ordered that Patrick remain committed to Napa State Hospital “pursuant to Section 1370 of the Penal Code ... for the purpose of being treated in order to regain his trial competency.”

194 Cal.Rptr.3d 706
Review Granted
Previously published at: 241 Cal.App.4th 1436
(Cal.Const. art. 6, s 12; Cal. Rules of
Court, Rules 8.500, 8.1105 and 8.1110,
8.1115, 8.1120 and 8.1125)
Court of Appeal,
Second District, Division 5, California.

IN RE ALBERT C., a Person Coming
Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
Albert C., Defendant and Appellant.

B256480
|
Filed November 10, 2015

Synopsis

Background: Juvenile delinquency proceeding was commenced. After minor was detained and received services to assist him in gaining competence, the Superior Court, Los Angeles County, No. MJ21492, Denise McLaughlin–Bennett, J., reinstated proceedings, found minor competent, and, after minor admitted to two counts, ordered suitable placement for minor. Minor appealed.

Holdings: The Court of Appeal, Kriegler, J.,held that:

[1] expert's written report did not establish that minor was incompetent to stand trial;

[2] evidence was sufficient to support finding that minor understood the nature of the proceedings and thus was competent;

[3] minor's detention for 294 days while receiving services to attain competency did not violate his right to due process of law;

[4] court protocol did not establish any presumptive due process violation for detention in excess of 120 days;

[5] any error in detaining minor more than 120 days while he received services directed at attaining competence was not prejudicial;

[6] minor was not similarly situated to persons who fall under the Lanterman–Petris–Short (LPS) Act; and

[7] court would modify allegedly vague probation condition requiring minor to get "satisfactory grades" to define such grades as "passing grades in each graded subject."

Affirmed as modified.

***711** APPEAL from a judgment of the Superior Court of Los Angeles County. Denise McLaughlin–Bennett, Judge. Affirmed as modified. (Los Angeles County Super. Ct. No. MJ21492)

Attorneys and Law Firms

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Theresa A. Patterson, Deputy Attorney General, for Plaintiff and Respondent.

Opinion

KRIEGLER, J.

Proceedings against a minor on a juvenile delinquency petition (Welf. & Inst.Code, § 602) [1] must be suspended if the minor "lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable ***712** degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her" based upon a showing that "the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition ...." (§ 709, subds. (a) & (b).) Albert C., a minor named in two section 602 petitions, was detained in juvenile hall for 294 days [2] while receiving services to assist him in gaining competence after

being declared incompetent to stand trial. At the end of that 294 day period, the delinquency court reinstated proceedings based on findings that minor was competent and he had "exaggerated" his inability to understand the nature of the proceedings.

Minor contends in this appeal that the delinquency court's handling of the proceedings after minor was declared incompetent violated various constitutional and statutory provisions, as well as a protocol drafted by the Presiding Judge of Juvenile Court in Los Angeles for the handling of cases in which a minor is declared incompetent. Minor also challenges conditions of probation imposed as part of a suitable placement order. We modify a condition of probation, but otherwise affirm.

PROCEDURAL SUMMARY

On July 13, 2012, a section 602 petition was filed alleging that minor threatened a public officer, in violation of Penal Code section 71.[3] Minor denied the allegations at his arraignment hearing and was released into his mother's custody. On August 14, 2012, minor's mother reported that minor left home without permission, he had not returned for 48 hours, and his whereabouts were unknown. An arrest warrant was issued.

Minor remained at large until his arrest on February 12, 2013. A second section 602 petition was filed alleging the following: assault by means likely to cause great bodily injury (Pen.Code, § 245, subd. (a)(4) [count 1]); battery with serious bodily injury (Pen.Code, § 243, subd. (d) [count 2]); possession of a firearm by a minor (Pen.Code, § 29610 [count 3]); and criminal threats (Pen.Code, § 422, subd. (a) [count 4]).[4] At the arraignment on the second section 602 petition, minor's counsel declared a doubt as to minor's competence and proceedings were suspended.

Minor was detained in juvenile hall while proceedings were suspended. At a hearing on February 4, 2014, the delinquency court ruled minor had regained competency and reinstated proceedings.

On February 20, 2014, minor admitted count 1 of the first petition and count 1 of the second petition. He was ordered suitably placed. This timely appeal followed.

DISCUSSION

Constitutional Issues

We first address the constitutional issues raised by minor. He contends (1) the juvenile court improperly reinstated delinquency proceedings by applying an incorrect legal standard and rejecting the opinion of the expert who evaluated minor and found him incompetent, (2) his right to due process of law was violated by his lengthy detention without evidence of progress toward competency, (3) the length of detention ***713** violated his right to equal protection of the law because he was not afforded the procedural protections required for a civil commitment, and (4) his right to confront and cross-examine witnesses was violated when the court considered statements by a deputy county counsel.

Minor's contentions are based upon the manner in which the delinquency court proceeded from the time minor's counsel declared a doubt as to minor's competency. We set forth a review of the proceedings in sections corresponding to the numerous arguments raised on appeal.

The Section 602 Petitions, Detention, and Attempts to Place Minor

The first section 602 petition was filed on July 13, 2012. The delinquency court explained deferred entry of judgment to minor at a pretrial hearing on August 8, 2012. Minor's counsel was unsure whether minor understood the proceedings. As a result, arraignment was continued to September 19, 2012, and minor was released home to his mother.[5]

An arrest warrant was issued after minor absconded from mother's home on August 14, 2012. Minor's whereabouts remained unknown until his arrest on February 12, 2013, which resulted in the filing of the second section 602 petition.

Arraignment on the second section 602 petition was scheduled for February 15, 2013. The lawyer standing for minor's counsel of record at the arraignment declared a doubt as to minor's competency to stand trial and proceedings were suspended. The delinquency court ordered minor detained upon finding that it was "a matter of immediate and urgent necessity for the protection of

the minor and the person and property of others that the minor be detained. Continuance in the home is contrary to the minor's welfare; reasonable efforts have been made to prevent or eliminate the need for removal. There are no available services that would prevent the need for further detention." Similar findings supporting detention were made by the court at numerous proceedings until the ultimate resolution of the petitions.

The delinquency court made efforts to place minor in a less restrictive setting than juvenile hall, taking into account that minor was also a dependent child under section 300. Efforts to place minor were made difficult by his abysmal behavior in juvenile hall—"since the minor's last court appearance on 03/19/2013, the minor has been involved in 11 incidents while inside juvenile hall," and on March 20, 2013, "minor participated in gang activity when he flashed 'gang signs.' " Between April 10 and April 25, 2013, Probation filed three behavior reports with the court, detailing incidents involving minor.

On June 20, 2013, Probation filed a report discussing the least restrictive setting for minor's placement. The only available alternative to juvenile hall was to release minor to the Department's care and custody. The probation officer recommended that minor remain in juvenile hall due to his "past AWOL/runaway behaviors." When previously released to his mother's custody, minor left home without permission and his whereabouts were not known ***714** to Probation and the Department for six months. Minor was arrested on charges of assault by means likely to cause great bodily injury and criminal threats. Probation did not believe that the Department possessed the supervision and structure required to ensure minor's safety and the safety of the community based on his past delinquent history. Because minor was under dependency jurisdiction, the court could order the Department to screen minor for a "Level 14" facility. Probation recommended that the hearing be continued for one month to assess minor's progress. At the June 20, 2013 hearing, the court ordered the Department to screen minor for Level 14 placement.

A July 17, 2013 probation report stated that the a caseworker from the Department presented minor's case to the interagency screening committee on July 2, 2013. Minor met the criteria for a Level 14 treatment program and/or a community treatment facility. Service providers at the meeting stated that they would present minor's case to their respective agencies, but that at the time no beds were available.

At an August 15, 2013 hearing, the delinquency court clarified that it intended the Department and Probation to coordinate a Level 14 placement, and that it was in communication with the dependency court judge who would make a joint order. Minor's counsel renewed her objections to minor's detention and moved to dismiss all charges because of the court's failure to adhere to the Amended Competency to Stand Trial Protocol (Protocol) drafted by the Presiding Judge of Juvenile Court in Los Angeles and the constitutional requirements of due process of law. The court observed that the deadlines in the Protocol are "not law, it is protocol, and the court does believe that for reasons that have been stated there's good cause to deviate from protocol and has done so." The court denied the motion to dismiss and continued the competency hearings with findings supporting minor's continued detention.

At the hearing on August 26, 2013, the court stated that minor was eligible for and agreed to Level 14 placement, but that there was a four to six week wait before placement. On September 18, 2013, minor's counsel specifically requested minor be placed in the "Omega" housing unit of the Department. Minor's social worker stated that she had never heard of the "Omega" housing unit.

Probation's October 16, 2013 report advised the delinquency court that minor did not meet the criteria for admission into the Vista Del Mar facility. At a hearing on October 16, 2013, minor's counsel stated that at minor's last appearance in dependency court, a placement was open for minor that day but the dependency court failed to fund the placement and minor was not released. The delinquency court replied that the matter of funding would need to be resolved by the dependency court. Minor's counsel renewed her objection to minor's custody, arguing that minor was not likely to attain competency in the foreseeable future and the petitions should be dismissed. Deputy County Counsel Paul Scolari advised the court that minor's next hearing in dependency court was set for October 28, 2013, and that he would argue that the section 300 "home of parent mother" order be changed so that minor be ordered into the custody of the Department. Minor's dependency attorney, Brian Thompson, stated that minor was on the waiting list for

four different level 14 placement facilities, but that minor had been rejected at another facility, Harbor View, due to his gang affiliation.

***715 Proceedings on the Issues of Competency and Treatment**

After minor's counsel declared a doubt as to minor's competency on February 15, 2013, the delinquency court appointed Dr. Praveen R. Kambam to evaluate minor for competency, and suspended proceedings as to both petitions. Dr. Kambam filed a report dated March 17, 2013, expressing the opinion that minor was incompetent to stand trial.[6] Dr. Kambam diagnosed minor with ADHD and Disruptive Behavior Disorder, but minor did not have any developmental disabilities. Dr. Kambam concluded: "It is my opinion, with reasonable medical certainty, that there is a substantial probability that the minor will attain Competency to Stand Trial in the next 12 months. While the minor is significantly impaired in his ability to retain information, reason, and make decisions, he has not had any medication trials with medications (such as ADHD medications) that improve executive functioning and reduce inattentive and hyperactivity-impulsivity symptoms. With mental health services to intervene in this area, and with repetitive education of competency-related concepts, he would likely significantly improve his understanding of these concepts."

In addition to Dr. Kambam's report, the delinquency court was already in possession of a report regarding minor's schooling and education. Minor entered special education in March 2007, under the eligibility of Attention Deficit and Hyperactivity Disorder (ADHD). According to an education report dated July 25, 2012, minor attained a "C" average in seventh grade but in eighth grade his average was "D-." In the first semester of ninth grade minor was failing three courses and close to failing a fourth class, but doing "significantly better in his reading and English classes." Minor had 53 period absences that semester. Minor failed all of his courses in the second semester of ninth grade, while accumulating 170 period absences. "Factors contributing to his lack of success [in school were] poor attendance and inappropriate behaviors." Cognitive testing on April 4, 2012, determined that minor possessed an average IQ. He did not meet the criteria for Specific Learning Disability, because although he had deficits in his academic skills, they were attributable to "significant life factors and lack of adequate exposure to school curriculum." Minor was eligible for special education under Emotional Disturbance, and under Other Health Impairment due to his ADHD.

The delinquency court found minor incompetent to stand trial at a competency hearing held on March 19, 2013. Probation and the Department of Mental Health (DMH) were ordered to evaluate minor and submit a report by April 10, 2013, with recommendations for treatment, and an assessment of whether minor was likely to gain competence in the foreseeable future. Minor remained detained.

Probation reported on April 10, 2013, that Probation and DMH were unable to collaborate on appropriate treatment or services for minor because there was no protocol or procedure for completing the report the court had ordered. Probation recommended minor's referral to the Regional Center for evaluation. The report also stated that according to minor's mother and maternal aunt, "minor has not been forthcoming with providing accurate information during his psychological assessments. ***716** Further, both mother and maternal aunt have advised this officer that they feel the minor may have been misleading the psychologists; so that his charges would be 'dropped.' "

The competency planning hearing was continued to April 17, 2013. Probation and DMH were again directed to evaluate minor and submit a joint report to the court with their recommendations for his treatment. Probation was ordered to prepare an Incompetent to Stand Trial planning report and refer minor to the Regional Center if appropriate. Minor remained detained, over the objection of his counsel, who argued that the least restrictive setting was in the home.

Probation filed a report on April 17, 2013, stating that minor would be referred to Creative Support US Services (Creative Support) for 20 hours of competency training, to occur once a week while minor was detained. Creative Support would administer an assessment test on its first visit, and submit a written report after training was completed. The probation report recommended that the hearing be continued to June 1, 2013, to assess the status of minor's competency attainment services. The court granted Probation's request to transfer minor from

Sylmar Juvenile Hall to Central Juvenile Hall, because competency services could not be provided at Sylmar.

According to a probation report filed on May 23, 2013, the probation officer had been in contact with Nicco Gipson of Creative Support in regards to minor's competency training. Minor was to meet with Gipson weekly, for an hour and a half. Minor had completed two competency training sessions, but it was too soon to evaluate his progress. Probation recommended that the matter be continued for one month so that minor could continue with competency training.

At the May 23, 2013 hearing, minor's counsel renewed her objection to minor's detention on the basis that, under the Protocol, the case should be dismissed if minor could not attain competency within 60 days. Counsel argued that minor had not been placed in the least restrictive setting, and that the training he was receiving was ineffective. The court reviewed the history of the case and determined that it was reasonable for minor to be detained while receiving competency services for another month in light of public safety concerns. Probation was directed to provide a continued assessment of whether minor could gain competency in the foreseeable future and if a less restrictive setting would be appropriate while he received training.

On June 20, 2013, Probation filed a report stating that Gipson planned to administer an assessment test to minor on June 19, 2013, to measure his progress. Gipson noted that minor had missed two training sessions, due to a dental appointment and a court appearance. Gipson would provide Probation with the test results. The June 20, 2013 hearing was continued for one month for receipt of Creative Support's report regarding minor's progress.

A report from Creative Support was attached to a July 17, 2013 probation report. It advised that minor commenced competency training services on May 9, 2013. Minor was tested on the first day of training, and again, on June 19, 2013. The Competency Assessment Instrument used to assess minor contained 14 domains, scored from 1 to 4, with 1 equaling clearly incompetent, 2 equaling borderline incompetent, 3 equaling borderline competent, and 4 equaling clearly competent. Minor scored a 1 in all 14 domains on both tests. According to the test standards he was incompetent to stand trial. Minor's counsel renewed her objection to minor remaining in custody, and requested the reappointment ***717** of the competency expert to evaluate whether minor was making progress towards attaining competency. The court denied the appointment motion as premature and ordered continuation of services and detention.

On August 15, 2013, Probation filed a report attaching a Creative Support report. Minor had been tested again on July 31, 2013, and received scores of 1 in all 14 domains of the Competency Assessment Instrument, meaning he was not competent to stand trial under the standard. Probation recommended continuing the hearing for two months to evaluate minor's progress.

Attached to a probation report filed on September 18, 2013, was a report from Creative Support which included scores from competency assessments administered to minor on July 31, 2013, and on September 11, 2013. On both tests, minor scored a 1 on a scale of 1 to 4 on each of the 14 domains, leading to a conclusion that minor was not competent to stand trial. The probation report indicated that the Department had advised there were community-based vendors who provided competency training. However, minor was not currently a Regional Center client, and would need a referral to determine his eligibility.

At a hearing on September 18, 2013, the delinquency court stated that it had read the latest probation report, which appeared to be requesting a continuance of the matter, and requested that minor be referred to the Regional Center for a determination as to his eligibility for services. Deputy County Counsel Scolari, who appeared at the hearing, stated that minor's social worker had already made a referral to the Regional Center and that the evaluation assessment could take up to 90 days. Competency training could continue through the Regional Center, provided that minor met the criteria for the Regional Center.

Minor's counsel informed the court that she had filed a petition for writ of habeas corpus with this appellate court on September 10, 2013, seeking minor's release from custody, based on a violation of the Protocol. Minor's counsel represented that after at least four tests, minor was still scoring all 1's, which demonstrated that he was not progressing. Counsel argued that minor was clearly incompetent, and that his continued detention was illegal. She requested that the section 602 petitions be dismissed,

based on a finding that minor was not substantially likely to obtain competency in the future.

The prosecutor argued against minor's release and against the dismissal of the petitions, noting that minor was facing serious charges, and that it appeared the Department agreed that a level 14 placement was best for minor and the public. Minor's counsel responded that detention in juvenile hall was not safe for minor, and requested he be placed in the least restrictive placement while receiving competency training.

The delinquency court summarized in detail the proceedings up to that point, and continued the matter for another hearing on October 16, 2013. The court noted that it was still within the 12–month period for attaining competency that was referenced in Dr. Kambam's original report. The continuance request was reasonable, as minor was continuing to receive competency training. The court ordered Probation to provide information at that time as to the status of minor's evaluation by the Regional Center, as well as progress towards transferring minor to a closed level 14 placement.

On October 16, 2013, Probation filed a report advising minor was tested by Creative ***718** Support on October 2, 2013, and scored all 1's in each of the 14 domains, leading to the conclusion that he was not competent to stand trial. At a hearing on October 16, 2013, the delinquency court expressed concern that the report from Creative Support contained essentially the same information as the previous month's report, and that the progress reports did not contain any description of the training being provided, or information that the testing was capable of preventing malingering. The court was inclined to appoint an expert to evaluate minor's competency. The prosecutor agreed with this suggestion, noting her concern that minor was "malingering and may in fact actually be competent and completely aware of what's going on." Minor's counsel stated that minor continued to receive failing test scores on his competency assessments, showing that there had been no progress toward attainment of competency. The delinquency court suggested that the author of the Creative Support report, Amy Wilcox, be ordered to appear at the next hearing to answer questions about the tests and services being provided to minor. Minor's counsel renewed her objection to minor's custody, arguing that minor was not likely to attain competency in the foreseeable future and the petitions should be dismissed. Counsel also renewed her request to have Dr. Kambam appointed to reevaluate minor. The delinquency court denied the request to have Dr. Kambam reappointed, choosing instead to appoint the next expert on the list to evaluate minor. The court ordered Wilcox from Creative Support Services to appear at the next hearing on November 12, 2013.

Testimony and Reports Leading to the Court's Determination that Minor was Competent

At the hearing on November 12, 2013, Wilcox, who scored minor's tests for Creative Support, produced minor's most recent test, showing that he answered, "I don't know" to every question, which was the basis for his scores of 1. Wilcox verified that the Competency Assessment Instrument could not control for malingering. All Creative Support could do was "give the test, provide the training; and that would be the forensic psychiatrist that would determine that if there were any malingering."

Dr. Cory Knapke filed a report after evaluating minor, concluding that minor was incompetent to stand trial, basing the finding on minor's lack of maturity and understanding of courtroom proceedings. The prosecutor expressed concern that minor was malingering, and the matter was set for an attainment of competency hearing. An attainment of competency hearing was held on February 4, 2014. Competency trainer Gipson and Dr. Knapke testified.

Gipson worked as a competency trainer for Creative Support with seven years of experience. She trained minor for about eight months in weekly sessions of an hour and a half, following a competency manual, which contained 14 different domains of competency material. She and minor went over the materials in the manual and discussed the information, then administered mini-tests to assess minor's understanding. His performance on the tests varied. He would appear to understand the information during one session, but the next week he might forget and they would need to review. Competency was scored on a scale of 1–4, with 1 being the lowest score. A 3 or 4 in all domains was a passing score. Gipson knew minor had scored more than a 1 at some point but could not recall when, or how often. Minor had attained a passing score on some domains, but then later failed the same domains. Gipson believed that minor may have ***719** scored as high as a 4 in some domains, but she could not be absolutely certain. Minor was able to respond to questions

and appeared to understand the conversation. Gipson spoke to minor about topics unrelated to competency training. She had no issues communicating with minor, who was friendly and usually calm.

The court questioned Gipson regarding minor's test scores that had been provided to the court on November 12, 2013, which showed scores of 1 in all domains, and in which minor uniformly answered "I don't know" to questions. Gipson testified that minor had been tested since then in early January, although the test had not been officially scored. She had the test with her. The test result was admitted into evidence without objection. Gipson testified that minor was able to answer many more questions now than in the past and was making good progress. The court asked if minor would receive a better score on the current test. Gipson replied, "Where you see the pluses on here it's just as I went through the plus means that he will get a three or better, which means that it would be a pass on that particular question." When asked by minor's counsel, Gipson confirmed that minor would have to pass all 14 domains to be considered competent, and that he did not pass all 14 domains on the January test.

