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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re O.P., a Person Coming Under the Juvenile Court
Law.

C073885

THE PEOPLE,

(Super. Ct. No. JV130689)

Plaintiff and Respondent,

v.

O.P.,

Defendant and Appellant.

A Welfare and Institutions Code¹ section 602 petition alleged that O.P., a minor, used force and violence to inflict injury upon a peace officer, a misdemeanor (Pen. Code, § 243, subd. (c)(1)), and attempted to remove a peace officer’s taser while resisting arrest (*id.* at §§ 148, 664). The juvenile court questioned O.P.’s competence to stand trial, appointed an expert to evaluate O.P.’s competency, held a competency hearing, and found O.P. failed to meet his burden of proof on the issue. The court then reinstated the

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

proceedings, and O.P. entered into a stipulated plea agreement pursuant to which he admitted battery with serious bodily injury (Pen. Code, § 243, subd. (d)) as a reasonably related offense to the assault offense charged in an earlier petition, the most recent petition was dismissed, and O.P. was adjudged a ward of the juvenile court and committed to the care and custody of his mother who gave her permission for him to remain at a group home in Sacramento. On appeal, O.P. contends that the court erred in presuming he was competent to stand trial and placing the burden on him (as opposed to the People) to prove that he was incompetent. Alternatively, he contends that there is insufficient evidence to support the juvenile court's finding that he was competent to stand trial and urges us to review that finding de novo.

While this case was pending on appeal, our Supreme Court decided *In re R.V.* (2015) 61 Cal.4th 181, which answered two of the issues raised by O.P.'s appeal. There, the court determined that a minor is presumed competent to undergo a wardship proceeding and that the person claiming otherwise bears the burden of proving incompetency by a preponderance of the evidence. (*Id.* at p. 185.) The court further found that a challenge to the sufficiency of the evidence supporting a juvenile court's determination that a minor is competent to proceed is reviewed deferentially under the substantial evidence test. (*Id.* at pp. 185-186.) More particularly, the court held that "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." (*Id.* at p. 203, fn. omitted.) Applying that standard here, we shall conclude that the juvenile court

could reasonably reject the expert's opinion that O.P. was not competent to proceed to trial, and therefore affirm the judgment.²

FACTUAL AND PROCEDURAL BACKGROUND

A. Background

In December 2009, 13-year-old O.P. got into an argument with his father. The argument turned physical, and O.P. stabbed his father in the back with a steak knife. O.P. was charged with assault with a deadly weapon, and it was further alleged that he personally used a deadly and dangerous weapon in the commission of that offense. Thereafter, O.P.'s trial counsel declared doubt as to his competence to stand trial, and the proceedings were suspended. In January 2010, the juvenile court found that O.P. was incompetent to stand trial and ordered that the proceedings remain suspended.

Five days later, the People, at the request of the Alta California Regional Center for the Developmentally Disabled, filed a petition pursuant to section 6500, alleging that O.P. is a mentally retarded person who is a danger to himself or others, and seeking an order committing him to the State Department of Developmental Services.³ Following an 11-day trial, the jury found the allegations in the section 6500 petition true, and O.P. was committed to Porterville Developmental Center (Porterville) for one year. (§ 6500, subd. (b)(1)(A), (B).)

In August 2012, a deputy responded to a "runaway juvenile call" involving then 16-year-old O.P., who had reportedly runaway from his group home. When the deputy grabbed O.P., O.P. placed the deputy in a headlock and attempted to remove the deputy's

² The People's request for judicial notice filed October 8, 2014, is denied as moot.

³ Section 6500, subdivision (b)(1) provides: "A person with a developmental disability may be committed to the State Department of Developmental Services for residential placement other than in a state developmental center or state-operated community facility, as provided in subdivision (a) of Section 6509, if he or she is found to be a danger to himself, herself, or others."

taser. O.P. was charged in a second petition with misdemeanor infliction of injury upon a peace officer and felony attempted removal of a peace officer's taser while resisting arrest. In September 2012, the juvenile court declared doubt as to O.P.'s competence, suspended proceedings, and appointed Dr. Baljit Atwal, a licensed psychologist with clinical experience working with children and adolescents, to evaluate O.P.'s competence to stand trial. (See § 709, subds. (a), (b).)