Dr. Knapke evaluated minor in November 2013, three months before he testified at the hearing. He determined that minor was not mentally retarded or developmentally disabled, and minor did not suffer from hallucinations or delusions. Minor did not exhibit any signs of ADHD. Minor was not entirely truthful during the interview, specifically with regard to frequency of drug and alcohol use, gang affiliation, and weapons possession.

Dr. Knapke determined that minor was able to rationally cooperate with his attorney, but he was concerned about minor's understanding of basic courtroom proceedings based on minor's poor school performance and grades. He elaborated: "As a result other psychologists and psychiatrists have also evaluated him and felt that he had problems with his thinking with his ability to reiterate basic courtroom proceedings when asked about courtroom proceedings, and during my examination when I asked him similar questions he responded I don't know to everything. He was unable to give me the names of any pleas. He was unable to differentiate between the adversarial roles of the district attorney verses [*sic*] a public defender. He was unable to explain what a judge does in the courtroom. He was unable to basically explain anything about courtroom proceedings, and because of his lack of education primarily due to his disruptive behaviors in the past, in other words being truant from school, being constantly absent from classes, being extremely disruptive in his classrooms and being aggressive in his classroom settings, he was unable to learn appropriately and his academic skills and understanding completely fell behind his peers. However, his IQ has been determined to be normal. So in my opinion his lack of understanding of courtroom proceedings and his lack of individual skills, if you will, is not due to lack of potential; in other words, he's not developmentally disabled but rather his problems with understanding, his lack of effort, and behavioral problems that have resulted in his inability to learn basic concepts."

Dr. Knapke could not rule out the possibility that minor was exaggerating his lack of understanding of courtroom proceedings. He would expect a juvenile of minor's intelligence level to have attained competency or have been able to demonstrate a basic understanding of courtroom proceedings after eight to nine months of ***720** competency training. When asked if minor "should have attained competency by now," Dr. Knapke said, "Yes. He's not mentally retarded. He—he has normal intelligence. There's no psychiatric reason from my point of view that he is unable to learn basic courtroom proceedings, especially after eight months of competency training." Dr. Knapke considered eight months of competency training to be "a lot of competency training."

When Dr. Knapke asked minor why he was in custody, minor avoided the question and spoke about abuse issues with his mother and grandmother. This was one of the reasons leading Dr. Knapke to opine at the time of his examination that minor was incompetent to stand trial, since minor was unable to state what he was charged with or to provide any information about courtroom proceedings. Minor seemed unsophisticated and "child-like" during the interview, but Dr. Knapke could not rule out the possibility that he was exaggerating his lack of understanding of basic concepts, including spelling and other questions addressing cognitive functions.

During cross-examination by minor's counsel, Dr. Knapke testified that "... I've been observing your client through the—through the day today, he's been appropriate in terms of courtroom, of—in terms of his courtroom demeanor he's been whispering to you

as he's been listening to witnesses, listening attentively to witnesses. So he's been assisting you with—with his defense....”

Minor's counsel asked Dr. Knapke if he discussed possible scenarios involving plea bargains. Dr. Knapke responded, “No, because once I began asking him about courtroom proceedings his response to almost every single question was I don't know. It was clear to me that he was not going to explain in any detail whatsoever any further information about courtroom proceedings. And keep in mind I was sufficiently concerned about his lack of understanding of courtroom proceedings at the time of my evaluation to opine in my report that I did not believe that he was competent, and I believed it was reasonable at that point in time that he continue with competency training. However, it was only based on his lack of understanding of courtroom proceedings, or at least that was my objective observations, I could not rule out the possibility, however, that he might have been exaggerating some lack of understanding regarding that.”

Dr. Knapke went on to testify that, “Based on what I heard today from the Creative Support person I think that there is a very high likelihood that he not only can attain competency, but I think it's pretty probably likely that he does understand basic courtroom proceedings.” In order to provide a “very definitive” opinion as to minor's present competency, he would need to reexamine minor. He noted “that there is substantial likelihood that he indeed has a basic understanding of courtroom proceedings at this point.”

The delinquency court made a detailed ruling on the record:

“In considering the information that the court has received thus far, particularly there being no evidence of any mental retardation, no evidence of any developmental disability, no evidence of mental illness, evidence that the minor possessing [*sic*] a normal IQ, that he has the probability of understanding, and it appears that if there has been any expressed misunderstanding it's been due to lack of effort or those behaviors that have been exhibited by the minor that have been described both in Dr. Cambam's [*sic*] report as well as Dr. Knapke's report. And in considering those responses contained within the January 30, 2014, revised competency assessment instrument, which I think the ***721** record should reflect is the same test that was presented by Ms. Wilcox back in November where all of the responses were I don't know. I think it should also be stated for the record that the reason why Ms. Wilcox came into the court with the same test with the repetitive responses of I don't know was because of the court's concern of receiving prior to November 2013 multiple reports from Creative Solutions [*sic*] indicating that the minor had scored all ones and because of that was incompetent. The court did not have information at that time as to what the scoring was based upon, nor did the court have any information with respect to the type of training probation had provided to the minor pursuant to the order the court made back in March of 2013. Ms. Wilcox did provide that information pursuant to the court's request by showing the court a copy of the questionnaire which has now been marked as People's 1, not the exact one questionnaire that Ms. Wilcox presented in November of 2013, but the same test format. The explanation at that time from Probation was that the minor had answered every question at that time with the response I don't know, and because of that that's why reports have been submitted to the court that there was a consistent finding that the minor had not yet attained competency, had remained incompetent, and required further training. It was also at that time that the People raised concern based on information it had about malingering issues, and because of that Dr. Knapke was appointed to determine whether or not the issue of competency was still at issue and whether or not the minor was malingering, and I don't believe that Dr. Knapke ever used the word malingering. I believe that Dr. Knapke's word was exaggerated, that's how he referenced it in the report that he prepared, and that's what —that's what he testified to that he could not rule out the minor exaggerating his responses in order to delay these proceedings.

“Seeing no evidence in this court's mind that would explain why the court—why the minor would repetitively state I don't know to questions that it would appear to this court could be answered by the minor, particularly since there's no evidence of mental retardation, there's no evidence of developmental disability, there's no evidence of mental illness, I do agree with Dr. Knapke that there's no reason why this minor has not yet attained competency. I did observe the minor during these proceedings and note that while I certainly could not hear what the minor was saying to his attorney, there was [*sic*] several times when he did attempt to get his attorney's attention and did

converse with his attorney. He seemed to be engaged in hearing, he was not distracted, his facial gestures appeared to respond within reason to some of the testimony that was given both by Ms. Gipson and by Dr. Knapke. When I take all of this evidence into consideration I find that there is overwhelming evidence to suggest that the minor has been exaggerating his responses, and that's the only reason why he's failed to give an accurate and forthright response to some of the questions that are contained within the questionnaire.

"I find that the People have met their burden, I find that the minor has attained competency and proceedings will be reinstated effective today." [7]

Standard of Review and Legal Principles Relating to Competency

[1] The federal and state constitutional rights to due process prohibit persons who ***722** are incompetent to stand trial to be subjected to a criminal trial or a juvenile delinquency proceeding. (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 468, 123 Cal.Rptr.3d 516, disapproved on other grounds in *R.V., supra,* 61 Cal.4th at p. 199, 187 Cal.Rptr.3d 882, 349 P.3d 68.) Pursuant to section 709, subdivision (a), a minor is incompetent "if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her." The language in section 709 is consistent with the standard adopted in *Dusky v. United States* (1960) 362 U.S. 402, 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (*Dusky*). (See *R.V., supra,* at p. 188, 187 Cal.Rptr.3d 882, 349 P.3d 68, quoting *Dusky, supra,* at p. 402, 80 S.Ct. 788 ["the inquiry into a defendant's competency ... focuses on whether the defendant ' "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and ... a rational as well as factual understanding of the proceedings against him" ' "].)

[2] Although adults may be declared incompetent on the basis of mental disorder or developmental disability only, juvenile incompetence also encompasses developmental immaturity, in light of the fact that minors' brains are still developing. (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 860–862, 58 Cal.Rptr.3d 746.) "Thus, unlike an adult, a minor does not need to show that his or her inability to understand or assist arises 'as a result of mental disorder or developmental disability.' " (*Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385, 391, 179 Cal.Rptr.3d 739 (*Bryan E.*), citing *In re John Z.* (2014) 223 Cal.App.4th 1046, 1053, 167 Cal.Rptr.3d 811.)

[3] **[4]** **[5]** **[6]** Our Supreme Court has recently interpreted section 709 to include a presumption of competency, and the party claiming incompetency bears the burden of proof by a preponderance of the evidence. (*R.V., supra,* 61 Cal.4th at p. 193, 187 Cal.Rptr.3d 882, 349 P.3d 68.) In reviewing a finding of competency, we view the record in the light most favorable to the verdict and uphold the verdict if it is supported by substantial evidence. (*Id.* at pp. 198–200, 187 Cal.Rptr.3d 882, 349 P.3d 68.) "A juvenile court's determination regarding competency ... involve[s] an 'individual-specific decision' that is 'unlikely to have precedential value.' [Citation.] Guided by the ... well-settled legal definition of competency, ... the juvenile court ... draw[s] [its] conclusions based on an appraisal of the particular expert testimony by mental health professionals, courtroom observations, and other testimonial and documentary evidence then before the court in the case." (*Id.* at pp. 199–200, 187 Cal.Rptr.3d 882, 349 P.3d 68.) "[A] juvenile court's determination regarding competency, even if made in the absence of an evidentiary hearing, may be informed by the court's own observations of the minor's conduct in the courtroom generally, a vantage point deserving of deference on appeal." (*Id.* at p. 199, 187 Cal.Rptr.3d 882, 349 P.3d 68.)

[7] **[8]** "Even if the prosecution presents no evidence of competency, a juvenile court can properly determine that the minor is competent by reasonably rejecting the expert's opinion. This court has long observed that ' "[t]he chief value of an expert's testimony in this field, as in all other fields, rests upon the *material* from which his opinion is fashioned and the *reasoning* by which he progresses from his material to his conclusion." ' [Citation.] In a case such as this one, therefore, the inquiry on appeal is whether the weight and character of the evidence of incompetency ***723** was such that the juvenile court could not reasonably reject it. [Citation.]" (*R.V., supra,* 61 Cal.4th at pp. 200–201, 187 Cal.Rptr.3d 882, 349 P.3d 68.)

Compliance with the Standards of Incompetence to Stand Trial

Minor argues the ruling of the delinquency court that minor attained competency to stand trial was improper for three reasons. First, he argues the court erred in finding competency despite the report of Dr. Knapke that minor did not understand the nature of the proceedings. Second, he contends the court did not comply with the standard required by *Dusky, supra,* 362 U.S. 402, 80 S.Ct. 788. Third, he argues the court held him to the standard of competence applicable to adults, rather than the broader standard applied to juveniles. We disagree with minor's contentions.

Asserted Rejection of Dr. Knapke's Conclusions

[9] We reject the argument that the court erred in finding minor competent after Dr. Knapke expressed contrary opinions in his written report and in his testimony. Minor overstates the situation. Dr. Knapke's written report was prepared approximately three months before the hearing, at a time when he did not know that minor had given rote answers of "I don't know" to Gipson's questions on courtroom procedures, despite minor having received months of training. Although Dr. Knapke opined initially that minor was incompetent because he did not understand the nature of the proceedings, by the end of the hearing he had concluded there was a "substantial likelihood" that minor had a basic understanding of courtroom proceedings. A review of the entire record reveals that the court did not entirely reject the opinions expressed by Dr. Knapke; to the contrary, the court accepted his finding on minor's lack of mental disease, the opinion that minor should have progressed toward competence with over eight months of training, and the doctor's current belief based on his in-court observations that minor was capable of understanding the nature of the proceedings.

[10] As our Supreme Court has made clear, a trial court is not bound by an expert opinion that a minor is incompetent to stand trial. (*R.V., supra,* 61 Cal.4th at pp. 200–201, 187 Cal.Rptr.3d 882, 349 P.3d 68.) The delinquency court considered the basis for the expert's opinion, which in this case was undermined by the observations by both the doctor and the court of minor participating competently in court. The trial court could reasonably reject Dr. Knapke's opinion on incompetence based on "the weight and character of the evidence of incompetency." (*R.V., supra,* at p. 203, 187 Cal.Rptr.3d 882, 349 P.3d 68.) Based on the totality of the evidence before the court, the court fairly concluded there was overwhelming evidence that minor "exaggerated" his answers to his own benefit—a polite way of stating he was feigning incompetence, just as minor's mother and grandmother had suggested early in the proceedings.

Compliance with the *Dusky* Standard

[11] The inquiry under *Dusky* focuses on two elements: (1) the present ability to consult with a lawyer with a reasonable degree of rational understanding; and (2) a rational and factual understanding of the proceedings against him. (*Dusky, supra,* 362 U.S. at p. 402, 80 S.Ct. 788; *R.V., supra,* 61 Cal.4th at p. 188, 187 Cal.Rptr.3d 882, 349 P.3d 68.) The first *Dusky* element is not in issue, as Dr. Knapke's testimony that minor was able to rationally cooperate with counsel constitutes substantial evidence.

[12] ***724** The remaining issue is the second prong of competency—whether minor understood the nature of the proceedings. Our review of the delinquency court's thorough and thoughtful analysis demonstrates that the court correctly applied the *Dusky* standard.

The delinquency court noted in her ruling that there was no evidence to explain why minor would repeatedly state, "I don't know" to questions regarding courtroom procedures, "particularly since there's no evidence of mental retardation, there's no evidence of developmental disability, there's no evidence of mental illness...." The court accepted Dr. Knapke's testimony that there was no reason why this minor has not yet attained competency.

Most importantly on this issue, both the court and Dr. Knapke observed that minor was engaged in the proceedings, and there is no hint in the record that he did not understand what was taking place at the attainment of competency hearing. The court pointed out that minor several times during the hearing attempted to get the attention of his counsel and conversed with his attorney. The court described minor as "engaged" and pointed out that he was not distracted and made facial gestures that appeared to respond within reason to portions of the testimony by Gipson and Dr. Knapke.

In the end, the court concluded, "[T]here is overwhelming evidence to suggest that the minor has been exaggerating his responses, and that's the only reason why he's failed to give an accurate and forthright response to some of the questions that are contained within the questionnaire." In other words, the court concluded that

minor, with an average IQ and no mental disease or defect, did understand courtroom procedures and had feigned incompetence to manipulate the system to his own benefit. (See *R.V., supra,* 61 Cal.4th at p. 199, 187 Cal.Rptr.3d 882, 349 P.3d 68 [juvenile court may rely on its own observations in finding competency, even in the absence of an evidentiary hearing].) The court's conclusion is consistent with Dr. Knapke's testimony that, after hearing the testimony from Gipson, "I think that there is a very high likelihood that he not only can attain competency, but I think it's pretty probably likely that he does understand basic courtroom proceedings," and "that there is substantial likelihood that he indeed has a basic understanding of courtroom proceedings at this point."

Misapplication of the Adult Standard of Competence

[13] **[14]** Minor contends that the court held him to an adult competency standard, disregarding his developmental immaturity as a legal cause of incompetence. He primarily relies on the court's statements that minor had no mental disorder or developmental disability that would prevent him from attaining competency. His interpretation of the court's statement is too limited. Mental disorder and developmental disability are two of the bases for juvenile incompetency. The court understandably ruled out these bases as part of its decision. The court did not stop there, however, or state that those were the only bases for minor's incompetency. The court noted evidence that minor possessed "a normal IQ, that he has the probability of understanding," and observed that "[minor] seemed to be engaged in hearing, he was not distracted, his facial gestures appeared to respond within reason to some of the testimony that was given...." The court concluded that "[s]eeing no evidence in this court's mind that would explain why ... the minor would repetitively state I don't know to questions that it would appear to this court could be answered by the minor ... I do agree with Dr. Knapke ***725** that there's no reason why this minor has not yet attained competency." The court did not limit the possible causes of incompetency to mental disorder and developmental disability. The court applied the correct standard for assessing juvenile competency to determine that minor possessed the necessary mental ability to stand trial.

Due Process Violation Based on Prolonged Detention

Minor contends that his detention for 294 days while receiving services to attain competency violated his right to due process of law. His due process claim has two elements. First, minor argues the length of his detention did not comply with the standards for due process set forth by the United States Supreme Court in *Jackson v. Indiana* (1972) 406 U.S. 715, 738–739, 92 S.Ct. 1845, 32 L.Ed.2d 435 (*Jackson*) and the California Supreme Court in *In re Davis* (1973) 8 Cal.3d 798, 801, 106 Cal.Rptr. 178, 505 P.2d 1018 (*Davis*). Second, he argues that detention beyond 120 days presumptively violated due process based on the Protocol issued by the Presiding Judge of the Juvenile Court in Los Angeles. (See *In re Jesus G.* (2013) 218 Cal.App.4th 157, 159 Cal.Rptr.3d 594 (*Jesus G.*).) Both arguments fail.

Compliance with *Jackson* and *Davis*

The defendant in *Jackson* was "a mentally defective deaf mute with a mental level of a pre-school child" who was charged with two robberies, involving items totaling $5 or less in value. (*Jackson, supra,* 406 U.S. at p. 717, 92 S.Ct. 1845.) Two psychiatrists opined that Jackson was incompetent to stand trial and there was an extremely low possibility of Jackson regaining competency. One psychiatrist stated that it was unlikely Jackson could learn to read or write, and questioned whether he was even able to communicate with the interpreter in sign language. The other stated that Jackson would be incompetent even if he were not deaf and mute. (*Id.* at pp. 718–719, 92 S.Ct. 1845.) He was held in a state mental facility pending a determination as to whether he was "sane." (*Id.* at p. 719, 92 S.Ct. 1845.) The State of Indiana did not have facilities that could assist Jackson in attaining competence and there was no evidence that Jackson could not receive adequate care at home or that he otherwise required custodial care. (*Id.* at p. 728, 92 S.Ct. 1845.) Indiana law did not provide for periodic review of the defendant's condition by the court or mental health authorities, nor did it accord the defendant any right to counsel at the competency hearing. (*Id.* at pp. 720–721, 92 S.Ct. 1845.)

The Supreme Court held that "a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment

proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal." (*Jackson, supra,* 406 U.S. at p. 738, 92 S.Ct. 1845, fn. omitted.) The Supreme Court declined to quantify a reasonable period of time, "[i]n light of differing state facilities and procedures and a lack of evidence in this record, we do not think it appropriate for us to attempt to prescribe arbitrary time limits." (*Ibid.*) It noted that "Jackson [had] been ***726** confined for three and one-half years on a record that sufficiently establishe[d] the lack of a substantial probability that he w[ould] ever be able to participate fully in a trial." (*Id.* at pp. 738–739, 92 S.Ct. 1845.)

In *Davis,* three accused misdemeanants were found incompetent to stand trial. (*Davis, supra,* 8 Cal.3d at pp. 802–803, 106 Cal.Rptr. 178, 505 P.2d 1018.) They petitioned for habeas corpus relief after they had been held in a state hospital for several months without a determination as to whether they were likely to regain their competence. (*Id.* at p. 806, 106 Cal.Rptr. 178, 505 P.2d 1018.) The *Davis* court complied with the rule in *Jackson* by holding that "no person charged with a criminal offense and committed to a state hospital solely on account of his incapacity to proceed to trial may be so confined more than a reasonable period of time necessary to determine whether there is a substantial likelihood that he will recover that capacity in the foreseeable future. Unless such a showing of probable recovery is made within this period, defendant must either be released or recommitted under alternative commitment procedures." (*Id.* at p. 801, 106 Cal.Rptr. 178, 505 P.2d 1018.)

The *Davis* court stated that "[w]ith respect to future commitments, we think that in order to comply with *Jackson*'s demands the trial courts should henceforth direct the appropriate state hospital authorities to commence an immediate examination of the person committed and, within a reasonable time, report to the court the result of that examination and estimate the additional time probably necessary to restore the person to competence. Should the person committed desire to challenge the report's conclusions, reasonable opportunity should be provided him to do so." (*Davis, supra,* 8 Cal.3d at p. 806, 106 Cal.Rptr. 178, 505 P.2d 1018, fns. omitted.) The three *Davis* petitioners had neither established that they were competent to stand trial nor that they were likely to be, and there was nothing in the record to support the conclusion that they were unlikely to respond to treatment. (*Ibid.*) Instead of ordering the petitioners released, the *Davis* court ordered hospital authorities to report without delay on whether petitioners were likely to attain competency in the foreseeable future. (*Ibid.*)

[15] Minor has not established a due process violation under *Jackson* and *Davis*. Unlike the defendant in *Jackson,* who suffered from multiple disabilities and was unlikely to ever attain competence, minor's incompetence was founded on emotional immaturity, which according to Dr. Kambam, could be remedied within 12 months. In this respect, minor's circumstances are in no way comparable to the defendant in *Jackson,* considering that Dr. Kambam expressed the opinion that minor had no mental illness, disease, or developmental disability. Minor had no insurmountable mental issues, he had an average IQ, had passing grades when he attended school on a regular basis, and incompetence was based on emotional immaturity. Under these circumstances, we hold that 12 months to attain competency was constitutionally reasonable.

It bears emphasis that minor was assisted by counsel throughout the proceedings. The delinquency and dependency courts worked together to place minor outside of juvenile hall in a less restrictive facility, but were unsuccessful due to minor's level of criminality and antisocial behavior as reflected in his numerous rule violations. Again, these circumstances are not in any way comparable to what occurred in *Jackson.*

In compliance with *Davis,* once minor was declared incompetent, the delinquency court ordered services to assist minor in ***727** attaining competence. The court monitored the services and minor's progress on a regular basis with reports. Creative Support essentially reported raw data; minor's answers to the questions presented were accepted without consideration of whether he was making an honest effort or malingering. Because the nature of the reports did not assist the court in determining whether minor was making progress, or if not, what was causing the delay, the court appointed Dr. Knapke to update minor's progress and current status, and scheduled a hearing to complete the record. As it turned out, the reason minor remained detained for 294 days while

receiving services was minor's manipulation of the system. The circumstances of this case do not amount to a due process violation. The length of detention in this case was the product of minor's determination to avoid a finding of competency, as evidenced by his repeated answer of "I don't know" to basic questions despite months of training, an average IQ, and no mental disease or defect.

Violation of the Protocol

[16] Minor argues that his detention in juvenile hall beyond 120 days violated due process based on the Protocol, as interpreted in *Jesus G., supra,* 218 Cal.App.4th 157, 159 Cal.Rptr.3d 594. We reject the arguments for three reasons. First, the 120–day limit on detention in the Protocol lacks the force of law and it therefore does not define due process. Second, to the extent the Protocol purports to fix the maximum period of confinement at 120 days while proceedings are suspended, it conflicts with the holding in *Jackson* and section 709, both of which provide for a reasonable period of time, not a fixed number of days, to attain competence. Third, assuming there was a violation of the Protocol or section 709, the error is harmless because, as we have already concluded, the trial court provided minor with services to attain competency and the court's ultimate conclusion that minor was competent is supported by substantial evidence.

The Protocol was drafted by the Presiding Judge of the Juvenile Court in Los Angeles. It sets forth a timeline for processing cases in which proceedings are suspended because of a minor's incompetence to stand trial, including the following: " '*The minor may not be held in a juvenile hall to participate in attainment services for more than one hundred and twenty days.*' " (*Jesus G., supra,* 218 Cal.App.4th at p. 162, 159 Cal.Rptr.3d 594.) The *Jesus G.* court stated that the guidelines in the Protocol "are in line with the constitutional requirements of due process as set forth in *Jackson* and *Davis* inasmuch as they address the problem of an indefinite commitment and the necessity of making a prognosis as to the likelihood of attaining competence." (*Id.* at p. 171, 159 Cal.Rptr.3d 594.) Without further discussion or explanation, the court concluded that "[t]he Protocol complies with constitutional requirements. As a result, a violation of the Protocol is presumptively a violation of constitutional rights." (*Id.* at p. 174, 159 Cal.Rptr.3d 594.) Minor relies on this final statement to support his argument that the court violated his due process rights by deviating from deadlines prescribed in the Protocol.

We hold that the Protocol is not entitled to the force of law, and the 120–day limit on detention does not define due process. The delinquency court in this case properly observed that the Protocol "is not law," it is a set of guidelines, which a judge is free to consider in his or her discretion. The Protocol is certainly a thoughtful and articulate memorandum relating to the processing of delinquency cases involving competency issues, but it is not a local rule of court and was not issued pursuant to a ***728** legislative directive. (Compare § 241.1, subd. (e) [expressly directing the creation of a protocol by the juvenile court for dual jurisdiction delinquency/dependency minors].)

[17] **[18]** **[19]** **[20]** A single judge, even a presiding judge, cannot determine how the law is to be applied by a co-equal trial court, particularly on matters which necessarily require flexibility and the exercise of discretion. "One superior court judge has no power to require another to perform a judicial act ... the presiding judge is merely one of equals who has been given specific administrative powers, not including the right to administer the records of a coequal judge. [Citation.]" (*Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 116, 7 Cal.Rptr.2d 841, fns. omitted.) "The immediate supervision and control of the activities of each trial court is clearly under the control of the judge of that court." (*Ibid.* fn. omitted.)

[21] The Protocol's limit of 120 days of detention while a minor receives services directed toward attaining competence provides a laudable goal, but this limit cannot be made binding on the co-equal members of the trial court. Flexibility is particularly necessary where the finding of incompetency is based on immaturity, rather than the existence of a mental disease defect, or developmental disability, because "[w]hat constitutes a reasonable length of time will vary with the context." (*In re Mille* (2010) 182 Cal.App.4th 635, 649, 105 Cal.Rptr.3d 859; see *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1276, 31 Cal.Rptr.3d 297, citing *Morrissey v. Brewer* (1972) 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 [" ' "due process is flexible and calls for such procedural protections based on the particular situation" ' "].)

[22] We disagree with *Jesus G.*'s conclusion that a fixed 120–day limit on detention while receiving services executes the holdings in *Jackson* and *Davis,* and that it establishes a presumptive due process violation. *Jackson* expressly declined to define a reasonable period of time, recognizing that flexibility is necessary in this area. (*Jackson, supra,* 406 U.S. at p. 738, 92 S.Ct. 1845.) The Protocol's limit of 120 days of detention is also inconsistent with section 709, subdivision (c)'s command that "all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future." What period of time is reasonably necessary varies from case to case. Detention of more than 120 days while receiving services to attain competence is not constitutionally unreasonable where (1) the minor has no mental disease or defect and has an average IQ, (2) an expert opines that the minor would be expected to regain competency within 12 months, (3) the minor is facing delinquency allegations involving weapons and violence, and he is also a dependent child which makes less restrictive placement difficult if not impossible, (4) the court carefully monitored minor's progress, and (5) the possibility of malingering arose early in the proceedings based on statements by the minor's mother and aunt to the probation officer.

Prejudice

Assuming there was undue delay without evidence of progress toward attaining competency, or a violation of the Protocol or section 709, no structural error is involved. For the reasons that follow, any error was harmless and reversal is therefore inappropriate.

[23] This appeal follows minor's admissions to the section 602 petitions and the delinquency court's disposition orders after ***729** proceedings were reinstituted. This procedural posture is important in establishing the standard of review. Errors "which are not jurisdictional in the fundamental sense shall be reviewed under the appropriate standard of prejudicial error and shall require reversal only if defendant can show that he was deprived of a fair trial or otherwise suffered prejudice as a result of the error.... The right to relief without any showing of prejudice will be limited to pretrial challenges of irregularities." (*People v. Pompa–Ortiz* (1980) 27 Cal.3d 519, 529, 165 Cal.Rptr. 851, 612 P.2d 941 (*Pompa–Ortiz*).) *Pompa–Ortiz* followed the approach taken in other contexts: "In *People v. Wilson* (1963) 60 Cal.2d 139, 32 Cal.Rptr. 44, 383 P.2d 452, for example, we held that denial of defendant's right to trial within a prescribed statutory time period was not reversible error on appeal in the absence of a showing of prejudice. If the issue is raised before trial, however, prejudice is presumed and the information is dismissed. (See also *People v. Welch* (1972) 8 Cal.3d 106, 113, 104 Cal.Rptr. 217, 501 P.2d 225, and *People v. Salas* (1972) 7 Cal.3d 812, 818–819, 103 Cal.Rptr. 431, 500 P.2d 7 [denial of motions to change venue]; also, *People v. Chavez* (1980) 26 Cal.3d 334, 161 Cal.Rptr. 762, 605 P.2d 401, where error in refusing representation by attorney of choice, correctable on pretrial application (*Harris v. Superior Court* (1977) 19 Cal.3d 786, 140 Cal.Rptr. 318, 567 P.2d 750), was held to compel reversal after judgment only upon a showing of prejudice)." (*Ibid.*)

[24] The holding in *Pompa–Ortiz* is consistent with the Supreme Court's view of the limited number of structural errors that are reversible per se. As recognized in *People v. Anzalone* (2013) 56 Cal.4th 545, 554–555, 155 Cal.Rptr.3d 352, 298 P.3d 849, reversal for structural error has been limited to: "adjudication by a biased judge"; "the complete deprivation of counsel"; "the unlawful exclusion of grand jurors based on race"; "the infringement on the right to self-representation"; "the denial of a public trial"; "and the giving of a constitutionally deficient instruction on the reasonable doubt standard." Trial error, which does not result in a miscarriage of justice under article VI, section 13 of the California Constitution, does not merit reversal. (*Id.* at pp. 553–554, 155 Cal.Rptr.3d 352, 298 P.3d 849.)

The decision in *People v. Leonard* (2007) 40 Cal.4th 1370, 1387–1391, 58 Cal.Rptr.3d 368, 157 P.3d 973 (*Leonard*) is particularly instructive. In *Leonard,* the trial court declared a doubt as to the defendant's competence to stand trial and appointed two psychiatrists to evaluate him. The court knew the defendant suffered from epilepsy, but did not appoint the director of the regional center for the developmentally disabled to examine defendant, as required by Penal Code section 1369, subdivision (a). This was error, but not error of a jurisdictional nature "that *necessarily* requires reversal of any ensuing conviction." (*Id.* at p. 1389, 58 Cal.Rptr.3d 368, 157 P.3d 973.) The psychiatrists who did evaluate the defendant in *Leonard* were familiar with his developmental disability and considered it in evaluating his competence, eliminating any prejudice that would

otherwise result from a failure to refer the defendant to the regional center. In addition, the error did not implicate the defendant's right to due process of law, because the "defendant's competency trial protected his right not to be tried or convicted while incompetent." (*Id.* at p. 1391, 58 Cal.Rptr.3d 368, 157 P.3d 973; see also *People v. Stewart* (2004) 33 Cal.4th 425, 461–462, 15 Cal.Rptr.3d 656, 93 P.3d 271 [any prosecutorial misconduct resulting from delayed discovery of evidence during the preliminary hearing deemed non-prejudicial on appeal following conviction]; ***730** *People v. Dunkle* (2005) 36 Cal.4th 861, 907–910, 32 Cal.Rptr.3d 23, 116 P.3d 494 [error in denial of the defendant's right to self-representation for a year during pretrial proceedings was cured when the defendant subsequently waived this right and proceeded to trial with counsel], disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22, 87 Cal.Rptr.3d 209, 198 P.3d 11; *People v. Wilson* (1963) 60 Cal.2d 139, 150–154, 32 Cal.Rptr. 44, 383 P.2d 452 [defendant must show prejudice from denial of speedy trial]; *People v. Anderson* (2015) 234 Cal.App.4th 1411, 1420–1421, 185 Cal.Rptr.3d 75 [constitutionally ineffective assistance of counsel at the preliminary hearing held non-prejudicial after trial with competent counsel]; *In re Christopher F., supra,* 194 Cal.App.4th at pp. 470–471, 123 Cal.Rptr.3d 516, [failure to refer incompetent minor to the regional center is not reversible error where the doctor performing the evaluation was skilled in the diagnosis of developmental disabilities]; *People v. Becerra* (2008) 165 Cal.App.4th 1064, 1070–1071, 81 Cal.Rptr.3d 348 [grand jury indictment obtained with perjured testimony held non-prejudicial where prosecution at trial produced evidence from the witness admitting he had lied to the grand jury and there was vigorous cross examination on the perjured testimony]; *People v. Tena* (2007) 156 Cal.App.4th 598, 612–615, 67 Cal.Rptr.3d 412 [erroneous denial of defendant's *Faretta v. California* (1975) 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 request at the preliminary hearing deemed harmless where defendant waived the right at trial and proceeded with counsel].)

[25] Minor has not made any showing of actual prejudice due to the length of his detention in regard to his admission to the petitions and the suitable placement disposition. Because the finding of competence is supported by substantial evidence, and minor can point to no actual prejudice resulting from the length of his detention, any error did not result in prejudice within the meaning of Article VI, section 13, of the California Constitution.

Equal Protection

Minor argues that the delinquency court violated his right to equal protection of the law by detaining him for more than 120 days pursuant to section 709 without the procedural protections that would be required for a civil commitment under the Lanterman–Petris–Short Act (LPS). (§ 5000 et seq.) We disagree. Minor is not similarly situated to persons who fall under the LPS Act.

[26] **[27]** **[28]** "A prerequisite to a meritorious [equal protection] claim is that individuals 'similarly situated with respect to the legitimate purpose of the law receive like treatment.' ([*In re*] *Gary W.* [(1971)] 5 Cal.3d 296, 303 [96 Cal.Rptr. 1, 486 P.2d 1201]; accord, *In re Lemanuel C.* (2007) 41 Cal.4th 33, 47 [58 Cal.Rptr.3d 597, 158 P.3d 148]; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253 [127 Cal.Rptr.2d 177, 57 P.3d 654] [(*Cooley*)].) Where two or more groups are properly distinguishable for purposes of the challenged law, it is immaterial if they are indistinguishable in other respects. (*Cooley, supra,* at p. 253 [127 Cal.Rptr.2d 177, 57 P.3d 654].) Nor, absent this threshold requirement, is an equal protection inquiry into the justification for any legislative distinction necessary. (See *Gary W.,*[*supra,*] at pp. 304, 306 [96 Cal.Rptr. 1, 486 P.2d 1201].)" (*People v. Barrett* (2012) 54 Cal.4th 1081, 1107, 144 Cal.Rptr.3d 661, 281 P.3d 753 (*Barrett*).)

The LPS Act applies to persons with a "mental disorder" (§ 5200), "mental health ***731** disorder or impairment by chronic alcoholism" (§ 5250), or those who are "gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism" (§ 5350). Under section 709, subdivision (b), a minor may be incompetent to stand trial if the minor "suffers from a mental disorder, developmental disability, *developmental immaturity, or other condition.*" (Italics added.) While minors in delinquency proceedings may be subject to both section 709 and the LPS Act in some cases, the laws have different purposes and apply to different mental states. (See *Barrett, supra,* 54 Cal.4th at p. 1109, 144 Cal.Rptr.3d 661, 281 P.3d 753 [the "mental conditions that create eligibility for an extended 180–day LPS Act commitment, though they include imminent dangerousness, do not necessarily imply incompetence or a reduced ability to understand, and make decisions about, the conduct of the proceedings"].)

[29] Here, minor cites to no basis for civil commitment proceedings against him. It is undisputed that he has no mental health disorder, he does not suffer from chronic alcoholism, nor is he gravely disabled. Instead, minor was diagnosed with attention deficit issues and developmental immaturity. As an individual devoid of mental and developmental abnormalities that cause him to be dangerous to himself or others, minor is subject only to section 709, not to the LPS Act. His equal protection argument necessarily fails, because minor is not similarly situated to persons who fall under the LPS Act.

Contrary to minor's argument, *Jackson, supra,* 406 U.S. at page 721, 92 S.Ct. 1845, does not require a different result. The equal protection violation in *Jackson* was the product of the defendant's indefinite detention while facing a criminal charge with no provision for periodic review, no right to counsel at the competency hearing, and no realistic possibility that Jackson would ever attain competency. Jackson was subject to "a more lenient commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses...." (*Id.* at 730, 92 S.Ct. 1845.) The *Jackson* court held that subjecting Jackson to indefinite confinement without any of the procedural protections that persons who have not been charged with crimes are afforded prior to being institutionalized was a violation of his right to equal protection of the laws. (*Id.* at pp. 728–730, 92 S.Ct. 1845.)

The differences between *Jackson* and minor's situation are apparent. Unlike the defendant in *Jackson,* minor had no mental disease or defect, he was expected to attain competency within 12 months, and he was provided counsel and regular reviews of his progress. The suspension of proceedings under section 709 was limited to the time reasonably necessary to attain competency. Moreover, minor was a dependent child under section 300, already under the jurisdiction of the juvenile court, and judicial officers made diligent but unsuccessful attempts to place minor outside of juvenile hall. Here, minor was not similarly situated to persons who fall under the LPS Act, and was also afforded procedural protections not present in *Jackson*. His equal protection rights were not violated.

Right to Confront Witnesses

Minor next argues that the court violated his constitutional right to confront witnesses by considering the hearsay statements of a Deputy County Counsel Scolari on behalf the Department, a non-party, at his attainment of competency hearing. We set forth the background for this contention below.

In a hearing on October 16, 2013, the court expressed concern that minor was consistently scoring 1's in all 14 domains of every test administered by Creative Services. The court stated, "At this time I ***732** have no way of knowing whether or not these tests are capable of preventing any malingering issues on the part of any minor that these tests are administered to ... the court is inclined to appoint the next expert in line ... for re-evaluation of the minor's competency." The prosecutor agreed that appointment of an expert for reevaluation would be useful, stating that she was also concerned that minor was not showing progress in his competency training due to malingering. Later in the hearing, minor's counsel inquired regarding the source of the prosecutor's belief that minor was malingering. The prosecutor identified Deputy County Counsel Scolari as the source of the information. With respect to his suspicions that minor was malingering, Scolari explained, "I believe that a couple transcripts have been ordered from two different dependency hearings where [minor] and [the dependency court judge] had discussions that some believe would show this court that he's very aware of what's happening." The delinquency court thanked Scolari and asked him to provide copies of those transcripts to the court and counsel, as well as the expert who would be appointed to evaluate minor. Minor's counsel made no objection at that time. The record does not indicate that the transcripts were lodged. The court appointed an expert to reevaluate minor's competency.

At a hearing on January 13, 2014, Scolari stated his opinion that minor fully understood the dependency proceedings, informing the court that he believed minor "knows more than I think he's letting on. I know in my conversations with the supervisor and the social worker on this case who had frequent phone contact with [minor] they have never had any indication whatsoever that he wasn't completely aware of what's going on in his dependency case as well as his delinquency case." The court later asked Scolari whether it was the Department's position that minor was malingering. Scolari responded, "Again, talking to the supervisor and the social worker, we've had numerous conversations over the past year with [minor], and they have—and I have also talked to

the county counsel ... in his dependency case ... and all three of them believe that [minor] clearly understands what is happening in both courtrooms. He ... discusses the issues with the dependency judge at length and in the conversations that they have had with him he also seems to be on top of what's going on. He knows exactly what his situation is and they think he's —they think [minor] is intelligent and they think he understands what he's doing." The court responded, "And you stated this position several times over as this is not the first appearance that you have made on behalf of [the Department]; is that correct?" Scolari replied: "True. It's always been their opinion that [minor] knows exactly what's happening." Minor's counsel objected to Scolari's participation, because he was not a party to the delinquency proceedings, and also objected to Scolari receiving a copy of Dr. Knapke's report regarding minor's competency. The court invited the parties to submit points and authorities on the issue of whether the Department should be joined in the delinquency proceedings. Minor's counsel filed a Memorandum of Points and Authorities. The record does not contain a memorandum from county counsel or a ruling by the delinquency court.

[30] We reject minor's contention that that consideration of Scolari's statements violated the Confrontation Clause. First, minor made no confrontation clause objection in the court below. The issue is therefore forfeited. (*People v. Redd* (2010) 48 Cal.4th 691, 730, 108 Cal.Rptr.3d 192, 229 P.3d 101.) A timely objection would have allowed the court to easily cure any ***733** purported violation of the right to confrontation by the calling of witnesses. [8]

[31] **[32]** Second, the contention fails on the merits. The right to confrontation is a trial right. (*People v. Miranda* (2000) 23 Cal.4th 340, 350, 96 Cal.Rptr.2d 758, 1 P.3d 73, citing *Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1079, 2 Cal.Rptr.2d 160, 820 P.2d 262.) Consideration, if any, by the delinquency court of a statement by counsel for the Department does not implicate the right to confrontation.

[33] Third, minor did not suffer any prejudice as a result of the statements in dispute. The delinquency court fully explained on the record the basis for its finding that minor was competent to stand trial. The ruling makes no mention of the statements of Scolari, and it is clear that the court ruled based on the testimony presented and its own observations of minor at the attainment of competency hearing. Error in allowing Scolari to state the Department's position, if any, did not result in prejudice to minor.

Other Contentions

[34] Minor argues that the delinquency court lacked jurisdiction to order a new competency evaluation and hold an attainment of competency hearing while proceedings were suspended. According to the contention, neither section 709 nor the Protocol lists the authority to make such orders among the actions the court may take while proceedings are suspended. We disagree, as the procedures followed were entirely appropriate and necessary in order to determine if minor had attained competency.