B. Dr. Atwal's Testimony at the Competency Hearing

Dr. Atwal was the only witness called to testify at the competency hearing, which spanned three days. She testified regarding her qualifications and the substance of her written report.⁴ In preparing her report, she conducted a three-hour interview with O.P. at juvenile hall, which included administering the Reynolds Intellectual Assessment Scales and the Juvenile Adjudicative Competency Interview (JACI). She also spoke to O.P.'s attorney and treating psychiatrist at juvenile hall, and reviewed numerous records, including probation reports, psychological evaluations, a prior competency evaluation, a speech and language report, and various public school records. Based on these sources, Dr. Atwal concluded that O.P. had a rudimentary understanding of the charges against him and the court process, but due to significant cognitive impairments, he lacked the present ability to consult with counsel and assist in preparing his defense, as well as a rational and factual understanding of the charges and proceedings against him.

Dr. Atwal explained that O.P.'s intellectual test results placed him in the "mild mental retardation range," and his "academic and psychological functioning . . . skills" were consistent with those of an 8 or 10 year old. In particular, the testing revealed severe deficits in verbal and language processing, including verbal memory, which Dr. Atwal opined would cause O.P. to have "a lot of difficulty remembering verbal

⁴ The report itself and amendments thereto were not admitted into evidence.

information” and communicating with counsel. She also concluded, consistent with prior evaluations, that he suffered from attention deficit hyperactivity disorder, posttraumatic stress disorder, and conduct disorder.

Dr. Atwal testified that O.P. knew that the current charges against him involved an altercation with a police officer, and his responses to her questions showed that he had some basic knowledge of the court process, which she “guess[ed]” he learned at Porterville where he went through some “competency restoration training.” O.P. knew that a judge was going to hear the attorneys’ arguments and look at the evidence and decide what is “real.” He knew that the knife he used to stab his father constituted evidence. He understood that the judge would not know if he was guilty when he walked into the courtroom because the judge had not yet received information from the attorneys and would have to wait to hear from them. He knew that his attorney “tells what I did and why I’m not guilty. She defends my rights. She takes my side.” He also knew that it was important to tell his attorney what happened so that she could help him. He was able to tell Dr. Atwal that a plea bargain is “[w]hen you make a bargain with someone,” such as when, “I traded someone my video game for their game.” He did not know the name of the attorney with whom a plea bargain is made, even though Dr. Atwal previously had used the terms “prosecutor” and “district attorney.” That suggested to Dr. Atwal that O.P.’s ability to learn new information in a new setting “is very limited to almost nonexistent.” O.P. did understand that that the role of the prosecutor was to “prove[] I was guilty of whatever I was charged with” by presenting evidence. After Dr. Atwal explained the meaning of a plea bargain in a legal context, O.P. was able to tell her that in a plea bargain, “the mean [attorney] says, I will give you lesser time for pleading guilty. If I take it, I get less time.” He also knew that he could plead not guilty even if he actually “did the thing the police said [he] did.” O.P. agreed that a plea bargain is like gambling, explaining that you “[r]oll the dice and may lose. Then you are playing a game for money but this is real.” O.P. said he would take a deal, “but it depends on

where they want to send me. If it was Porterville, I wouldn't take it. If I could stay here [(juvenile hall)], I would take it." He knew that if he denied the charges, he would have to "fight the case to try and prove [he] didn't do it," and that the process for fighting the case against him is called a trial. Dr. Atwal found it significant that O.P. did not mention the possibility of being released from juvenile hall or any other option that did not involve a restriction on his liberty and concluded that O.P.'s decision making is driven by emotion, namely fear of returning to Porterville, rather than logic, and that his ability to make an independent decision about taking a deal is "limited." Dr. Atwal also opined that O.P. could not fully understand the meaning of a plea bargain, which requires the relinquishment of certain constitutional rights, because in her estimation he did not understand his constitutional rights. Rather, he would rely on his attorney to tell him what to do. Dr. Atwal found it odd that O.P. indicated that he had never seen a probation officer given that he had spent a significant amount of time at juvenile hall, which is run by probation.

Dr. Atwal opined that O.P.'s intellectual limitations impaired his ability to take his "rudimentary knowledge" of the court process and court participants and apply it in the context of the current juvenile proceedings. She observed that he "put the whole context of his current case in the context of being judged by a jury" even though there is no jury in a juvenile wardship trial. She further observed that in discussing the court process, O.P. never mentioned witness testimony, even though he had gone through an entire trial with multiple witnesses with respect to the section 6500 petition, and continued to refer to the juvenile wardship proceeding as "6500."