It is unclear how minor would suggest that the delinquency court determine whether competency has been attained other than through a new competency evaluation and a hearing on the subject. If the delinquency court lacks the power to engage in these acts, there will be no means to effectively reinstate proceedings once competency is attained.

Both the Protocol and section 709, subdivision (c) provide that while proceedings are suspended, "the court may make orders that it deems appropriate for services ... that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions." While the Protocol is not a statement of law, to the extent minor relies upon it we note that it specifically provides that "[m]inor's counsel or the district attorney may request a further [Juvenile Competency to Stand Trial Panel] evaluation or a full evidentiary hearing." Here, minor's counsel requested a new evaluation several times, and the prosecutor requested an evidentiary hearing.

[35] The purpose of section 709 is to ensure that mentally incompetent minors are not subjected to juvenile delinquency proceedings, and to restore minors to competency as quickly as possible. With that objective in mind, "section 709 clearly intend[s] ... the reports and/or testimony of experts who have evaluated the defendant for legal competency" to be the center of such a determination. (*In re John Z., supra,* 223 Cal.App.4th at p. 1058, 167 Cal.Rptr.3d 811.) It is unreasonable to interpret section 709 as precluding the appointment of experts to determine current ***734** competency, when the task of the

court is to minimize the length of time proceedings are suspended. Reconsideration of minor's competency was not error, and certainly was not error that can be described as structural.

Minor also argues the court acted in excess of jurisdiction because his detention was prolonged without evidence of progress toward attaining competency. We have previously rejected this contention in discussing minor's due process claims. Our earlier discussion disposes of this issue.

Probation Conditions

Probation condition No. 9 provides: "You must go to school each day. You must be on time to each class. You must have good behavior at school. You must receive satisfactory grades." Minor contends that he is incapable of complying with condition No. 9 due to his educational deficiencies, and that the terms "satisfactory grades" and "good behavior at school" are unconstitutionally vague.

Relevant Law

[36] A delinquency court "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b).) "A [delinquency] court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. [Citation.] That discretion will not be disturbed in the absence of manifest abuse. [Citation.]" (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5, 63 Cal.Rptr.2d 701.)

[37] Minor failed to present his claim that the probation condition is invalid because he lacks the capability to comply to the delinquency court, and he has not presented this court with a factual record. However, his challenge to condition No. 9 on vagueness grounds may be addressed on appeal because it presents a " 'pure question[ ] of law that can be resolved without reference to the particular sentencing record developed in the trial court.' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 889, 55 Cal.Rptr.3d 716, 153 P.3d 282 (*Sheena K.*).)

[38] **[39]** **[40]** **[41]** "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness. (*People v. Reinertson* (1986) 178 Cal.App.3d [320,] 324–325 [223 Cal.Rptr. 670].)" (*Sheena K., supra,* 40 Cal.4th at p. 890, 55 Cal.Rptr.3d 716, 153 P.3d 282.) " ' "It is an essential component of due process that individuals be given fair notice of those acts which may lead to a loss of liberty. [Citations.] This is true whether the loss of liberty arises from a criminal conviction or the revocation of probation. [Citations.] [¶] ' "Fair notice" requires only that a violation be described with a " 'reasonable degree of certainty' " ... so that "ordinary people can understand what conduct is prohibited."....' " [Citation.]' (*In re Angel J.* (1992) 9 Cal.App.4th 1096, 1101–1102 [11 Cal.Rptr.2d 776 (*Angel J.*)], quoting *In re Robert M.* (1985) 163 Cal.App.3d 812, 816 [209 Cal.Rptr. 657], quoting *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 270–271 [198 Cal.Rptr. 145, 673 P.2d 732].)" (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018, 14 Cal.Rptr.3d 805.) Whether a probation condition is unconstitutionally vague is a question of law reviewed de novo. (***735** *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143, 116 Cal.Rptr.3d 84; *In re J.H.* (2007) 158 Cal.App.4th 174, 183, 70 Cal.Rptr.3d 1.)

[42] The meaning of "satisfactory grades" was addressed in *Angel J., supra,* 9 Cal.App.4th 1096, 11 Cal.Rptr.2d 776. We agree with the *Angel J.* analysis, and resolve any issue of vagueness by defining "satisfactory grades" as "passing grades in each graded subject," i.e., "not failing, such as D or above in an A through F grading system." (*Id.* at p. 1102 & fn. 7, 11 Cal.Rptr.2d 776.)

[43] A similarly straightforward interpretation can be applied to the probation condition that minor maintain "good behavior at school." The reasonable meaning of such a condition is that minor must follow the rules of behavioral conduct set forth by school personnel. This definition gives minor fair notice of what is required of him and allows the court to determine if the condition has been violated. We modify probation condition No. 9 accordingly.

DISPOSITION

Probation condition No. 9 is modified to provide as follows: "You must go to school each day. You must be on time to each class. You must follow the rules of behavioral conduct set forth by school personnel. You must receive passing grades in each graded subject." In all other respects, the judgment is affirmed.

We concur:

MOSK, Acting P.J.

KIRSCHNER, J. *

All Citations

194 Cal.Rptr.3d 706, 15 Cal. Daily Op. Serv. 12,103, 2015 Daily Journal D.A.R. 12,226

Footnotes

1 All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

2 Minor was detained on the section 602 petitions for a total of 355 days. The period of 294 days is measured from the date of the competency planning hearing to the date minor was found competent, a period spanning from April 17, 2013, to February 4, 2014.

3 Minor was 14 years old at the time the petition was filed.

4 Minor was 15 years old at the time the second petition was filed.

5 According to the probation report filed on August 8, 2012, minor was a dependent child under section 300, and a joint assessment had been prepared pursuant to section 241.1 by the Probation Department (Probation) and the Los Angeles County Department of Children and Family Services (Department), with a recommended disposition of deferred entry of judgment (§ 790), with the Department as the lead agency. Recommended services included placement in the home, with minor to receive individual counseling, drug and alcohol testing, and education services.

6 Dr. Kambam's report is not contained in the record on appeal, but is part of the record in a habeas corpus petition filed on behalf of minor in this court. We take judicial notice of the report, as it is a court record which is an essential component of minor's contentions on appeal. (Evid.Code, §§ 452, subd. (d)(1) & 459, subd. (a).)

7 The court's ruling was made prior to our Supreme Court's decision holding that a minor claiming incompetency has the burden of proof. (*In re R.V.* (2015) 61 Cal.4th 181, 193, 187 Cal.Rptr.3d 882, 349 P.3d 68 (*R.V.*).)

8 We also reject minor's contention that the court committed judicial misconduct by allowing Scolari to participate in the proceeding. No objection was made on this ground below, nor do we see any merit to the contention. (*People v. McWhorter* (2009) 47 Cal.4th 318, 373, 97 Cal.Rptr.3d 412, 212 P.3d 692; *People v. Snow* (2003) 30 Cal.4th 43, 77–78, 132 Cal.Rptr.2d 271, 65 P.3d 749.)

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

61 Cal.4th 181
Supreme Court of California

In re R.V., a Person Coming
Under the Juvenile Court Law.
The People, Plaintiff and Respondent,
v.
R.V., Defendant and Appellant.

No. S212346.
|
May 18, 2015.

Synopsis

Background: The Superior Court, Orange County, No. DL034139, Deborah J. Servino, J., sustained wardship petition alleging that minor brandished a weapon and vandalized property. Minor appealed. The Court of Appeal affirmed. Minor petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Cantil–Sakauye, C.J., held that:

[1] a minor is presumed competent to undergo a wardship proceeding and the party claiming otherwise has the burden of proving incompetency by a preponderance of the evidence;

[2] challenge to the sufficiency of the evidence supporting a competency determination inquires whether the weight and character of the evidence of incompetency was such that the court could not reasonably reject it, disapproving *In re Christopher F.*, 194 Cal.App.4th 462, 123 Cal.Rptr.3d 516; and

[3] juvenile court could not reasonably reject the evidence that minor was incompetent to stand trial.

Reversed.

Chin, J., filed dissenting opinion.

Opinion, 158 Cal.Rptr.3d 234, superseded.

Attorneys and Law Firms

***884** Cindy Brines, Verdugo, under appointment by the Supreme Court, for Defendant and Appellant.

Paulino G. Durán, Public Defender (Sacramento) and Arthur L. Bowie, Assistant ***885** Public Defender, for the Office of the Public Defender for Sacramento County as Amicus Curiae on behalf or Defendant and Appellant.

Aimee Feinberg; Tamara Lange and Michael Harris for National Center for Youth Law as Amicus Curiae on behalf or Defendant and Appellant.

Susan L. Burrell and L. Richard Braucher, Richmond, for Youth Law Center and Pacific Juvenile Defender Center as Amicus Curiae on behalf or Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steven T. Oetting, Deputy State Solicitor General, Melissa Mandel, Charles C. Ragland, Kathryn Kirschbaum, Lise S. Jacobson and Sean M. Rodriquez, Deputy Attorneys General, for Plaintiff and Respondent.

Opinion

CANTIL–SAKAUYE, C.J.

***185** **70** A minor who is the subject of a wardship petition under Welfare and Institutions Code [1] section 601 or 602 has, like an adult facing criminal prosecution, a due process right not to be tried while mentally incompetent. Section 709 establishes procedures for juvenile courts to follow so as to ensure that minors are not subject to adjudication while their competency is impaired.

We decide two issues in this case; first, whether under section 709 a minor is presumed competent and bears the burden of proving otherwise by a preponderance of the evidence and, second, what is the proper standard for reviewing on appeal a challenge to the sufficiency of the evidence supporting the juvenile court's determination that the minor was competent to proceed.

Section 709 is silent regarding the presumption of competency and allocation of the burden of proof, but we find that the most straightforward reading of the statute's text is that the provision contains an implied presumption

of competency. This understanding of section 709 is further supported by the legislative materials surrounding that statute's enactment, which show that lawmakers intended the juvenile courts to continue to apply to minors the adult competency scheme's presumption of competency and allocation **71 of the burden of proof to the party claiming incompetency.

We conclude furthermore that, like a challenge to the sufficiency of the evidence supporting the verdict in an adult competency proceeding, a claim of insufficient evidence to support a juvenile court's determination in a *186 competency proceeding is reviewed deferentially under the substantial evidence test. In the present matter, the evidence before the juvenile court consisted solely of the court-appointed expert's report and testimony, and the materials on which the expert based his opinion, that 16–year–old R.V. was incompetent to stand trial. In these circumstances, we review the juvenile court's determination by asking whether the weight and character of that evidence is such that the juvenile court could not reasonably have rejected it.

Having viewed the evidence presented in the case in the light most favorable to the juvenile court's determination of competency, as we must, we nonetheless conclude that the court could not reasonably ***886 have rejected the qualified expert's compelling, well-supported, and unequivocal opinion that minor was not competent to proceed to trial.

The Court of Appeal concluded, to the contrary, that the juvenile court's reasons for declining to accept the expert's opinion were supported by substantial evidence in the record, and upheld the judgment below. Accordingly, the Court of Appeal's judgment is reversed.

I. BACKGROUND

On a weekday morning in March 2012, officers from the La Habra Police Department responded to a 911 call reporting that a juvenile was threatening family members with a knife. Jose Cruz, who resided with minor, minor's stepsibling, and minor's mother, told police that he had awakened minor for school around 7:00 a.m. Minor became angry and starting throwing things, saying he did not want to go to school. Cruz argued with minor, warning him that he was going to miss his bus. In response, minor clenched his fists and told Cruz, "I'm going to fuck you up," then continued to throw and kick things around the living room. When Cruz told minor to calm down, minor held out a knife and said he would kill Cruz if he called the police. According to Cruz, minor did not move toward him with the weapon.

Minor's mother confirmed that minor had been throwing things around the living room, and told police that she saw him knock a small television set to the floor. According to minor's mother, minor moved from the living room to the bedroom and started yelling, "I want a house. I want my own space." He warned his mother, "Don't come close to me. I have a knife." Minor's mother saw that he had a small silver knife in his hand.

Javier Naranjo, the family's landlord, also spoke with the officers. He told them that he had entered the residence after hearing the sound of something breaking and saw minor kick a DVD player in the living room. He also overheard minor arguing with Cruz and threatening to stab him with a knife. *187 When Naranjo likewise told minor to calm down, minor threatened to kill him as well. Naranjo then saw minor go into his bedroom and stab a bed three times.

Minor complied with the officers' order to raise his hands in the air. As minor was being handcuffed, he mentioned that the knife, a multitool with a two-inch blade, was in his front right pocket. Minor explained to one of the officers that he was upset and trying to scare his mother, and indicated that he had trouble with his parents. According to that officer's report, minor appeared to have a difficult time understanding the officer's questions and seemed confused about the incident.

All three witnesses reported to police that minor had psychological problems. His mother indicated that for the past four weeks he had not taken his medication, Abilify. Cruz explained that minor is "different every day" and "with each episode he gets worse." Minor was taken into custody and transported to a juvenile detention facility.

Three days after the incident, the Orange County District Attorney filed a section 602 petition to declare minor a ward of the juvenile court. The petition alleged that minor committed two misdemeanor counts of brandishing a deadly weapon (Pen.Code, § 417, subd. (a)(1)), and one misdemeanor **72 count of vandalism (Pen.Code,

§ 594, subds. (a), (b)(2)(A)). About three weeks later, defense counsel expressed a doubt regarding minor's competency ***887 to stand trial. In accordance with statutory procedures, the court determined there was substantial evidence raising a doubt as to minor's competency, suspended proceedings, and appointed a forensic psychologist, Haig J. Kojian, Ph.D., to evaluate minor. (See § 709, subd. (a).) Although the court also ordered minor released on the home supervision program pending the competency hearing, minor was returned to juvenile detention 10 days later for violating the conditions of his release.

Dr. Kojian's nine-page report concluded that minor presently was not competent to stand trial. Although defense counsel offered to submit the question of competency on the basis of Dr. Kojian's written report, the prosecutor expressed concern that Dr. Kojian had not administered any diagnostic tests to minor and requested a hearing at which Dr. Kojian could be questioned. The court granted the request.

At the hearing held one week later, Dr. Kojian explained, consistently with his written report, the basis for his conclusion that minor was not competent to stand trial. At the conclusion of the hearing, the court expressed its view that the law presumes minor is competent and places on him the burden of proving incompetency by a preponderance of the evidence. The court then *188 ruled that minor had not met his burden of proof, found minor competent to stand trial, and ordered the reinstatement of proceedings.

Immediately after the court's competency determination, minor waived his various rights and entered a "slow plea," submitting the matter to the court for adjudication based on the police report. The court found the allegations in the wardship petition to be true, declared minor a ward of the juvenile court, and placed him on probation.

The Court of Appeal affirmed the judgment. It first agreed with the juvenile court that a minor is presumed competent and bears the burden of proving by a preponderance of the evidence that he or she is not competent to be adjudicated under the juvenile court law. Applying a substantial evidence standard of review, the Court of Appeal upheld the juvenile court's determination that minor was competent to proceed and affirmed the judgment.

This court granted minor's petition for review.

II. DISCUSSION

A. Presumption of competency and allocation of the burden of proof in proceedings to determine juvenile competency under section 709

We briefly review the law regarding competency to stand trial and some of the legal developments that preceded the enactment of section 709. This history guides our interpretation of the statute.

1. Overview of the law predating section 709

[1] The constitutional right to due process of law prohibits the trial of a mentally incompetent criminal defendant. (*People v. Medina* (1990) 51 Cal.3d 870, 881, 274 Cal.Rptr. 849, 799 P.2d 1282; *Drope v. Missouri* (1975) 420 U.S. 162, 172–173, 95 S.Ct. 896, 43 L.Ed.2d 103.) Due process principles further require trial courts to employ procedures to guard against the trial of an incompetent defendant. (*People v. Hale* (1988) 44 Cal.3d 531, 539, 244 Cal.Rptr. 114, 749 P.2d 769; *People v. Pennington* (1967) 66 Cal.2d 508, 518, 58 Cal.Rptr. 374, 426 P.2d 942; ***888 *Pate v. Robinson* (1966) 383 U.S. 375, 377, 86 S.Ct. 836, 15 L.Ed.2d 815.) Under *Dusky v. United States* (1960) 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (*Dusky*), the inquiry into a defendant's competency to proceed focuses on whether the defendant " 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and ... a rational as well as factual understanding of the proceedings against him.' " (*Id.* at p. 402, 80 S.Ct. 788 (the *Dusky* standard).)

*189 The constitutional prohibition against trial of an incompetent defendant and the requirement of procedures to prevent trial from occurring under those circumstances are mirrored in Penal Code section 1367 et seq. Similar to the *Dusky* standard, state law **73 provides that a defendant is incompetent if he or she "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense." (Pen.Code, § 1367, subd. (a).)

[2] Under statutory procedures for determining a criminal defendant's competency to stand trial,

the defendant is presumed competent unless proved incompetent by a preponderance of the evidence. (Pen.Code, § 1369, subd. (f); *People v. Medina, supra,* 51 Cal.3d at p. 881, 274 Cal.Rptr. 849, 799 P.2d 1282.) On its face, the statutory scheme does not expressly impose the burden of proof on any specific party. Rather, the presumption of competency operates to place the burden of proof on the party claiming the defendant is incompetent. (See Evid.Code, §§ 605, 606; *People v. Rells* (2000) 22 Cal.4th 860, 867, 868, 94 Cal.Rptr.2d 875, 996 P.2d 1184.)

Penal Code section 1367 et seq., by its terms, applies to criminal prosecutions, not to juvenile court proceedings. In *James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 143 Cal.Rptr. 398 (*James H.*), however, the Court of Appeal held that the juvenile had a due process right to a competency adjudication as part of a section 707, subdivision (b), proceeding to determine his fitness to be dealt with under the juvenile court law. (*James H., supra,* at pp. 174–176, 143 Cal.Rptr. 398.) The Court of Appeal reasoned that its conclusion was compelled, in part, by the high court's decision in *In re Gault* (1967) 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527, which held that a juvenile facing possible loss of liberty pending the outcome of a delinquency proceeding is entitled to the same " 'essentials of due process and fair treatment' " (*id.* at p. 30, 87 S.Ct. 1428) as defendants in adult criminal proceedings, including the right to effective counsel. (*James H., supra,* at pp. 173–174, 143 Cal.Rptr. 398; see *In re Gault, supra,* at pp. 30–31, 35–42, 87 S.Ct. 1428.)

The Court of Appeal in *James H.* acknowledged the absence of existing statutory procedures for juvenile competency determinations. It concluded, however, that the juvenile court has inherent authority to conduct such hearings. (*James H., supra,* 77 Cal.App.3d at pp. 175–176, 143 Cal.Rptr. 398.) As the Court of Appeal observed, juvenile courts routinely improvise procedures to meet changing constitutional requirements while awaiting legislative clarification. (*Id.* at p. 176, 143 Cal.Rptr. 398.) In this regard, at the time of the *James H.* decision, juvenile courts appear to have been making use of adult competency procedures in wardship proceedings under sections 601 and 602. (See, e.g., *In re Ramon M.* (1978) 22 Cal.3d 419, 430, fn. 14, 149 Cal.Rptr. 387, 584 P.2d 524 [noting the People's concession that "the protective reach of Penal Code section 1368 extends to section 602 proceedings in juvenile court"].) The ***889** *James H.* ***190** decision likewise fashioned a Penal Code section 1368–like procedure for juvenile courts making competency determinations. The procedure required the court to suspend proceedings and conduct a competency hearing in the event it entertained a doubt regarding the juvenile's capacity or ability to cooperate with his or her attorney. With regard to the definition of incompetence, the *James H.* decision advised juvenile courts either to borrow the formulation in Penal Code section 1367 or to use the test set forth in the high court's decision in *Dusky, supra,* 362 U.S. 402, 80 S.Ct. 788. (*James H., supra,* at pp. 176–177, 143 Cal.Rptr. 398; see *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 857–858, 58 Cal.Rptr.3d 746 (*Timothy J.*).) The decision did not address the presumption of competency or burden of proof.

In 1999, the Judicial Council added former rule 1498 to the California Rules of Court in order to establish statewide procedures for conducting a hearing to determine the competency of a juvenile subject to a wardship proceeding under section 601 or 602. The rule was intended to, and largely did, conform to the procedures described in the *James H.* decision and established as the definition of competency an abbreviated version of the *Dusky* standard.[2] (Advisory ****74** Com. com., 23 pt. 3 West's Ann. Codes, Rules (2005 ed.) foll. rule 1498(d), p. 630; see *Timothy J., supra,* 150 Cal.App.4th at pp. 858, 859, 58 Cal.Rptr.3d 746.) It also authorized, but did not require, the court to appoint an expert to evaluate the juvenile's competency to proceed. (Cal. Rules of Court, former rule 1498(d) (1).)

Subsequent to the adoption of California Rules of Court, former rule 1498, the Court of Appeal in *Timothy J., supra,* 150 Cal.App.4th 847, 58 Cal.Rptr.3d 746, held that the rule permitted a finding of incompetence arising from the minor's developmental immaturity. This construction of former rule 1498 distinguished the juvenile competency standard from Penal Code section 1367, subdivision (a), which requires a showing that the adult defendant's incompetence arose from either a mental disorder or developmental disability. (*Timothy J., supra,* at pp. 858–861, 58 Cal.Rptr.3d 746.) In *Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227, 78 Cal.Rptr.3d 569 (*Tyrone B.*), the Court of Appeal held that, notwithstanding the permissive language of the rule, the juvenile court *must* appoint an appropriate expert to evaluate the minor when the minor's counsel expresses a doubt regarding

the minor's competency and the court finds substantial evidence raises a doubt in this regard. (*Id.* at p. 231, 78 Cal.Rptr.3d 569 [construing rule 5.645(d), the current version of the rule].)

A decade after the adoption of California Rules of Court, former rule 1498, the Legislature enacted section 709, codifying some of the standards and ***191** procedures that had been established in the rules of court, and modifying or adding others consistently with the holdings in decisions such as *Timothy J., supra,* 150 Cal.App.4th 847, 58 Cal.Rptr.3d 746, and *Tyrone B., supra,* 164 Cal.App.4th 227, 78 Cal.Rptr.3d 569. The Legislature also provided for the Judicial Council's continued involvement in this area by expressly delegating to that body the task of developing *****890** and adopting rules regarding the special qualifications an expert must possess in order to be appointed by the court to evaluate a minor's competency. (Stats.2010, ch. 671, § 1.)

2. Section 709

Section 709 begins by describing the mechanisms by which the issue of competency arises. The statute provides in relevant part that "[d]uring the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency." (§ 709, subd. (a).) Like the juvenile competency procedures adopted in the Rules of Court, section 709 uses the *Dusky* standard to define competency. The statute does not employ an abbreviated form of the standard, however, and establishes the inquiry as whether the minor "lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her." (§ 709, subd. (a).)

The statute further provides that if the court finds "substantial evidence raises a doubt as to the minor's competency," the proceedings must be suspended and the court must order a hearing to determine the minor's competency. (§ 709, subds.(a), (b).) Toward that end, the court is required to "appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency." (§ 709, subd. (b).) In order to qualify for appointment under section 709, the expert must be proficient in child and adolescent development and familiar with the applicable standards and criteria for evaluating competency. As mentioned above, the statute assigns to the Judicial Council the responsibility for developing and adopting rules to implement such requirements. (*Id.,* subd. (b).)

Section 709 then describes how the court should proceed, depending on the outcome of the competency determination. "If the minor is found to be incompetent by a preponderance of the evidence," the proceedings remain suspended for a reasonable period of time until it can be determined whether there is a substantial probability that the minor will attain competency in the foreseeable ****75** future while the court still retains jurisdiction. (§ 709, subd. (c).) ***192** If, on the other hand, "the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction." (§ 709, subd. (d).)[3]

3. Statutory construction of section 709

[3] **[4]** **[5]** In construing the statute, "we are guided by the overarching principle *****891** that our task ' "is to determine the intent of the enacting body so that the law may receive the interpretation that best effectuates that intent. [Citation.]" ' " (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186, 165 Cal.Rptr.3d 460, 314 P.3d 767.) Our analysis begins with the language of the statute, which " 'generally is the most reliable indicator of legislative intent.' " (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265, 139 Cal.Rptr.3d 837, 274 P.3d 456.) " ' " 'When the language of a statute is clear, we need go no further.' [Citation.] But where a statute's terms are unclear or ambiguous, we may 'look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, ... and the statutory scheme of which the statute is a part.' " [Citation.]' [Citation.]" ***193** *People v. Scott* (2014) 58 Cal.4th 1415, 1421, 171 Cal.Rptr.3d 638, 324 P.3d 827; accord, *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1063, 116 Cal.Rptr.3d 530, 239 P.3d 1228.)

[6] Minor argues that section 709 does not place the burden of proving incompetence on either party. As he points out, section 709, unlike Penal Code section 1369, subdivision (f), does not expressly provide for a

presumption of competency. The Attorney General, for her part, maintains that section 709 contains an implied presumption of competency and allocates the burden of rebutting that presumption to the party seeking a determination of incompetency.

[7] We agree with the Attorney General that the most straightforward reading of the text of section 709 is that minor is presumed competent. Competency procedures are triggered and proceedings are suspended when "the court finds substantial evidence raises a doubt as to the minor's competency...." (§ 709, subd. (a).) If no doubt is raised, or there is no substantial evidence to support such a doubt, the minor is treated as competent and subject to adjudication of the wardship petition, and the proceedings simply run their course. Were a minor not ****76** presumed competent, the statute arguably would require an affirmative showing of competency to proceed. The statutory text also suggests that the party asserting the minor's incompetency bears the burden of proof. Section 709, subdivision (c), requires the continued suspension of proceedings on a finding of incompetency by a preponderance of the evidence. By contrast, subdivision (d) provides for the reinstatement *****892** of proceedings "if the minor is found to be competent," but does not refer to any standard of proof.

We acknowledge that section 709's silence regarding any presumption of competency and allocation of the burden of proof permits other possible interpretations of the statutory text. We find, however, that our understanding of section 709 to include an implied presumption of competency is supported by the provision's legislative history and statutory purpose. (See *City of Brentwood v. Central Valley Regional Water Quality Control Bd.* (2004) 123 Cal.App.4th 714, 722–727, 20 Cal.Rptr.3d 322 [examining extrinsic aids to determine which party bore the burden of proving the applicability of exceptions to a mandatory minimum penalty for violating provisions of a waste water permit when the governing statute was silent as to which party bore the burden of proof].)

a. Legislative history

The materials considered by lawmakers in connection with the enactment of section 709, like the language of the statute itself, do not expressly refer to a presumption of competency or any allocation of the burden of proof. These ***194** materials demonstrate that in enacting section 709, the Legislature intended to more effectively safeguard a juvenile's due process right not to be subject to adjudication while incompetent. Toward that end, the statute parts company with the adult competency scheme in certain specified ways that tailor the juvenile competency procedures to better fit the significant developmental differences between adults and juveniles and the distinctions between the adult and juvenile criminal justice systems.

At the same time, however, and most significantly, we discern nothing in the legislative materials from which to infer that lawmakers intended to alter juvenile courts' existing practice of relying on the adult competency provisions in other respects. Specifically, nothing in the legislative history suggests lawmakers intended that Penal Code section 1369's presumption of competency for an adult criminal defendant should not apply to a minor facing adjudication as a ward of the juvenile court under section 601 or 602.

Various legislative materials explained to lawmakers that existing procedures for determining competency in juvenile proceedings derived from the adult competency scheme, the Rules of Court, and judicial decisions. According to the legislation's author, whose statement was included in a number of bill analyses, the overarching problem with the lack of any statutory authority governing the juvenile court procedures was that this absence created uncertainty and inconsistent application of the developing case law. (See, e.g., Sen. Republican Floor Commentaries Assem. Bill No. 2212 (2009–2010 Reg. Sess.) as amended Aug. 5, 2010, p. 1365; Assem. Com. on Appropriations, Analysis of Assem. Bill No. 2212 (2009–2010 Reg. Sess.) as amended Apr. 22, 2010, p. 2; Assem. Com. on Public Safety, Analysis of Assem. Bill No. 2212 (2009–2010 Reg. Sess.) as amended Apr. 8, 2010, p. 3 (Assembly Com. on Public Safety Analysis).) But the specific concerns regarding the application of adult competency procedures in juvenile courts were limited to two primary issues for which there existed no corresponding provisions in the adult competency scheme, namely (1) developmental immaturity as an additional basis for incompetency, and (2) the need for the appointment of experts who are specially trained in the area of juvenile development to accurately evaluate the minor. " 'While case law suggest[s] *****893** that courts may rely on adult competency provisions in

the absence of a juvenile statute on competency to stand trial, adult competency statutes do not address the nuanced application of "developmental immaturity" outlined in case law relevant to determination of competency in juveniles. .... [¶] Moreover, evaluation of children requires a professional expertise on child development, use of assessment instruments unique **77 to evaluation of children in order to identify a mental disorder or developmental disability.' " (Assem. Com. on Appropriations, *supra,* at p. 2.) There is no suggestion that the presumption of competency itself was seen as a problem.

*195 Analyses of the bill prepared for various legislative committees echoed the author's concerns regarding certain *specific* gaps in the adult competency procedures, as applied to juvenile competency proceedings. The analyses also presented the arguments of the bill's institutional supporters, who likewise emphasized the increased understanding of how juveniles " 'think, perceive situations, and process information.' " (Assem. Com. on Public Safety Analysis, *supra,* at p. 9 [quoting an argument by Sacramento County Office of Public Defender].) The interested stakeholders whose statements in support of the proposed legislation were conveyed to lawmakers urged them to enact the bill, in part, to help ensure the constitutional rights of minors accused of crimes. The bill would protect a minor's rights, they argued, by (1) adopting the *Dusky* standard as the definition of juvenile competency, (2) codifying the holding of *Timothy J., supra,* 150 Cal.App.4th 847, 58 Cal.Rptr.3d 746, that incompetency could be based on a juvenile's developmental immaturity, and (3) requiring that competency evaluations be conducted by experienced, trained experts in the field of child development. (Assem. Com. on Public Safety Analysis, *supra,* at pp. 8–11.) Notably, however, nothing in the stakeholders' statements or in the bill analyses themselves suggested that prior judicial reliance on the adult scheme should be rejected in any other respect. Nor was there any expression of concern that the adult competency scheme's presumption of competency and associated burden of proof would fail to adequately protect a minor from being adjudicated while incompetent.

Minor points out that the legislative materials made clear there was no preexisting *statutory* authority for resolving doubts regarding competency in a juvenile proceeding. From this he argues that the Legislature would not have viewed the adult competency scheme as existing authority for juvenile competency determinations and, therefore, did not intend that the provisions from the adult scheme would apply in juvenile proceedings unless specifically so identified as being appropriate for minors. Minor's argument is refuted by the legislative materials themselves, which informed lawmakers that, under existing practice, juvenile competency proceedings were governed by a combination of the adult competency statutes, court rules, and judicial decisions. Contrary to minor's assertion, nothing in the history of section 709's enactment suggests that lawmakers considered the proposed legislation to comprise the sole and complete authority for juvenile competency determinations, or a wholesale rejection of procedures derived from the adult competency scheme.

Minor argues furthermore that a presumption of competency for juveniles ignores the research on adolescent brain development, research that includes studies showing that many youth lack the capacity ***894 to adequately understand the legal process and assist their attorneys in defending their case. Minor's assertion is essentially a policy argument; indeed, the legislative history described above demonstrates that lawmakers considering whether to enact *196 section 709 were amply informed about the recent advances in understanding a minor's cognitive, psychological, social and moral development. Such information prompted the Legislature to add developmental immaturity as a basis for finding incompetency and to require that competency evaluations be conducted by experts skilled in child development. It is not inconsistent with the Legislature's interest in research on brain development that lawmakers neither eliminated statutory language suggesting that competency would be presumed nor specifically rejected Penal Code section 1369's presumption of competency in wardship proceedings. Rather, it reflects only that the Legislature was seeking to address the concerns raised by that research in ways other than evidentiary presumptions and their associated burdens of proof.

Our review of the legislative history of section 709 suggests lawmakers did not intend to preclude juvenile courts from continuing to apply a presumption of competency **78 to minors subject to wardship proceedings. Our task is not to consider whether it is preferable to presume a minor incompetent, subject to proof by a preponderance of the evidence that he or she is competent to proceed, but rather to discern what the Legislature intended in this

regard. We conclude that the Legislature did not intend the enactment of section 709 to alter the existing practice of presuming a minor competent to undergo a wardship proceeding and imposing on the party claiming otherwise the burden of proving incompetency by a preponderance of the evidence.

b. Policy

The parties devote a sizable amount of their briefing to the policy considerations supporting their respective positions regarding the burden of proof that applies under section 709. The Attorney General argues, for example, that imposition of the burden of proof on a minor who claims incompetency comports with policy concerns because, like an adult criminal defendant, the minor and minor's counsel have superior access to information relevant to competency. (See *People v. Medina, supra,* 51 Cal.3d at p. 885, 274 Cal.Rptr. 849, 799 P.2d 1282 [concluding that Pen.Code, § 1369, subd. (f), does not offend due process by imposing on defendant the burden of proving incompetency, in part, because defendant and defense counsel likely have better access to the relevant information].) Minor counters that once the juvenile court finds substantial evidence raising a doubt regarding the minor's competency and appoints an expert to evaluate the minor, the *expert* has the best access to the relevant information, which supports allocating the burden of proof to neither party. Minor and amicus curiae on his behalf argue, alternatively, that imposing on the prosecution the burden of proving competency by a preponderance of the evidence advances "the unique and important role that the juvenile justice system has in rehabilitating juveniles" and the policy of protecting the vulnerability of children, especially those regarding whom a court has found substantial evidence raising a doubt as to competency.

***197** **[8]** We need not resolve the debate regarding the policies supporting allocation of the burden of proof to one party or *****895** the other. Because we have concluded that section 709 did not effect a departure from the juvenile courts' application of the adult competency scheme's presumption of competency to minors in wardship proceedings, the policy arguments have been resolved by the Legislature. It necessarily follows from the presumption of competency that the burden of proving incompetency is borne by the party asserting it. As previously mentioned, although the adult competency scheme establishes a presumption of competency, it does not expressly allocate to any party the burden of proof at the competency hearing. We explained in *People v. Rells, supra,* 22 Cal.4th 860, 94 Cal.Rptr.2d 875, 996 P.2d 1184, that that statutory scheme's silence on this point is simply a function of the presumption of competency, which, in accordance with Evidence Code section 606, "operates to impose the burden of proof on the party, if any, who claims that the defendant is mentally incompetent." (*Rells, supra,* at p. 867, 94 Cal.Rptr.2d 875, 996 P.2d 1184.) A presumption affecting the burden of proof is one that has been "established to implement some public policy other than to facilitate the determination of the particular action in which the presumption is applied...." (Evid.Code, § 605.) It is well settled that the presumption of competency comes within the category of policy-based evidentiary presumptions affecting the burden of proof. (*Rells, supra,* at p. 868, 94 Cal.Rptr.2d 875, 996 P.2d 1184.) Because the presumption of competency applies in a wardship proceeding, the party asserting incompetency bears the burden of proving the minor is incompetent to proceed.

Amicus curiae for minor, the Office of the Public Defender, Sacramento County (Public Defender) argues that maintaining a presumption of competency, once there has been a prima facie showing that the minor is incompetent, is inconsistent with California's policy of presuming that a minor under the age of 14 years is incapable of committing a crime. Under Penal Code section 26, paragraph One, before a minor under the age of 14 years may be adjudged a ward of the ****79** juvenile court, the prosecution must prove by clear and convincing evidence that the minor "appreciated the wrongfulness of the charged conduct at the time it was committed." (*In re Manuel L.* (1994) 7 Cal.4th 229, 232, 27 Cal.Rptr.2d 2, 865 P.2d 718; accord, *People v. Cottone* (2013) 57 Cal.4th 269, 280, 159 Cal.Rptr.3d 385, 303 P.3d 1163.)

[9] We reject the Public Defender's argument for several reasons. First, although some of the same considerations may be relevant to both the question of competency to stand trial and the question of capacity to commit crime, these inquiries differ in their purpose and scope. (*Timothy J., supra,* 150 Cal.App.4th at p. 862, 58 Cal.Rptr.3d 746.)

We observe, moreover, that any possible interplay between the presumption of competency and the presumption of incapacity is limited to cases involving

minors under the age of 14 years. In such cases, the presumption of ***198** competency arises only if the minor is subject to adjudication under the juvenile law, that is, only after the prosecution has overcome the presumption of incapacity with clear and convincing proof that the minor knew the wrongfulness of his or her conduct. The presumption of competency presents no inconsistency with a presumption of incapacity that has been rebutted.

B. Standard of review

The other principal issue we address in this case concerns the standard by which *****896** an appellate court reviews a challenge to the sufficiency of the evidence supporting the juvenile court's determination in a competency proceeding under section 709. Minor argues for de novo review on appeal. The Attorney General maintains that the deferential substantial evidence review is appropriate here. As we explain, we agree with the Attorney General that the standard of review applicable in this case is the deferential substantial evidence test.

1. Governing standard

[10] **[11]** Decisions by this court have pointed to a verdict in a competency proceeding as an example of the type of "mixed question[ ] of law and fact" to which a deferential standard of review is applied. (*People v. Holmes* (2004) 32 Cal.4th 432, 442, 9 Cal.Rptr.3d 678, 84 P.3d 366; see *People v. Cromer* (2001) 24 Cal.4th 889, 895, 900, 103 Cal.Rptr.2d 23, 15 P.3d 243.) In so doing, we have drawn on the reasoning of *Thompson v. Keohane* (1995) 516 U.S. 99, 113–114, 116 S.Ct. 457, 133 L.Ed.2d 383, which also pointed to such a determination as an example of a primarily fact-dependent issue that warrants deference in federal habeas corpus proceedings. (See 28 U.S.C. § 2254(d).) These precedents describe several factors that help distinguish lower court rulings that are reviewed deferentially from those that require independent review by the appellate court. First, deferential review is appropriate when the lower court's determination, as with a ruling on competency, is based upon its " 'first-person vantage' " and, "to a significant extent, on ' "first-hand observations made in open court," ' which that court itself is best positioned to interpret." (*People v. Ault* (2004) 33 Cal.4th 1250, 1267, 17 Cal.Rptr.3d 302, 95 P.3d 523; see *People v. Cromer, supra,* at p. 901, 103 Cal.Rptr.2d 23, 15 P.3d 243; *Thompson v. Keohane, supra,* at p. 114, 116 S.Ct. 457.) Deferential review of a lower court's ruling such as the determination of competency is proper, moreover, because such a determination is an "individual-specific decision" that is "unlikely to have precedential value." (*Thompson v. Keohane, supra,* at p. 114, 116 S.Ct. 457.) When a legal rule "acquire[s] content only through application," independent review is indicated, as deference to the trial court's conclusions prevents the appellate court from carrying out its role to "maintain control of, and to clarify, the legal principles." ***199** *Ornelas v. United States* (1996) 517 U.S. 690, 697, 116 S.Ct. 1657, 134 L.Ed.2d 911; see *People v. Cromer, supra,* at p. 896, 103 Cal.Rptr.2d 23, 15 P.3d 243.) Deference is appropriate, however, when the lower court's determination is "highly individualized" (*Cromer, supra,* at p. 901, 103 Cal.Rptr.2d 23, 15 P.3d 243) and would not likely result in an appellate opinion elucidating rules of general applicability. (See *Thompson v. Keohane, supra,* at p. 114, fn. 14, 116 S.Ct. 457.)

[12] We conclude that the deferential standard of review that applies to an adult ****80** criminal defendant's challenge to the sufficiency of the evidence supporting a verdict in a competency determination (*People v. Samuel* (1981) 29 Cal.3d 489, 505, 174 Cal.Rptr. 684, 629 P.2d 485; *People v. Marshall* (1997) 15 Cal.4th 1, 31, 61 Cal.Rptr.2d 84, 931 P.2d 262; *People v. Frye* (1998) 18 Cal.4th 894, 1004, 77 Cal.Rptr.2d 25, 959 P.2d 183), likewise applies to a minor's challenge to the sufficiency of the evidence supporting a juvenile court's determination regarding competency under section 709. Like the trier of fact in an adult competency trial, the juvenile court *****897** often makes its determination by conducting an evidentiary hearing, observing first hand not only the testifying witnesses but also the minor's behavior and interactions with counsel.

[13] Amici curiae on minor's behalf, Youth Law Center and Pacific Juvenile Defender Center, argue in favor of de novo review. They assert that, unlike in adult court, where a jury may be called upon to weigh witness testimony, the juvenile courts decide the question of competency primarily on the documentary record of the minor's impairment and the expert's report, which renders deferential review unnecessary. Amici curiae provide no affirmative support, however, for their assertion that determinations in juvenile competency proceedings generally do not involve live testimony, and the case law

seems to suggest otherwise. (See, e.g., *In re Alejandro G.* (2012) 205 Cal.App.4th 472, 476, 140 Cal.Rptr.3d 340 [both of the appointed experts who evaluated the minor prepared reports and testified at the hearing]; *In re Christopher F.* (2011) 194 Cal.App.4th 462, 466, 123 Cal.Rptr.3d 516 [the expert repeated in court his conclusion that the minor was not competent to proceed].) In any event, a juvenile court's determination regarding competency, even if made in the absence of an evidentiary hearing, may be informed by the court's own observations of the minor's conduct in the courtroom generally, a vantage point deserving of deference on appeal.