Dr. Atwal found it significant that O.P. became very animated when talking about video games, stating that "it was almost like he lost touch with what was going on at that moment." She believed that he was acting out characters in the video games and would not be surprised if he told his attorney "that he couldn't get hurt by law enforcement because bullets bounce off of him."

Dr. Atwal questioned O.P.'s decision-making skills, noting that he had told her that a staff member at Porterville had broken his arm, and that he had lied and said he injured himself in exchange for burgers. Dr. Atwal found that this showed that O.P. was functioning at a very young age "because he is going for the immediate, concrete benefit." O.P.'s ability to provide a detailed description of the incident at Porterville did not change her opinion that he would be unable to provide counsel details about the most recent charges because "he has had time to think about [the incident at Porterville], and he has been talked to. And I believe some formal charges were filed, so there has been repetition."

After interviewing O.P., Dr. Atwal spoke to O.P.'s attorney about the attorney's interactions with O.P. and what abilities she expected him to perform in the legal proceedings against him. O.P.'s attorney indicated that her main concern in communicating with O.P. was "sorting out what was fact and when it occurred." She also expressed concern regarding O.P.'s ability to sequentially and chronologically detail events and experiences and stated that she "had difficulty getting him to address [her] questions [without] go[ing] off on tangents or provid[ing] irrelevant information." The concerns raised by O.P.'s attorney reinforced Dr. Atwal's initial impressions of O.P.

Dr. Atwal also spoke to O.P.'s treating psychiatrist at juvenile hall about O.P.'s placement there and any medications O.P. was taking. When asked if the psychiatrist was able to tell her whether O.P. was decompensating in juvenile hall, Dr. Atwal responded, "She was telling me, yes, that he was beginning to have more problems."

Dr. Atwal concluded that O.P. suffered from mental health disorders, a developmental disability, and developmental immaturity, all of which impaired his competency. More specifically, she concluded that he would be unable to rationally apply his knowledge of the charges against him and the court process in order "to sufficiently understand the nature of the proceedings" or rationally assist his counsel in the preparation of his defense.

On cross-examination, Dr. Atwal acknowledged that during the interview, O.P. was alert; well-oriented to time, place, person, and circumstances; and made appropriate eye contact. His answers to her questions were appropriate, he did not have trouble relaying information in a sequential manner, and he was able to engage in a two-way conversation. She had no trouble following his narrative, except when he became emotionally aroused. She also testified that not all individuals who are borderline mentally retarded are incompetent, explaining that I.Q. is just one factor.

Dr. Atwal based her conclusion that O.P. would have difficulty remembering verbal information on her “interaction” with him on the JACI. According to Dr. Atwal, O.P. repeatedly confused the current proceedings with the prior trial on the 6500 petition. She explained, “When I would ask him questions regarding what to expect in court, in juvenile court, and whether or not there was a jury present or not, he would get confused with the 6500 proceedings and give me answers that would be consistent with what occurred in that setting, instead of what would be occurring in [the] current proceedings.” Dr. Atwal conceded that she never told O.P. that there is not a jury trial in juvenile court.

Dr. Atwal likewise based her conclusion that O.P. would have difficulty accurately communicating relevant information to counsel on his use of the term “6500” when referring to the current proceedings. After it was revealed that Dr. Atwal herself could not name the offenses with which O.P. had been charged, only the facts underlying the charges, she said she would not expect O.P. to know the names of the Penal Code sections. She also acknowledged that O.P. was able to accurately describe the events upon which the current charges were based and conceded that she had omitted portions of O.P.’s description of those events from her report. The report reflects that O.P. stated, “I tried to put the cop in a headlock and tried to take his taser.” However, O.P. also told Dr. Atwal that “he was running from a group home because he didn’t like it. They wouldn’t give me my space. He had been at the group home, and staff was pestering me, and I didn’t like it. He wouldn’t talk about it, what they wanted him to do. The cop was trying

to stop him, and he was trying to get away.” Dr. Atwal agreed that O.P.’s description was consistent, coherent, and logical.

Dr. Atwal based her opinion that O.P. may have difficulty distinguishing between the skills of the characters in the video games and his own on “his emotional reaction and his getting lost in telling me all about it.” She acknowledged, however, that he never answered any of her questions “in the character of someone in one of these video games.”

Dr. Atwal did not know whether O.P. had ever been on probation. Rather, she “presumed that he probably talked to other peers that may have had some experience with probation officers.” She never attempted to educate O.P. on the role of a probation officer.