A juvenile court's determination regarding competency also is like a verdict in a competency proceeding involving an adult criminal defendant in that both involve an "individual-specific decision" that is "unlikely to have precedential value." (*Thompson v. Keohane, supra,* 516 U.S. at p. 114, 116 S.Ct. 457.) Guided by the same well-settled legal definition of competency, both the juvenile court and the trial court draw their conclusions based on an appraisal of the particular expert testimony by mental health professionals, courtroom ***200** observations, and other testimonial and documentary evidence then before the court in the case. Neither determination involves the type of legal rule that acquires " ' "meaning only through its application to the particular circumstances of a case," ' " such as the Fourth Amendment's doctrines of probable cause and reasonable suspicion, for which independent appellate review, rather than deferential review, is appropriate. (*People v. Cromer, supra,* 24 Cal.4th at p. 896, 103 Cal.Rptr.2d 23, 15 P.3d 243.)

Minor contends that independent review is nonetheless required for a juvenile court's determination regarding competency because of the importance of the constitutional right at stake and the consequences of an error by the juvenile court. As minor points out, a juvenile court's erroneous determination that the juvenile is competent could subject the juvenile to an adjudication while incompetent in violation of his or her due process right. The same constitutional considerations apply in adult proceedings, however, yet on appeal the deferential substantial evidence standard of review applies.

2. Nature of the substantial evidence test for reviewing juvenile court determinations under section 709

[14] We have concluded that an appellate court applies a deferential standard when reviewing a claim that the record does not support the juvenile court's determination in a competency proceeding. Some features of the so-called substantial evidence test will apply to all such challenges *****898** on appeal. For example, the appellate court evaluating a claim of insufficient evidence supporting a determination of competency defers to the juvenile court and therefore views the record in the light most favorable to the juvenile court's determination. (See ****81** *People v. Samuel, supra,* 29 Cal.3d at p. 505, 174 Cal.Rptr. 684, 629 P.2d 485; *People v. Marshall, supra,* 15 Cal.4th at p. 31, 61 Cal.Rptr.2d 84, 931 P.2d 262; *People v. Frye, supra,* 18 Cal.4th at p. 1004, 77 Cal.Rptr.2d 25, 959 P.2d 183.)

[15] **[16]** There is, however, no single formulation of the substantial evidence test for all its applications. We observe that in the present matter, the evidence before the court consisted of Dr. Kojian's report and testimony, and the written materials on which he based his opinion that minor was not competent to stand trial. The prosecutor did not present any affirmative evidence of competency. Nor was he obligated to do so. As we have explained, under section 709, minor is presumed competent and had the burden of proving incompetency by a preponderance of the evidence. Even if the prosecution presents no evidence of competency, a juvenile court can properly determine that the minor is competent by reasonably rejecting the expert's opinion. This court has long observed that " '[t]he chief value of an expert's testimony in this field, as in all other fields, rests upon the *material* from which his opinion is fashioned and the *reasoning* by which he progresses from his material to ***201** his conclusion.' " (*People v. Samuel, supra,* 29 Cal.3d at p. 498, 174 Cal.Rptr. 684, 629 P.2d 485.) In a case such as this one, therefore, the inquiry on appeal is whether the weight and character of the evidence of incompetency was such that the juvenile court could not reasonably reject it. (See *Samuel, supra,* at pp. 498–506, 174 Cal.Rptr. 684, 629 P.2d 485 [examining the facts on which the defense experts relied and the reasoning by which they arrived at their opinions to conclude that the jury could not reasonably have rejected the defense evidence of incompetence].)

This court has used such a formulation of the substantial evidence test in two closely analogous decisions. The defendant in *People v. Drew* (1978) 22 Cal.3d 333, 149

Cal.Rptr. 275, 583 P.2d 1318, had entered a plea of not guilty by reason of insanity, which he had the burden of proving by a preponderance of the evidence. At the sanity trial, both of the court-appointed psychiatrists concluded that the defendant was insane at the time of the crime, and the prosecution presented no evidence. (*Id.* at pp. 338–339, 350–351, 149 Cal.Rptr. 275, 583 P.2d 1318.) In addressing the defendant's claim that the jury's verdict of sanity was not supported by substantial evidence, we explained that under the circumstances of that case, the question on appeal was "whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it." (*Id.* at p. 351, 149 Cal.Rptr. 275, 583 P.2d 1318.) The record supported the jury's verdict, we concluded, because the jury reasonably could have found that the psychiatrists failed to "present sufficient material and reasoning to justify" their opinions. (*Id.* at p. 351, 149 Cal.Rptr. 275, 583 P.2d 1318.) We pointed out, for example, that although both experts had diagnosed the defendant as suffering from latent schizophrenia that was characterized by assaultive behavior, neither expert explained why this diagnosis would lead to the conclusion that the defendant met the definition of insanity such that he did not understand ***899** that his assault on the police officer victim was wrong. (*Id.* at pp. 350–351, 149 Cal.Rptr. 275, 583 P.2d 1318.)

A similar formulation of the substantial evidence test appears in *People v. Coogler* (1969) 71 Cal.2d 153, 77 Cal.Rptr. 790, 454 P.2d 686. The capital defendant in that case had presented a diminished capacity defense to a charge of first degree deliberate and premeditated murder. (See Pen.Code, former § 1127b.) At the guilt phase of trial, three mental health expert witnesses testified for the defense that the defendant suffered from a disassociation reaction brought on by mental illness at the time of the killings, and each expert expressed the opinion that the defendant could not have acted with premeditation and deliberation. (*Coogler, supra,* at pp. 162–165, 77 Cal.Rptr. 790, 454 P.2d 686.) The prosecution did not present any expert witnesses of its own. (*Id.* at p. 166, 77 Cal.Rptr. 790, 454 P.2d 686.) The jury convicted the defendant of first degree murder and ultimately returned a verdict of death. On automatic appeal, the defendant argued that in light of his experts' testimony, the trial court erred by instructing the jury on first degree deliberate and premeditated murder. Reviewing the evidence presented **82** in the case, this court held to the contrary that substantial evidence supported the court's instruction. We explained that a jury properly could reject the ***202** experts' conclusions because of the material on which the experts relied. (*Id.* at p. 166–167, 77 Cal.Rptr. 790, 454 P.2d 686.) For example, we observed, a jury properly could reject the opinion of the psychiatrist who had relied upon the defendant's own description of previous behaviors and limited recollection of the crimes, but had failed to consider the police reports or preliminary hearing transcripts. (*Id.* at pp. 162, 167, 77 Cal.Rptr. 790, 454 P.2d 686.)

The Court of Appeal in the present matter applied a substantial evidence standard when reviewing the juvenile court's competency determination. It erred, however, when describing the contours of that standard. Quoting verbatim from the decision in *In re Christopher F., supra,* 194 Cal.App.4th at page 471, footnote 6, 123 Cal.Rptr.3d 516, the Court of Appeal characterized the applicable standard as a review of " ' "the whole record to determine whether any rational trier of fact could have found the essential elements of the crime ... beyond a reasonable doubt," ' " stating further that " ' "the record must disclose substantial evidence to support the verdict ... such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." ' "[4]

[17] It is evident from both the language of the above quoted standard, and the decision from which that language was drawn, that the Courts of Appeal in *In re* ***900** *Christopher F.* and the present matter were reciting the standard for reviewing a challenge to the sufficiency of the evidence supporting a verdict of *guilt.* (See *In re Christopher F., supra,* 194 Cal.App.4th at p. 471, fn. 6, 123 Cal.Rptr.3d 516, quoting verbatim from *People v. Zamudio* (2008) 43 Cal.4th 327, 357, 75 Cal.Rptr.3d 289, 181 P.3d 105, which applied the quoted standard to the appellant's challenge to the sufficiency of the evidence supporting his robbery conviction.) A standard of review that inquires whether the record showed substantial evidence from which "a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt" has no application in a challenge to the sufficiency of the evidence supporting a finding of competency, for either a juvenile or an adult criminal defendant. A competency determination does not constitute a finding that the allegations in a wardship petition are true, or that a defendant is guilty of a crime. (*Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, 43, 11 Cal.Rptr.3d 533 ["competency proceedings are civil *203 in nature and

collateral to the determination of defendant's guilt and punishment"].) Nor does a competency determination involve proof beyond a reasonable doubt. (§ 709, subd. (c) [incompetence is proved by a preponderance of the evidence]; Pen.Code, § 1369, subd. (f) [same].) As explained above, the proper formulation of the substantial evidence test for reviewing a challenge to the sufficiency of the evidence supporting a juvenile court's competency determination in a case such as this one, in which the evidence before the court consists of the opinion of a qualified expert concluding that the minor is incompetent to proceed and the materials on which the expert relied, inquires whether the weight and character of the evidence of incompetency was such that the juvenile court could not reasonably reject it. [5]

C. Application of the standard of review

[18] Under section 709, a minor is incompetent to proceed in a wardship adjudication ****83** "if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her." (§ 709, subd. (a).) We have concluded, *ante,* in part II.B., that an appellate court presented with a challenge to the sufficiency of the evidence supporting a juvenile court's competency determination in a case like this one—in which the only evidence before the court was the court-appointed expert's opinion that the minor was incompetent and the materials on which the expert relied—reviews the court's determination deferentially, evaluating the record in the light most favorable to the court's determination and upholding it if the appellate court concludes that the court could reasonably reject the evidence of incompetency. Applying that standard here, we conclude that the court could not reasonably have rejected Dr. Kojian's compelling, well-supported, and unequivocal opinion that minor was not competent to proceed to trial.

1. Evidence before the juvenile court

a. The expert's written report

As previously mentioned, the court appointed forensic psychologist Haig J. Kojian, *****901** Ph.D., to evaluate minor's competency to stand trial. (See § 709, subd. (b).) In preparing his report, Dr. Kojian conducted a clinical interview with minor and spoke with minor's mother by telephone. He also reviewed minor's school records and the responding officers' detention reports in the present matter. Based on these sources, Dr. Kojian concluded that minor was not presently competent to stand trial.

***204** Dr. Kojian's report first discusses the results of his mental status examination of minor. According to the report, minor's presentation appeared impaired and there was evidence of an altered thought process. Minor's speech and movements were slow and deliberate, and his gait was rigid. Moreover, his affect appeared incongruent with thought content. For example, he smiled for no reason and out of context. Dr. Kojian noted that minor stated several times that he was confused and repeatedly changed his responses to questions. He also told Dr. Kojian that he was depressed.

When Dr. Kojian indicated that he would like to administer some psychological tests, minor refused, saying, "I just don't feel I need to do this." Dr. Kojian ultimately managed to assess minor with an abbreviated version of the "Rey 15–Item Test" for ruling out malingering, to which minor responded appropriately.

Dr. Kojian reported that minor was unable to provide any meaningful self-history. For example, although minor correctly reported he was living with his mother, stepfather, and stepsibling at the time he was detained, he also said that he had a good relationship with his parents. Minor denied using alcohol or drugs, which Dr. Kojian found unconvincing. He also denied being in special education classes, which contradicted school records. Although minor reported having been suspended from school once or twice, he could not remember why.

At various points during the evaluation, minor told Dr. Kojian that he was "confused right now." Dr. Kojian reported that, when asked to elaborate, minor "wasn't making much sense." Specifically, minor indicated that his mother was confusing him and that he "didn't know her or her side of the story." Minor also stated, "Hard times ... problems." When asked to explain, minor indicated he had difficulty with talking, saying, "Just the language ... in school though" and "little problem."

Dr. Kojian's telephone interview with minor's mother disclosed that although minor had met developmental

milestones on a timely basis, he had been diagnosed with "mental problems."

Dr. Kojian devoted most of his report to the issues relevant to a finding of competency, specifically, whether minor is capable of consulting with counsel, assisting in his defense, and understanding the nature of the charges and the proceedings. (See § 709, subd. (a).) Minor's responses to Dr. Kojian's questions suggested to him that minor "was confused and didn't know what was going on."

**84 Some of minor's confusion concerned the reason for his detention. Specifically, when minor was asked why he was in custody he first stated it was for *205 "being on the porch," an apparent reference to his being returned to juvenile detention for violating the terms of his home supervision program (HSP) release. (Minor was aware that he had been detained for several weeks, had been released on HSP, and was then returned to custody.) When Dr. Kojian clarified that he was asking about the original detention, minor indicated he ***902 was in custody for "not understanding," "for being confused," and "for his safety." In response to Dr. Kojian's suggestion that these were not crimes, minor said, "Disturbing the peace."

Minor then offered another reason for his being in custody, stating that he had been detained because "it was thought he was using drugs," which he denied. When Dr. Kojian questioned minor further on the subject, minor indicated that a prior drug matter had been resolved "by me understanding it." Minor correctly identified the earlier drug case as a misdemeanor, and stated that misdemeanors were less serious than felonies "such as disturbing the peace."

According to Dr. Kojian's report, minor correctly described some of the aspects of the legal proceedings against him but was confused about, or ignorant of, others. For example, minor knew that a misdemeanor is less serious than a felony, but he did not know the difference between a plea bargain and trial. Minor also expressed some confusion over whether or not he had an attorney. He did not know counsel's name and did not understand counsel's duty and function. Nor was he aware of the prosecutor's function. Minor did know that the judge "makes the decisions," but he did not know what types of decisions those were. He also understood being guilty meant he was "responsible," but he believed that the determination of guilt depended on "whether he attends school."

When Dr. Kojian returned to the subject of the specific charges in the case, minor first indicated he was being charged with disturbing the peace, a crime different from those alleged in the wardship petition. In response to Dr. Kojian's suggestion that that was not the charge, minor said, "messing up my house," "playing with mom and dad," "for not being serious," and "for not going to school." Dr. Kojian hinted to minor that the charges involved a knife, prompting minor to offer various guesses, including "Me risking myself and not being serious?," "Me messing up?," and "For me being confused?"

As previously mentioned, Dr. Kojian's assessment of minor's competency included information gleaned from the detention reports and minor's school records. He noted specifically minor's mother's statement to responding officers that minor recently had stopped taking his medication and that "with each episode he gets worse." He found significant a notation by one of the *206 officers that minor seemed to be having trouble understanding the questions posed to him and appeared "confused." Dr. Kojian also found useful information in what he referred to as minor's IEP (individualized education plan), for example, that minor had been receiving special education services due to a mood disorder. Written assessments by some of minor's teachers included comments such as "He acts like he is under the influence" and he "[does] not seem to know what is going on at all in school."

Based upon his observations and assessment of minor, his interview with minor's mother, and his review of the identified records and reports, Dr. Kojian concluded that minor was impaired and that two underlying issues were causing minor's impairment. Specifically, he found that minor was both "clearly suffering from depression" and that minor's thinking and cognitive functioning was "clearly disrupted." Dr. Kojian acknowledged that because he did not administer any standardized tests to minor, he could not determine the etiology, or source, of the impaired cognitive functioning. He did not believe ***903 the impairment was developmental. Rather, he was of the view that minor either could be in the early stages of schizophrenia or other psychotic disease, or that he could be using more drugs or different drugs

than earlier reported, which has resulted in organic impairment.

In concluding remarks, Dr. Kojian wrote that "it appears from all accounts" that minor ****85** was not competent to stand trial at the present time. He found that minor was "legitimately confused" about what is occurring and that " in his current condition does not have the capacity to meaningfully and rationally cooperate with counsel to prepare a defense or to assist counsel in a meaningful and rational manner." In light of minor's confused and vacillating responses during the interview, Dr. Kojian also questioned whether he fully understood the nature of the proceedings against him. Dr. Kojian acknowledged that perhaps the charges against minor had been reduced to disturbing the peace. In his view, however, minor's statements, for example, his assertion that his drug case had been resolved "because he, now, understands," suggest he is confused about the present charges and the proceedings.

b. Expert's testimony at the competency hearing

Minor's counsel offered to submit the question of minor's competency solely on the basis of Dr. Kojian's report, without an evidentiary hearing. The prosecutor indicated, however, that because Dr. Kojian had not administered any tests to minor, he wanted to question him in this regard. The court granted the prosecutor's request and held a hearing in late April 2012, at which Dr. Kojian was the only witness called to testify. Before questioning commenced, the court granted minor's counsel's request to take judicial ***207** notice of two sets of documents in the case file, a probation modification petition and the officers' detention reports.

Dr. Kojian testified regarding his qualifications and the substance of his written report. He indicated that his forensic psychology practice spanned over 20 years, during which time he had evaluated thousands of juveniles.

Much of Dr. Kojian's testimony echoed his written report, and he confirmed that he "had no doubt" minor had an "impairment of some sort." Regarding the sources of that impairment, he reiterated his observation that minor appeared to be depressed and his conclusion that minor's depression could be affecting his functioning. He noted in this regard that the medication minor had been prescribed, Abilify, is used to treat mood disorders. He also repeated his finding that minor's appearance, affect and vacillating responses to his questions, coupled with the statements by minor's teachers, parents, and the officers who detained him, suggested impaired cognitive functioning, and he reaffirmed his view that minor was "legitimately confused." Dr. Kojian testified, consistently with his report, that minor's difficulty explaining what he was being charged with, his erroneous explanations as to why he was in custody, and one responding officer's observation that the minor appeared confused, led him to believe minor could not consult with counsel and did not fully understand what was happening.

At the hearing, Dr. Kojian described in more detail the records that he had reviewed in reaching his opinion that minor was incompetent. Specifically, he had examined the wardship petition, the detention *****904** reports, a May 2011 child guidance letter from minor's therapist, Arthur Montes, a licensed clinical social worker, and a January 2011 psychoeducational report by a school psychologist at minor's high school. According to Dr. Kojian, the school records presented a consistent theme that minor is very slow, his testing is low, and that "something is wrong with him."

The prosecutor's questioning of Dr. Kojian focused mostly on whether minor's refusal to be tested affected Dr. Kojian's opinion that minor was incompetent. Dr. Kojian indicated that administering tests would not have changed his opinion. He stated, "If I wasn't 100 percent sure of my opinion I wouldn't have written it in my report the way I wrote it and signed my name." With regard to the issue of malingering, Dr. Kojian explained that a discrepancy between a minor's presentation and other information available to the evaluator, such as comments by parents and teachers, "raises a red flag that someone is 'faking,' " but that no such discrepancy existed here. Dr. Kojian also testified that, in his view, minor did not seem to be malingering. He indicated that he had given minor a brief, "malingering-type" test and that minor "didn't fire on any of those questions."

***208** The prosecutor also questioned Dr. Kojian regarding the passage of time between completion ****86** of his report in mid-April 2012, and his testimony at the late April hearing, asking whether it was possible minor could have regained competency during that nine-day

period of time. Dr. Kojian explained that competency is not a static condition, and that if it seemed that minor was improving, he might need to be reevaluated. He expressed the view, however, that no doctor can say how a subject is, on the particular day that the doctor testifies regarding an earlier assessment. When pressed by the prosecutor whether his opinion is that minor, as he was then sitting in the courtroom, was incompetent to stand trial, Dr. Kojian indicated that on the day he signed his report he was of the opinion that minor was incompetent but that he did not know what minor's functioning was on the day of the hearing.

During closing argument by the parties, defense counsel recalled that the court had had to read the delinquency petition to minor "word by word." For his part, the prosecutor emphasized his concerns regarding Dr. Kojian's failure to administer any tests to minor and suggested the court appoint a second expert to evaluate him.

c. Documentary evidence

After hearing Dr. Kojian's testimony and closing argument by the parties, but before announcing its ruling, the court called a recess in order to review Dr. Kojian's written report and the two documents in the case file that it had agreed to judicially notice. One of the documents in the file was a February 2012 probation modification petition recommending the termination of wardship jurisdiction over minor that stemmed from an incident in 2010. The modification petition included several attachments, one of which was a March 2011 psychoeducational report by the school psychologist at minor's high school that was prepared in connection with a "manifestation determination," which Dr. Kojian had relied upon in forming his opinion. That report is summarized below.

The purpose of a manifestation determination is to decide whether the misbehavior of a special education student with an ***905** IEP is related to his or her disability. If it is determined that the student's violation of school rules is a manifestation of the disability, the student is entitled under state and federal law to special disciplinary rules for students with disabilities. (See Ed.Code, § 48915.5; 20 U.S.C. § 1415(k).) The psychoeducational report at issue here indicated that minor had been a special education student since 2006 and was then receiving services in the "mild to moderate" program.

The report covered a number of topics, including minor's medical and educational history, observations by minor's teachers, the results of various ***209** standardized assessments of minor conducted in January 2011, and an analysis of whether the assessment results or other information established that minor met the eligibility requirements for certain specified disabilities that would entitle minor to additional special education services.

With regard to minor's medical history, the report indicated that he had been diagnosed with a mood disorder for which he was being treated by Arthur Montes. The report concluded that minor met the special education eligibility criteria for disability under the category of "other health impairment" because his diagnosed mood disorder was adversely affecting his educational performance.

The report's discussion of minor's educational history indicated he had excessive unexcused absences and had earned very few units toward graduation. It also showed a fairly lengthy disciplinary record, including an incident that occurred about seven weeks before the manifestation determination report, in which minor was found to be under the influence of marijuana and in possession of a Prozac pill. In connection with that incident, he was arrested for possessing a prescription drug without the prescription and released to his mother. The behavior that appears to have triggered the manifestation determination report occurred six weeks later, when minor was suspended for five days after receiving from another student a backpack containing two stolen cellular telephones.

The report included questionnaire results and comments by many of minor's teachers. Several teachers indicated minor was quiet, inattentive, and unproductive. His "auto-tech" ****87** teacher remarked that at times minor showed some mechanical interest but "seems lost ... most of the time." Minor's English teacher reported that minor "acts like he is under the influence" and " does not seem to know what is going on at all in school."

In summarizing the standardized assessment results, the report indicated that although minor scored in the average range in visual processing of information, he fell within the

"low" or "very low" range in numerous, if not most, other areas. His overall intellectual ability, for example, was very low, as was his comprehension, long-term retrieval, processing speed, and short-term memory.

Although the report indicated that minor met the special education eligibility criteria for disability under the category of "other health impairment," it showed he did *not* meet eligibility criteria under any other category, including "special learning disability," "speech and language impaired," and "intellectually disabled."

The report ultimately found that the behavior at issue was a manifestation of minor's disability and concluded that his low cognitive and comprehension ***210** skills "can make it difficult for him to process *****906** the differences between right and wrong" and that "he can be easily influenced to do wrong." The report indicated that its assessment would be reviewed by the IEP team and used to determine appropriate placement and services for minor.

The second document attached to the probation modification petition was a May 2011 letter from minor's therapist, Arthur Montes. The purpose of Montes's letter was to request an "intake assessment" to determine if minor had a developmental disability. Referring to the manifestation determination's psychoeducational report as an "I.E.P.," Montes pointed to its findings regarding minor's subaverage intellectual functioning and extremely low cognitive and comprehension skills as grounds justifying an intake assessment.

2. The court's ruling

The court began its ruling by describing the evidence it had considered in making its determination. Specifically, the court indicated it had considered Dr. Kojian's testimony and written report, the detention reports, and the probation modification petition, which included the manifestation determination's psychoeducational report and the letter from therapist Arthur Montes. The court observed that it was not obligated to adopt Dr. Kojian's opinion that minor was incompetent to proceed. It found instead that minor was competent and had failed to sustain his burden of showing otherwise by a preponderance of the evidence.

The court took a short recess after announcing its ruling and then went back on the record to briefly explain the grounds on which it had reached its decision. With regard to the documentary evidence, the court indicated it had disregarded Montes's opinion that minor was developmentally delayed because that opinion was simply a "piggyback" of the manifestation determination report, which, the court observed, was not "a full determination of what was needed for the I.E.P." The court noted that school personnel were "still going to be in the process of determining appropriate placement and services."

The court remarked that Dr. Kojian "appeared ... to have extensive experience" but it nonetheless rejected his opinion that minor was unable to assist his counsel. The court explained that it reached that conclusion, in part, because Dr. Kojian "was not able to fully determine whether there was malingering and was unable to complete the ['Rey 15–Item Test']."

The court also was unpersuaded by Dr. Kojian's conclusion that minor's statements during the interview indicated confusion. The court found to the ***211** contrary that minor's characterization of the charges against him were appropriate responses given that minor had been released on HSP but failed to comply with its conditions, and in light of what minor allegedly had done. In the court's view, "messing up my house and not going to school ... at least was alleged to have been the genesis of what ended up in the charged offenses." The court observed furthermore that minor knew that a misdemeanor ****88** was less serious than a felony and understood, correctly, that an earlier offense involving possession of drugs at school had been taken care of.

The other reason cited by the court for rejecting Dr. Kojian's opinion was that the manifestation determination report had not "completely relied" on the "I.E.P. testing" in reaching its conclusion. Specifically, the court found it significant that the report's author believed minor's "cognitive *****907** and adaptive delays may have been drug induced" and noted that testing carried out in 2009 did not indicate the same cognitive and adaptive delays shown by the more recent testing.

3. The court could not reasonably reject the expert's conclusion that minor was not competent to proceed

We have concluded that an appellate court evaluating a challenge to the sufficiency of the evidence supporting a determination of competency under section 709 views the record in the light most favorable to the finding and, in a case like the present matter, asks whether the weight and character of the evidence of incompetency is such that the juvenile court could not reasonably reject it. Applying this formulation of the substantial evidence test here, we conclude that the court could not reasonably have rejected Dr. Kojian's opinion that minor was not competent to stand trial.

The juvenile court could not reasonably call into question the material on which Dr. Kojian based his opinion that minor was not competent to proceed. The expert's evaluation of minor included an assessment of minor's appearance, affect and speech, and a comprehensive interview covering various aspects of minor's background, the reasons for minor's detention, and minor's understanding of his present situation. Dr. Kojian interviewed minor's mother regarding minor's mental health history, and reviewed statements by teachers and responding officers regarding minor's behavior in school and at the time of his arrest, respectively. He also examined school records, which included minor's disciplinary history, his grades, and the results of recent standardized testing for cognitive functioning, intellectual ability, and other skills. Nothing in the record suggested that Dr. Kojian's evaluation had overlooked a significant indicator of competency. And nothing indicates that his inquiry focused on something other than the correct ***212** competency standard, namely, minor's present ability to assist counsel in preparing a defense and a rational understanding of the charges and proceedings.

We observe furthermore that Dr. Kojian expressed little reservation regarding his opinion that minor was incompetent. The Attorney General points to certain testimony to suggest Dr. Kojian's opinion was tenuous. Read in context, however, Dr. Kojian's statement that he "believed to a reasonable degree of psychological certainty that [his] opinion was probably correct" and that "it appears ... that this young man is not competent to stand trial at this time" demonstrated an attempt to express his opinion within professional parameters, and not to suggest any reservations in his views. (Cf. *People v. Marshall, supra,* 15 Cal.4th at p. 32, 61 Cal.Rptr.2d 84, 931 P.2d 262 [expert admitted his opinion that the defendant was incompetent "lacked 'a level of reasonable medical certainty' "].)

One of the court's principal reasons for rejecting Dr. Kojian's opinion was that the expert had not "fully determine[d]" whether minor was malingering and "was unable to complete" the Rey 15–Item Test. On this record, however, the expert's inability to administer a standardized test for malingering did not undermine the reasoning by which he arrived at his opinion. Although the prosecutor questioned Dr. Kojian at length regarding his failure to administer the Rey 15–Item Test for malingering, Dr. Kojian concluded that minor was not malingering and stated he was "100 percent sure" of his opinion notwithstanding minor's refusal to *****908** be assessed with objective measures. As he explained, a discrepancy between a minor's presentation during the evaluation and other information available to the evaluator, such as comments by parents and teachers, could suggest the minor is faking his or her responses, but no such discrepancy existed in the present case. Dr. Kojian also indicated ****89** that he had given minor a brief malingering-type test and that minor " didn't fire" on any of the questions. This court has long recognized that an expert is "entitled to base his opinion on observations of, and statements made by, the patient during a routine psychological interview." (*People v. Stoll* (1989) 49 Cal.3d 1136, 1155, 265 Cal.Rptr. 111, 783 P.2d 698.) We observe that in assessing the strength of an expert's opinion, a juvenile court properly may take into account a minor's refusal to be tested with objective measures. On the record presented here, however, the court could not reasonably point to Dr. Kojian's inability to administer a complete standardized test for malingering as a reason on which to reject the expert's opinion that minor was not competent to stand trial.

In rejecting Dr. Kojian's opinion, the court also pointed to certain statements by minor that, in the court's view, contradicted Dr. Kojian's conclusion ***213** that minor was confused. The identified responses were limited and incomplete, however, and did not provide a reasonable basis on which to reject the expert's opinion.

Minor was aware generally that a misdemeanor was less serious than a felony, that a judge makes decisions, and that being guilty means he is "responsible." The record also shows that when the arresting officer gave minor his *Miranda* advisements at the time of his arrest

(*Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694), minor invoked his right to silence. But most of minor's answers to Dr. Kojian's questions reflected ignorance of, or confusion regarding, many of the significant features of a juvenile adjudication. For example, minor could not describe the functions of defense counsel and the prosecutor, the differences between a plea bargain and a trial, and the types of decisions that are made by a juvenile court judge. Minor also was uncertain he was being represented by counsel and he believed the determination of his guilt depended on "whether he attends school."

Admittedly, some of minor's curious answers as to why he was in custody were explainable. His initial answer that he was in custody for "being on my porch" was understandable in light of the fact he originally was allowed to live at home pending the competency hearing but was returned to juvenile detention 10 days later for violating the conditions of his release pursuant to the Home Supervision Program, presumably by going outside the residence. And minor's statement that he was being charged with "messing up my house" and "not going to school" arguably was an accurate reflection of some of the factual underpinnings of the charges against him, as the court pointed out. But Dr. Kojian's report and testimony indicated that, from the outset, minor seemed to misunderstand what was meant by a criminal charge. During the interview, when told that "being confused" and "not understanding" were not crimes, minor said he was being charged with disturbing the peace. And when informed by Dr. Kojian that that crime was *not* the charge, minor again described the charges in vague, factual terms. Most significantly, as Dr. Kojian observed, minor exhibited no awareness of the most important *****909** facts underlying the charges, namely, that he allegedly had threatened family members with a knife. On this record, the court could not reasonably reject the expert's opinion on the basis of isolated statements suggesting minor understood some features of a juvenile proceeding generally, or on the ground that minor's confusion in some respects could be explained.

Nor were any of the other grounds offered by the juvenile court a reasonable basis for rejecting the expert's opinion that minor was incompetent. The court found that evidence of a possible link between minor's drug use and his significant intellectual and adaptive deficits called into question ***214** Dr. Kojian's opinion. Specifically, the court emphasized the portion of the manifestation determination report indicating (1) that minor's significant cognitive and adaptive delays shown by the most recent testing "may have been drug induced" and (2) that the results of earlier assessments showed minor's scores in those areas fell within average ranges. Our examination of the report, however, discloses that this cited evidence concerned the question of the minor's eligibility for special education services based on "intellectual disability," a disability category formerly referred to as ****90** mental retardation. To qualify for special education services under that category it must be shown that the student's significant deficits in intellectual functioning and adaptive behavior "manifested during the developmental period." (Cal.Code Regs., tit. 5, § 3030, subd. (b)(6); see Ed.Code, § 56026, subd. (a).) The school psychologist who authored the report expressed the view that minor's current, significant deficits in intellectual and adaptive functioning adversely affected his educational performance. But she concluded nonetheless that minor did not meet the eligibility criteria for intellectual disability because minor's deficits appeared to have been drug induced and, according to prior testing, had not arisen during the developmental period.

This evidence was not inconsistent with, nor did it contradict, Dr. Kojian's opinion because his conclusions regarding the conditions causing minor's incompetence were *not* based on a finding of intellectual or developmental disability. Rather, Dr. Kojian's report to the court expressly stated that one of the causes of minor's incompetency, the impairment of his cognitive functioning, did *not* appear to be developmental in nature. And to the extent the evidence cited by the juvenile court was relevant to the question of minor's competency, it *supported,* rather than refuted, Dr. Kojian's opinion. Dr. Kojian had indicated that he found two underlying causes of minor's incompetency, a mood disorder and an impairment in minor's cognitive functioning. As to the latter condition, Dr. Kojian believed the impairment was attributable to one of two sources—either a serious, emerging mental disease such as schizophrenia, or extensive drug use that had led to organic deficits. That the manifestation determination report attributed minor's recently assessed cognitive delays to his use of drugs further bolstered one of Dr. Kojian's theories regarding the etiology of minor's impaired thinking.

None of the other reasons given by the court when explaining why it declined to accept Dr. Kojian's opinion were relevant to an assessment of the materials and reasoning used by Dr. Kojian in reaching his conclusion that minor was incompetent. For example, the court indicated it had rejected the belief by Montes, minor's therapist, that minor had a developmental ***910** delay because that opinion simply "piggyback[ed]" on the information provided in the manifestation determination report. But Dr. Kojian, consistent with the court's view of Montes's opinion, had expressed the opinion that minor's ***215** incompetency was caused, *not* by any developmental disability or delay, but rather by either a mood disorder or substantial impairments in his thought and cognitive functioning.

One final reason for rejecting Dr. Kojian's opinion mentioned by the court was that the manifestation determination report was not a "full" IEP, and that appropriate placement and services for minor had yet to be determined. Even assuming that these points constitute a valid criticism of the material on which Dr. Kojian based his conclusions, the court could not reasonably have relied on them to reject the expert's opinion. The manifestation determination report stated that minor had been diagnosed with a mood disorder. This diagnosis, however, was consistent with similar information Dr. Kojian gleaned from other sources. For example, minor himself had indicated that he was depressed, and Dr. Kojian had learned from the initial detention report that minor was taking Abilify, which he knew is typically used for the treatment of mood disorders. Dr. Kojian's report also referenced the portion of the manifestation determination report in which minor's teachers remarked that he seemed confused and impaired. He did so, however, as further support for his own observations of minor's mental status and apparent confusion during the in-person interview. Notably, Dr. Kojian did *not* rely on the manifestation determination report's summary of the 2011 standardized testing results, which showed significant intellectual and cognitive deficits, as a basis for concluding that minor's cognitive functioning was impaired. Instead, Dr. Kojian acknowledged that because of minor's refusal to be tested during the evaluation, he was unable to pinpoint the cause of that impairment. Given Dr. Kojian's minimal reliance on the manifestation determination report in reaching his conclusions, the court's stated concerns regarding the adequacy ****91** of that material did not justify the rejection of Dr. Kojian's opinion.

In arguing that the court reasonably could reject the evidence of incompetency, the Attorney General points to Dr. Kojian's testimony "admitting" that his opinion, although accurate on the day he signed his report, might not reflect minor's mental state on the day of the hearing. We are not persuaded that this line of questioning undermined Dr. Kojian's opinion. An expert's written report necessarily precedes his or her testimony at the competency hearing. On this record, it is speculative that the time between the completion of the report and the date of the hearing renders the expert's opinion stale. Significantly, there was nothing in the record suggesting minor's mental status had improved in the nine days between the date of Dr. Kojian's report and the hearing. We note moreover that the court did not reference the cited testimony when explaining the reasons for rejecting Dr. Kojian's opinion.

The court correctly observed that it was not obligated to accept an expert's opinion of incompetency. This court's decisions have long recognized the ***216** propriety of rejecting even unanimous expert opinion, such as when, for example, the experts were unfamiliar with the evidence that would tend to explain the defendant's behavior (*People v. Marks* (2003) 31 Cal.4th, 197, 219, 2 Cal.Rptr.3d 252, 72 P.3d 1222), when the experts' opinions were based ***911** solely on a brief interview with the defendant (*People v. Marshall, supra,* 15 Cal.4th at p. 32, 61 Cal.Rptr.2d 84, 931 P.2d 262), and when the experts' opinions regarding the defendant's incompetency were tenuous. (*Ibid.*) Similarly, in *In re Alejandro G., supra,* 205 Cal.App.4th 472, 480–481, 140 Cal.Rptr.3d 340, the Court of Appeal agreed with the juvenile court that the court was under no obligation to accept the experts' opinions that the minor was incompetent. In that case, one of the experts found the minor " 'close to being competent' " and " 'capable of understanding the proceedings,' " while the other expert had evaluated the minor's understanding of the proceedings by asking him questions pertaining to procedures applicable to adult criminal trials, not juvenile adjudications. As previously discussed, however, neither Dr. Kojian's evaluation of minor nor his opinion suffered from similar infirmities.

[19] **[20]** Amicus curiae National Center for Youth Law has argued that, because of the highly complex

nature of juvenile competency proceedings, juvenile courts should defer to the opinion of the court-appointed expert unless there is a clear reason not to do so. We reject the proposition that a court should defer to the opinion of an expert. " 'To hold otherwise would be in effect to substitute a trial by "experts" for a trial by [the finder of fact]....' [Citation.]" (*People v. Samuel, supra,* 29 Cal.3d at p. 498, 174 Cal.Rptr. 684, 629 P.2d 485.) We recognize at the same time, however, that although an expert's opinion is not determinative of the question of competency, such an opinion holds special significance in the juvenile competency setting, as contemplated by the Legislature. (See *In re John Z.* (2014) 223 Cal.App.4th 1046, 1058, 167 Cal.Rptr.3d 811 [the reports and testimony of experts who have evaluated the minor for competency are clearly intended to play a central role in the competency determination under § 709].) Under section 709, the juvenile court must appoint an expert, specially qualified in the field of child development, when there is substantial evidence raising a doubt regarding the minor's competency. (§ 709, subds. (b), (c).) The statutory scheme therefore contemplates the court will make its determination whether a minor is competent or incompetent with the expert's specialized knowledge and views in mind. On the record presented in this case, the court's rejection of the expert's opinion was made in the absence of disagreement among qualified experts. When, as here, the expert concludes that the minor is incompetent but the juvenile court finds flaws in the expert's methodology and reasoning, the court should consider appointing a second expert to inform the court's view that the first expert's opinion is inadequate. We observe that in the present case, when the prosecutor expressed concerns with the expert's failure to administer standardized tests, he suggested that the court appoint a second expert to evaluate minor.

***217** ****92** For the reasons discussed above, we conclude that on the record before us in this case, the juvenile court could not reasonably have rejected the expert's opinion that minor was not competent to proceed.

III. DISPOSITION

Because the Court of Appeal found that the juvenile court's reasons for declining to accept the expert's opinion were supported by substantial evidence in the record and affirmed the judgment, the Court of Appeal's judgment is reversed.

WE CONCUR: WERDEGAR, CORRIGAN, LIU, CUÉLLAR, and KRUGER, JJ.

*****912** Dissenting Opinion by CHIN, J.

I agree with the majority that, under Welfare and Institutions Code section 709,[1] a minor is presumed competent and bears the burden of proving otherwise by a preponderance of the evidence. However, under the deferential standard of appellate review that applies in light of this conclusion, I would affirm the juvenile court's finding that R.V. was competent. I therefore dissent.

1. The Standard of Review.

The standard of appellate review that applies here follows from (1) the majority's conclusion, with which I agree, that R.V. bore the burden of proving incompetency by a preponderance of the evidence, and (2) the juvenile court's finding that R.V. failed to sustain that burden.

In evaluating the sufficiency of the evidence on appeal, appellate courts generally apply the familiar substantial evidence test. Under that test, an appellate court must view the evidence in the light most favorable to the court's judgment, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, 68 Cal.Rptr.2d 758, 946 P.2d 427.) The appellate court must "presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 60, 119 Cal.Rptr.3d 415, 244 P.3d 1062.)

However, as our courts of appeal have explained, where, as here, the trier of fact has found that the party with the burden of proof did not carry that ***218** burden, "it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This

follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case [citations]. [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, 103 Cal.Rptr.3d 538; see *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 395, 178 Cal.Rptr.3d 604; *Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838, 159 Cal.Rptr.3d 832 [same]; *Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 966, 141 Cal.Rptr.3d 103; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 279, 88 Cal.Rptr.3d 186 [same]; *Caron v. Andrew* (1955) 133 Cal.App.2d 402, 409, 284 P.2d 544.)

Notably, these appellate decisions relied on our decision in ***913** *Roesch v. De Mota* (1944) 24 Cal.2d 563, 150 P.2d 422. There, after explaining that the trial court had found that **93** the plaintiffs had failed to sustain their burden of proving a certain fact by a preponderance of the evidence, we stated: "The problem here is not whether the appellants on the issue ... failed to prove their case by a preponderance of the evidence. That was a question for the trial court and it was resolved against them. The question for this court to determine is *whether the evidence compelled the trial court to find in their favor on that issue.* These appellants contend that the testimony of [their witness] was uncontroverted and that it required a finding in their favor. It may be assumed that his testimony was uncontradicted and unimpeached, but it would not necessarily follow that it was of such a character and weight as to leave *no room for a judicial determination* that it was insufficient to support a finding in favor" of the appellants. (*Id.* at pp. 570–571, 150 P.2d 422, italics added.)