Dr. Atwal failed to ask O.P.’s treating psychiatrist about O.P.’s ability to communicate, memory recall, or ability to stay on task. She did, however, acknowledge receiving a follow-up statement from the psychiatrist indicating that O.P. was able to communicate, had no problem with memory, and definitely could understand and respond appropriately to questioning.

C. The Juvenile Court’s Ruling

The juvenile court found that Dr. Atwal was a “credible witness” on the issue of “psychological evaluation,” and that the record showed by a preponderance of the evidence that O.P. suffered from a developmental disability and mental disorders. The court, however, rejected Dr. Atwal’s opinion that as a result of those impairments, O.P. was unable to consult with counsel and assist in preparing his defense with a reasonable degree of rational understanding, and lacked a rational and factual understanding of the nature of the charges and proceedings against him. The court was troubled by what it deemed to be Dr. Atwal’s extensive reliance on O.P.’s attorney’s assessment of O.P.’s ability to do certain things because the information the attorney provided was contradicted by Dr. Atwal’s own observations and those of the treating psychiatrist. The court specifically noted that on cross-examination, Dr. Atwal acknowledged that O.P. had

no problem following a narrative or relating information in a chronological, sequential fashion. The court also found that Dr. Atwal “deliberately disregarded evidence which was . . . not supportive of her conclusions in favor of relying upon evidence which in her view did support her conclusions,” and noted that “[u]pon cross-examination . . . it became clear that many of those conclusions were, in fact, supported either by nothing or by very little” Among other things, the court observed that Dr. Atwal’s opinion that O.P. was confusing the past and the present was based in part on O.P.’s response to her request for him to give an example of evidence. O.P. responded by referring to the knife he used to stab his father. The court explained that Dr. Atwal could have, but did not, ask O.P. to give an example of evidence in *this case*. Rather, she simply asked him to provide an example of evidence, and the court found that O.P.’s response was “absolutely correct.”

The court rejected Dr. Atwal’s opinion that O.P. would be unable to engage in a plea bargain, finding that Dr. Atwal’s testimony indicated that O.P. had a pretty good understanding of plea bargains and the consequences of admitting the charges against him. While Dr. Atwal found O.P.’s response that he could go to Porterville or juvenile hall if the petition was sustained “limiting,” the court found it “realistic and reasonable” given that he had spent time at both institutions. The court further found that O.P.’s statement that he would not accept a plea bargain that required him to return to Porterville “completely rational,” explaining that “every single day in this court adult defendants in the plea bargaining process bargain over whether they’ll go to state prison or county jail. It’s an extraordinarily important factor in plea bargaining decisions made by adults who are completely competent to stand trial.”

The juvenile court found Dr. Atwal’s testimony that O.P. confused fantasy and reality was completely unsupported by the record. The court explained, “[V]ideo games are by definition 100 percent fantasy. If you’re going to talk about video games, you’re talking about fantasy. And according to Dr. Atwal when talking about video games, he

talked about fantasy. And when he wasn't talking about video games, he didn't talk about fantasy. And he didn't . . . project himself as a mythical figure, think he could fly or propel bullets”

The court likewise rejected any suggestion by Dr. Atwal that O.P. did not understand the charges against him, noting that O.P. gave a detailed and accurate description when asked what it was the police said he did, and that Dr. Atwal failed to include a significant portion of that description in her report. The court dismissed Dr. Atwal's reliance on O.P.'s erroneous reference to the current proceeding as “6500” as evidence he did not understand the charges against him, noting again that he gave a detailed description of the events giving rise to those charges and that many competent individuals would not know that section 602, as opposed to section 6500, is the jurisdiction code section for a juvenile dependency proceeding, or the names of the offenses with which O.P. was charged.

The juvenile court also observed that at times Dr. Atwal seemed evasive, noting that there were instances where she was asked a direct question and either refused to respond or did not directly respond to the question posed. In addition, the court noted that “[s]ometimes she took an extraordinary amount of time to formulate her answer.”

The court concluded that O.P. failed to meet his burden of establishing by a preponderance of the evidence that he was incompetent. Rather, the court found that most of Dr. Atwal's testimony “establish[ed] by a preponderance of the evidence that [O.P.] has a pretty good understanding of what the nature of the charges is and the nature of the court system.” The court observed that “[w]hat's been described here is about the simplest kind of trial you can get. . . . [¶] . . . So the amount of interaction between defense counsel and the defendant on all those things that I just outlined is at the minimal end of the spectrum compared to a more complex case. [¶] . . . [¶] I see nothing in Dr. Atwal's testimony that suggests he's unable to tell defense counsel what he did. I certainly would expect he's already told defense counsel what he did. . . . I do find that he

has described a fairly thorough understanding of the nature of the charges, the nature of the Court, and what's going to happen and how it's going to happen. I find that he can assist with counsel.”