The same rules apply where the evidence consists of expert opinion. It is well established that a trier of fact is "not automatically required to render a verdict [that] conforms to ... expert opinion," even if "unanimous." (*People v. Drew* (1978) 22 Cal.3d 333, 350, 149 Cal.Rptr. 275, 583 P.2d 1318; see *People v. Samuel* (1981) 29 Cal.3d 489, 498, 174 Cal.Rptr. 684, 629 P.2d 485 [trier of fact "is not required to accept at face value a unanimity of expert opinion"].) "To hold otherwise would be in effect to substitute a trial by 'experts' for a trial by jury...." ***219** (*People v. Wolff* (1964) 61 Cal.2d 795, 811, 40 Cal.Rptr. 271, 394 P.2d 959.) As we have explained, "[t]he value of an expert's opinion depends upon the quality of the material on which the opinion is based and the reasoning used to arrive at the conclusion." (*People v. Marshall* (1997) 15 Cal.4th 1, 31–32, 61 Cal.Rptr.2d 84, 931 P.2d 262.) In other words, " '[e]xpert evidence is really an argument of an expert to the court, and is valuable only in regard to the proof of the *facts* and the validity of the *reasons* advanced for the conclusions.' " (*People v. Bassett* (1968) 69 Cal.2d 122, 141, 70 Cal.Rptr. 193, 443 P.2d 777.) Thus, as a general rule, the trier of fact remains free to reject even uncontradicted expert testimony after considering the expert's opinion, reasons, qualifications, and credibility, so long as it does not act arbitrarily. (*People v. McDonald* (1984) 37 Cal.3d 351, 371, 208 Cal.Rptr. 236, 690 P.2d 709; *People v. Johnson* (1992) 3 Cal.4th 1183, 1231–1232, 14 Cal.Rptr.2d 702, 842 P.2d 1; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890, 92 Cal.Rptr. 162, 479 P.2d 362.) The trier of fact's decision in this regard is binding on an appellate court unless the trier of fact could not, in light of the record, reasonably reject the expert's testimony. (*Samuel, supra,* at p. 506, 174 Cal.Rptr. 684, 629 P.2d 485; *Drew, supra,* at pp. 350–351, 149 Cal.Rptr. 275, 583 P.2d 1318.) Under the preceding authorities, the questions here are whether the juvenile court could not have reasonably rejected Dr. Kojian's opinion and whether the weight and character of the evidence compelled the court to find that R.V. had sustained his burden to show incompetency.

2. The Evidence Does Not Compel a Finding of Incompetence.

According to the majority, reversal is necessary because the juvenile court could not reasonably have rejected the opinion of forensic psychologist Haig J. Kojian that R.V. was not competent to proceed. For reasons that follow, I disagree.

Under the two prongs of section 709, subdivision (a), it was R.V.'s burden to ***914** prove by a preponderance of evidence that he lacked either "sufficient

present ability to consult with counsel and assist in preparing his ... defense with a reasonable degree of rational understanding," or "a rational as well as factual understanding, of the nature of the charges or proceedings against him." Regarding the latter prong, in the "Opinion" section of his written report, Dr. Kojian expressed, not a firm conclusion, but uncertainty, stating that he "*question[ed]* whether [R.V.] fully knows or understands what is occurring." (Italics added.) He based his uncertainty on the various statements R.V. had made about the reason for his detention. In his report, after setting forth those statements, Dr. Kojian stated: "It appeared to me that [R.V.] was confused and didn't know what was going on." However, the juvenile court ***220** disagreed with Dr. Kojian's reasoning, ****94** explaining: "Given the statements that the minor had said to Dr. Kojian and Dr. Kojian interpreted them as confusion, but knowing that the minor had been released on [the home supervision program], and also knowing what the minor had allegedly done, and [that each] of his responses were appropriate, such as messing up my house and not going to school, because he had refused to go to school, which appeared to have been allegedly the—at least was alleged to have been the genesis of what ended up in the charged offenses." Viewing the evidence in the light most favorable to the court's decision, and giving that decision the benefit of every reasonable inference and resolving all conflicts in its favor, I cannot find that the court *unreasonably* rejected Dr. Kojian's interpretation.

Moreover, Dr. Kojian's testimony at the competency hearing regarding this prong was at least as equivocal as the statements in his report, if not more so. When directly asked whether R.V. "lack[ed] a rational [as] well as factual understanding of the nature of the charges and proceedings against him," Dr. Kojian did not reply with a clear or unqualified "yes." Instead, he replied, "I think it is limited, yes." Dr. Kojian's testimony that R.V. had a "limited" understanding did not compel the juvenile court to find that R.V. had proved by a preponderance of the evidence that he "lack[ed]" the requisite understanding, which is the standard under section 709, subdivision (a).

Indeed, parts of Dr. Kojian's report affirmatively supported the conclusion that R.V. possessed the requisite understanding. The report observed that R.V. "knew, in general, the meanings of guilty or not guilty," that the former "means he is responsible" and the latter means he "could be released home," that "the court makes a decision," and that "misdemeanors are less serious than felonies." The juvenile court expressly mentioned the last of these observations in explaining why it did not accept Dr. Kojian's opinion. Moreover, the record also shows that when advised of his rights upon his arrest, R.V. invoked his right to silence. Viewing the evidence in the light most favorable to the court's decision, giving that decision the benefit of every reasonable inference and resolving all conflicts in its favor, the weight and character of Dr. Kojian's opinion was not such that the juvenile court acted *unreasonably* in finding that R.V. failed to sustain his burden of proof on the second prong of section 709, subdivision (a).

The majority acknowledges that R.V. invoked his right to silence after being advised of his rights, that he was aware generally that a misdemeanor was less serious than a felony, that a judge makes *****915** decisions, and that being guilty means he is " 'responsible.' " (Maj. opn., *ante,* 187 Cal.Rptr.3d at p. 908, 349 P.3d at p. 89.) The majority ***221** also "[a]dmit [s]" that "some of" R.V.'s statements about the reasons for his detention were "explainable," "understandable," and, "as the [juvenile] court pointed out," an "arguably ... accurate reflection of some of the factual underpinnings of the charges against him." (Maj. opn., *ante,* at p. 908, 349 P.3d at p. 89.) The majority nevertheless declares that R.V.'s statements failed to "provide a reasonable basis" for rejecting Dr. Kojian's opinion because they "were limited and incomplete." (Maj. opn., *ante,* at p. 908, 349 P.3d at p. 89.) According to the majority, "most of" R.V.'s statements "reflected ignorance of, or confusion regarding, many of the significant features of a juvenile adjudication," including the functions of defense counsel and the prosecutor, the differences between a plea bargain and a trial, and the types of decisions that a juvenile court judge makes. (*Ibid.*) The majority also asserts that, according to Dr. Kojian's report and testimony, R.V. "seemed to misunderstand what was meant by a criminal charge" and "exhibited no awareness of the most important facts underlying the charges." (Maj. opn., *ante,* at p. 908, 349 P.3d at p. 89.) "On this record," the majority declares, R.V.'s statements "suggesting" that he "understood some features of a juvenile proceeding generally" and was not confused about what was happening did not provide a reasonable basis for questioning Dr. Kojian's opinion. (Maj. opn., *ante,* at p. 908, 349 P.3d at p. 89.)

For several reasons, I disagree with the majority's analysis. First, as explained ****95** above, insofar as the record shows that Dr. Kojian based his opinion regarding R.V.'s confusion on statements that, as the majority " [a]dmit[s]," were "explainable," "understandable," and an "arguably ... accurate reflection of some of the factual underpinnings of the charges against" R.V. (maj. opn., *ante,* 187 Cal.Rptr.3d at p. 908, 349 P.3d at p. 89), the juvenile court could reasonably question Dr. Kojian's reasoning. Second, for reasons explained above, the juvenile court could reasonably conclude that Dr. Kojian's opinion regarding R.V.'s confusion was far more equivocal and uncertain than the majority suggests. As noted earlier, in the " Opinion" section of his report, Dr. Kojian stated that he "question[ed] whether [R.V.] fully knows or understands what is occurring." At trial, Dr. Kojian testified, not that R.V. lacked the requisite understanding, but that he had a "limited" understanding of the nature of the charges and proceedings against him. Third, although, as the majority notes, R.V. told Dr. Kojian he did not know what a judge makes decisions about or what "the duty and function of the DA" are, the majority fails to note that R.V. also told Dr. Kojian that he had "never thought" about the first question and "had never had the time to think about" the second. Given this explanation, the juvenile court could have reasonably questioned whether R.V.'s asserted lack of knowledge about certain legal matters, notwithstanding his understanding of other legal matters, indicated confusion and incompetence. Fourth, and finally, the majority's explanation for concluding that the statements in the record showing R.V.'s understanding of the legal process are too ***222** "limited and incomplete" to sustain the juvenile court's decision (maj. opn., *ante,* at p. 908, 349 P.3d at p. 89) is inconsistent with the applicable standard of review, which requires us to view the evidence in the light most favorable to the juvenile court's judgment, to give that judgment *****916** the benefit of every reasonable inference, and to resolve all conflicts in its favor. Applying this standard, and in light of the preceding discussion, I do not agree that the juvenile court, which itself had the opportunity to observe R.V., acted unreasonably in rejecting Dr. Kojian's opinion.

Regarding the first prong of section 709, subdivision (a), Dr. Kojian stated in his written report: "I ... believe that in his current condition [R.V.] doesn't have the capacity to meaningfully or rationally cooperate with counsel in the preparation of a defense, or to assist counsel in a meaningful or rational manner." At the hearing, the juvenile court explained that it did "not accept" Dr. Kojian's opinion on this issue "partly because the doctor was not able to fully determine whether there was malingering and was unable to complete the Rey ... test" for malingering. Significantly, Dr. Kojian's report *itself* provided a basis for the juvenile court's reliance on this consideration in rejecting Dr. Kojian's opinion; the report noted *five separate times* that R.V. "refused to take any tests," and characterized this refusal as "[u]nfortnate[ ]" four of those times. As specifically relevant to the malingering issue, Dr. Kojian stated in his report: "I tried a few times to get him to comply [with my request for testing] but he refused noting 'I just don't feel I have to do this.' I, even, asked him if he wouldn't mind taking just one, little test (I was trying to give him the REY 15–item to rule out malingering) but he refused." After responding to a few "basic items," R.V. "refused to answer any other questions and said 'I'm not going to say anything else. I am just trying to get help.' " If Dr. Kojian believed that R.V.'s refusal to take any tests was significant—and it is clear from the statements in his report that he did—then surely the juvenile court did not act *unreasonably* in also finding it significant. (See maj. opn., *ante,* 187 Cal.Rptr.3d at p. 908, 349 P.3d at p. 89.)

The majority's explanation for finding otherwise is unpersuasive. (Maj. opn., *ante,* 187 Cal.Rptr.3d at p. 885, 349 P.3d at p. 70.) According to the majority, Dr. Kojian stated during his testimony that "he was '100 percent sure' of his opinion" that R.V. was not malingering "notwithstanding" R.V.'s refusal to submit to testing. (Maj. opn., *ante,* at p. 907, 349 P.3d at p. 88.) However, the record indicates that this statement related, not to R.V.'s refusal to take a test for malingering or to Dr. Kojian's opinion on that subject, but to R.V.'s refusal to take "any cognitive function test." Later, in expounding on what made him believe that R.V. "flunked" the ****96** statutory competency test, Dr. Kojian stated rather equivocally, "It didn't seem to me that [R.V.] was attempting to malinger his impairment." At the ***223** end of the direct examination, when asked specifically about malingering, Dr. Kojian again equivocally responded, "it didn't seem to me to be malingering." More broadly, notwithstanding the statement the majority cites, Dr. Kojian later expressed notably less certainty about his opinion regarding R.V.'s competence, indicating that, "to a reasonable degree of psychological certainty," it was "probably correct." To be sure, the majority's

"context[ual]" reading of the equivocation in Dr. Kojian's remarks—that it "demonstrated an attempt to express his opinion within professional parameters," rather than "any reservations in his views" (maj. opn., *ante,* at p. 907, 349 P.3d at p. 88)—is plausible. But the question here is not how *we,* as an appellate court, interpret Dr. Kojian's remarks de novo on a cold record, but whether the contrary interpretation of a juvenile court that actually saw Dr. Kojian testify and observed *****917** R.V. in person is *unreasonable.* In my view, the statements the majority cites do not establish that the juvenile court acted unreasonably in considering a factor that Dr. Kojian himself expressly noted numerous times in his report—R.V.'s "unfortunate[ ]" refusal to submit to testing.

Moreover, in other respects, Dr. Kojian's report and testimony furnished affirmative support for the juvenile court's assessment of Dr. Kojian's opinion regarding R.V.'s ability to assist counsel. At the outset, the report stated that, after being told of the interview's purpose and receiving various advisements—that the interview was nonconfidential and voluntary and that a report would be sent to the court for use "in the current matter"—R.V. "noted that he understood the scope and intent of testing and volunteered to be interviewed." According to the report, R.V.'s "grooming and hygiene were intact," and he "was, largely, oriented and knew the day, date and location." R.V. told Dr. Kojian that "[h]e was involved in counseling and did find it to be helpful." R.V.'s mother told Dr. Kojian that R.V. "was able to meet developmental milestones on a timely basis." As previously noted, the report observed that R.V. "knew, in general, the meanings of guilty or not guilty," that the former "means he is 'responsible' " and the latter means he "could be released home," that "the court makes a decision," and that "misdemeanors are less serious than felonies." In a section entitled "Conclusion and Opinion," the report stated that R.V.'s "thinking *appeared* to be impaired" (italics added), but then immediately explained that R.V. "[u]nfortunately ... [had] refused to take any tests" that would provide "objective measures" of his functioning and had been "rather disinterested in answering questions." It also explained that R.V.'s apparent cognitive issue did not "appear" to be "developmental in nature" and might have resulted from drug use.

At the hearing, Dr. Kojian stated that he did not know whether R.V. was "intellectually impaired." When asked whether R.V. was "cognitively impaired," Dr. Kojian responded equivocally: "My assessment of him was that ***224** there was some type of cognitive process going on that did appear to be evidence for some type of cognitive impairment." Dr. Kojian later testified that if R.V.'s cognitive issue was "substance induced in nature, then it might self-correct," that "you don't need to do anything except sit around and wait," and that "nobody knows" how long it would take for the effect of the drugs to "wear off." The district attorney followed up by asking whether R.V. "could be better" than he had been "16 days earlier" at the time of the interview. Dr. Kojian first responded, "You're correctly pointing out that competency isn't a static variable ..., so it changes." After stating his opinion that R.V. was not competent "[o]n the day" of the interview or the day the report was signed, Dr. Kojian then noted that he was not responsible for the 16–day gap between the interview and the competency hearing, and stated, "No doctor can tell how an individual is ... on the day that they testify on [an] assessment that they conducted." The district attorney then explained that he was asking about the time gap because Dr. Kojian had answered "no" when earlier asked at the hearing whether, in his opinion, R.V., "sitting here right now, was ... competent." Dr. Kojian, after reiterating ****97** his opinion that R.V. was not competent on the day the report was signed, stated: "I don't know what his functioning is as he sits here today."

In summary, the record shows considerable equivocation regarding Dr. Kojian's *****918** opinion, contains affirmative indications of competence, reveals justifications for questioning Dr. Kojian's reasoning process, and offers a case-specific reason for questioning the effect on Dr. Kojian's assessment of the 16–day gap between the interview and the competency hearing. Of course, as the majority's discussion demonstrates, there was evidence that could reasonably have led the juvenile court to accept Dr. Kojian's opinion. Indeed, based on that evidence, were I making the competency determination de novo, like the majority, I might very well find Dr. Kojian's opinion sufficient to sustain R.V.'s burden of proof. But, giving proper deference to the juvenile court's decision—viewing the evidence in the light most favorable to the court's decision, giving that decision the benefit of every reasonable inference, and resolving all conflicts in its favor—I cannot find that the court acted unreasonably in rejecting Dr. Kojian's opinion or that the

evidence was of such weight and character as to compel a finding of incompetence. [2]

***225** Finally, for two reasons, I do not agree with the majority that expert opinion "holds special significance in the juvenile competency setting," or that a juvenile court, upon finding "flaws" in the "methodology and reasoning" of an expert who finds the minor to be incompetent, "should consider appointing a second expert to inform [its] view that the first expert's opinion is inadequate." (Maj. opn., *ante,* 187 Cal.Rptr.3d at p. 911, 349 P.3d at p. 91.) First, I see no statutory basis for either statement. Regarding the latter, the majority cites no supporting authority of any kind. Regarding the former, the majority observes that section 709 requires a juvenile court to "appoint an expert, specially qualified in the field of child development, when there is substantial evidence raising a doubt regarding the minor's competency." (Maj. opn., *ante,* at p. 911, 349 P.3d at p. 91.) However, in adult criminal cases, the Penal Code requires a court to appoint an expert—sometimes two—if it "has a doubt about the mental competency of a defendant" (*People v. Pokovich* (2006) 39 Cal.4th 1240, 1245, 48 Cal.Rptr.3d 158, 141 P.3d 267), yet expert testimony holds no special significance in such cases. It is true that section 709, subdivision (b), specifies that the expert appointed in a juvenile case "shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence." But nothing about that mere specification of expertise confers "special significance" on an expert's opinion in juvenile cases. (Maj. opn., *ante,* at p. 911, 349 P.3d at p. 91.) The majority also cites *In re John Z.* (2014) 223 Cal.App.4th 1046, 167 Cal.Rptr.3d 811 (maj. opn., *ante,* at p. 911, 349 P.3d at p. 91), but that decision holds only that a juvenile court unsatisfied with an appointed expert's written report may not make a competency determination without first holding "a formal competency hearing at which [the expert can] testify concerning his [or her] report" (*In re John Z.,* at p. 1058, 167 Cal.Rptr.3d 811). [3] Here, of course, the *****919** juvenile court held such a hearing and made its decision only after listening to Dr. Kojian's testimony.

Second, the majority's statements appear to conflict with well-established principles that the majority expressly reaffirms earlier in the same paragraph: a juvenile court need ****98** not "defer to the opinion of an expert" and "an expert's opinion is not determinative of the question of competency." (Maj. opn., *ante,* 187 Cal.Rptr.3d at p. 911, 349 P.3d at p. 91.) In the context of these well-established principles, what does it mean to say that an expert's opinion has "special significance"? (Maj. opn., *ante,* at p. 911, 349 P.3d at p. 91.) How does a juvenile court factor this undefined term into its analysis? Why must a court that reasonably declines to defer to the expert's opinion because of a flawed methodology or reasoning consider ***226** appointing another expert to inform its view of the first expert's opinion? Does such a court err if it does not appoint a second expert? In short, the majority's statements, in addition to being without statutory basis, will create confusion and uncertainty for juvenile courts.

For the foregoing reasons, I dissent.

All Citations

61 Cal.4th 181, 349 P.3d 68, 187 Cal.Rptr.3d 882, 15 Cal. Daily Op. Serv. 4873, 2015 Daily Journal D.A.R. 5383

Footnotes

1 All further unlabeled statutory references are to the Welfare and Institutions Code.

2 Effective January 1, 2007, California Rules of Court, former rule 1498 was amended in ways not relevant here and was renumbered rule 5.645. The portion of the renumbered rule relating to competency to stand trial appears in rule 5.645(d).

3 Section 709, subdivisions (a) through (e), reads in full: "(a) During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

"(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions

impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.

"(c) If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. During this time, the court may make orders that it deems appropriate for services, subject to subdivision (h), that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, the following:

"(1) Motions to dismiss.

"(2) Motions by the defense regarding a change in the placement of the minor.

"(3) Detention hearings.

"(4) Demurrers.

"(d) If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction.

"(e) This section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602."

4 The Court of Appeal stated as follows: "We review a juvenile court's finding of competence for substantial evidence. 'The same standard governs our review of the sufficiency of evidence in juvenile cases as in adult criminal cases. "[W]e review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime ... beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." ' ([*In re*] *Christopher F., supra,* 194 Cal.App.4th at p. 471, fn. 6 [123 Cal.Rptr.3d 516].)"

5 We disapprove *In re Christopher F., supra,* 194 Cal.App.4th 296, to the extent its articulation of the standard of review is inconsistent with our opinion.

1 All further unlabeled statutory references are to the Welfare and Institutions Code.

2 The majority appears to lose sight of the applicable standard of review in proclaiming *itself* to be "[un]persuaded" that Dr. Kojian's opinion was "undermined" by the exchange about the 16–day gap between the interview and the hearing. (Maj. opn., *ante,* 187 Cal.Rptr.3d at p. 910, 349 P.3d at p. 91.) Under that standard of review, the relevant question is whether, in light of the testimony, the juvenile court could not reasonably consider this gap as one factor in determining the weight of Dr. Kojian's opinion. As already explained, on the record here, considering that gap would not be unreasonable.

3 Another *option,* the court stated, was for the juvenile court to have waited for the report of another expert it had appointed after expressing dissatisfaction with the first report. (*In re John Z., supra,* 223 Cal.App.4th at p. 1058, 167 Cal.Rptr.3d 811.)