DISCUSSION

O.P. contends there is insufficient evidence to support the juvenile court's finding that he is competent to stand trial. More particularly, he asserts that the juvenile court “focused on [his] responses, gleaned from his competency training at Porterville, and did not consider [his] ability to utilize the information he learned there.” He further claims that “[a]lthough his responses may have given an appearance of competency, [his] intellectual deficits undermined the court's finding of competency, making the finding not reasonable, credible, nor of solid value.” As we shall explain, we have no trouble concluding on the record before us that the juvenile court reasonably could reject Dr. Atwal's opinion that O.P. was incompetent, and find instead that the evidence showed that he was competent to stand trial.

Subjecting an incompetent minor to a trial in a juvenile wardship proceeding is a violation of the due process clauses of the state and federal Constitutions. (*In re R.V.*, *supra*, 61 Cal.4th at p. 189.) Juvenile competency proceedings are governed by section 709. (*In re R. V.*, at pp. 188-192.) Under that section, 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. (*Id.* at p. 196.) A minor is incompetent to proceed in a wardship adjudication “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).)

In evaluating a challenge to the sufficiency of the evidence supporting a determination of competency under section 709, we apply the deferential substantial evidence test. (*In re R.V.*, *supra*, 61 Cal.4th at p. 200.) We defer to the juvenile court

and view the record in the light most favorable to the juvenile court's determination. (*Ibid.*) While there is "no single formulation of the substantial evidence test for all its applications," where, as here, the evidence consists solely of the testimony of a qualified expert, we ask "whether the weight and character of the evidence of incompetency was such that the juvenile court could not reasonably reject it." (*Id.* at pp. 200-201.) Applying that standard here, we conclude that the court could reasonably reject Dr. Atwal's opinion that O.P. was not competent and determine that O.P. was in fact competent to stand trial.

Viewed in the light most favorable to the juvenile court's determination, the evidence showed that during Dr. Atwal's interview of O.P., O.P. was able to engage in a two-way conversation, his answers to her questions were appropriate, he had no trouble relaying information in a sequential manner, and she had no trouble following his narrative, except when he became emotionally aroused, and even then, she was able to redirect him such that he was able to continue with the interview. Although O.P. became very animated when talking about video games, he never answered any of her questions "in the character of someone in one of [his] video games." O.P.'s treating psychiatrist likewise indicated that O.P. was able to communicate, had no problem with memory, and definitely could understand and respond appropriately to questioning.

O.P.'s description of the events underlying those charges was consistent, coherent, and logical. As for the court process, he knew that in a plea bargain, the prosecutor would offer him less time in exchange for pleading guilty, and that he could plead not guilty even if he actually "did the thing the police said [he] did." His willingness to accept a plea deal depended on "where they want to send me," explaining that "[t]f it was Porterville, I wouldn't take it. If I could stay here [(juvenile hall)], I would take it." He knew that if he denied the charges, he would have to "fight the case to try and prove [he] didn't do it," and that the process for fighting the case against him is called a trial. He knew that the judge listens to the lawyers' arguments and talks to people and decides if

he is guilty by looking at records and deciding if evidence is “real.” He said that the judge would not know if he was guilty when he walked in the room because the judge had not yet received information from the attorneys and would have to wait to hear from them. He understood that the prosecutor is “the one that proves I was guilty of whatever I was charged with,” and that she does that by presenting evidence. When asked for an example of evidence, he said, “like the knife that I used to stab my dad.” He knew that his attorney “tells what I did and why I’m not guilty. She defends my rights. She takes my side.” He also knew that it was necessary for him to tell his attorney what happened so that she could help him.

While the limitations testified to by Dr. Atwal may be consistent with O.P.’s significant cognitive impairments, they were not borne out by her own observations or those of his treating psychiatrist, as outlined above and noted in the juvenile court’s thorough and well-reasoned oral ruling. Dr. Atwal’s testimony concerning her observations of O.P. along with those of the treating psychiatrist provided a reasonable basis for the juvenile court to reject Dr. Atwal’s finding that O.P.’s cognitive impairments limited his ability to consult with counsel and assist in preparing his defense with a reasonable degree of understanding, and understand the nature of the charges and proceedings against him, and to conclude that O.P. was competent to stand trial.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

HULL, J.