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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re ALFONZO L., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFONZO L.,

Defendant and Appellant.

F068550

(Super. Ct. No. 12CEJ600625-1)

**OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Sally Espinoza, Deputy Attorneys General, for Plaintiff and Respondent.

## **INTRODUCTION**

A Welfare and Institutions Code section 602 petition was sustained finding Alfonzo L.<sup>1</sup> committed nonforcible child molestation (Pen. Code, § 288, subd. (a)). As a result, the minor was adjudged a ward of the court and placed on formal probation.

The minor's intellectual capabilities were raised as a defense to the original allegation of forcible molestation, and there were questions about his ability to understand right from wrong. On appeal, the minor argues his trial counsel was ineffective for failing to express a doubt as to his competency to stand trial in light of the substantial evidence presented to counsel and the court prior to and during the jurisdictional hearing. Additionally, the minor contends the juvenile court had an obligation to act independently and express a doubt as to his competency to stand trial.

## **BRIEF FACTUAL AND PROCEDURAL HISTORY**

In May 2011, 14-year-old Alfonzo and 13-year-old S.R. were students at a middle school. Alfonzo was a resource specialist program student; S.R. was a functional skills student.<sup>2</sup> Just prior to a lunch break, S.R. and Alfonzo were alone in a restroom near the cafeteria. A game of truth or dare led to Alfonzo penetrating S.R.'s anus with his penis. S.R.'s teacher walked into the bathroom, observed S.R. on his hands and knees, and asked the boys to step out of the locked stall. Both were escorted to the office and the matter was reported to law enforcement. According to S.R., he told Alfonzo to stop. Alfonzo, however, testified to the contrary; S.R. never told him to stop.

Alfonzo was alleged to have violated Penal Code section 288, subdivision (b) by committing a forcible lewd and lascivious act against S.R. Following a court trial, the juvenile court sustained the petition on the lesser included offense of a nonforcible lewd

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<sup>1</sup>The juvenile proceedings incorrectly identify the minor as Alfonso.

<sup>2</sup>A functional skills student is the lowest functioning special education student at the middle school. A resource specialist program student is one who receives extra help in math and English.

and lascivious act, in violation of subdivision (a) of section 288. Thereafter, Alfonzo was placed on formal probation. This appeal followed. We will affirm.

## DISCUSSION

### 1. The Assistance of Counsel

Alfonzo contends he received ineffective assistance of counsel because his attorney failed to express a doubt as to his competency despite substantial evidence in the record. Plaintiff maintains defense counsel did not render ineffective assistance of counsel because the evidence proffered did not establish Alfonzo lacked the ability to understand the nature of the criminal proceedings or to assist counsel in his defense. We agree with plaintiff.

“The criminal trial of an incompetent defendant violates the due process clause of the federal and state Constitutions. [Citations.] Similarly, a child subject to delinquency proceedings has a due process right to a competency hearing. [Citations.]” (*In re Christopher F.* (2011) 194 Cal.App.4th 462, 468; see *In re Alejandro G.* (2012) 205 Cal.App.4th 472, 478 [“[l]ike an adult defendant, a minor has a right to a competency hearing in juvenile delinquency proceedings”].) However, different standards and statutes govern competency determinations in adult criminal and juvenile proceedings.

Adult criminal competency proceedings are governed by Penal Code sections 1367 and 1368. In those proceedings, “[a] defendant is mentally incompetent . . . if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (Pen. Code, § 1367, subd. (a).) Once there is substantial evidence of the defendant’s incompetence, the trial court must conduct a competency hearing. (*Id.*, § 1368, subds. (b), (c); *People v. Rodriguez* (2014) 58 Cal.4th 587, 624; *People v. Mai* (2013) 57 Cal.4th 986, 1032.)

“In California juvenile proceedings, [Welfare and Institutions Code] section 709 governs competency determinations and provides, in relevant part: ‘(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.” (*In re John Z.* (2014) 223 Cal.App.4th 1046, 1053–1054.)

Therefore, unlike his or her adult counterpart, 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.” (Pen. Code, § 1367, subd. (a); see *In re John Z.*, *supra*, 223 Cal.App.4th at p. 1053 [“[j]uvenile incompetency is not defined solely ‘in terms of mental illness or disability,’ but also encompasses developmental immaturity, because minors’ brains are still developing”]; *In re Jesus G.* (2013) 218 Cal.App.4th 157, 170 [“a juvenile may be found incompetent to stand trial solely because of developmental immaturity, without a finding of mental disorder or developmental disability”]; see also *Tyrone B. v. Superior Court* (2008) 164 Cal.App.4th 227, 231 [minor “need not show the presence of a mental disorder or developmental disability before invoking the court’s authority to consider declaring a doubt as to his competency”].) This is because although “an adult’s incompetence to stand trial must arise from a mental disorder or developmental disability that limits his or her ability to understand the nature of the proceedings and to assist counsel[,] [t]he same may not be said of a young child whose developmental immaturity may result in trial incompetence despite the absence of any underlying mental or developmental abnormality.” (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 860.)

An adult defendant, or in this case a juvenile, is presumed to be competent. (*People v. Ramos* (2004) 34 Cal.4th 494, 507; *People v. Hightower* (1996) 41 Cal.App.4th 1108, 1111.) To be entitled to a competency hearing, a defendant must

exhibit more than bizarre or paranoid behavior, strange speech, or a preexisting psychiatric condition with little bearing on the question of the defendant's ability to assist his or her counsel. (*People v. Ramos, supra*, at p. 508; see *People v. Lewis* (2008) 43 Cal.4th 415, 524, overruled on another ground in *People v. Black* (2014) 58 Cal.4th 912, 919.)

The due process right to effective assistance of counsel extends to minors in juvenile delinquency proceedings. (*Timothy J. v. Superior Court, supra*, 150 Cal.App.4th at p. 857.) To demonstrate that he received ineffective assistance of counsel, the minor “bears the two-pronged burden of showing that his counsel’s representation fell below prevailing professional norms and that he was prejudiced by that deficiency.” (*In re Angel R.* (2008) 163 Cal.App.4th 905, 909, citing *Strickland v. Washington* (1984) 466 U.S. 668, 694.) To satisfy this burden, “the defendant must show that counsel’s performance was deficient in that it ‘fell below an objective standard of reasonableness ... [¶] ... under prevailing professional norms.’ [Citations.] If counsel’s performance has been shown to be deficient, the defendant is entitled to relief only if it can additionally be established that he or she was prejudiced by counsel’s deficient performance. [Citations.]” (*In re Edward S.* (2009) 173 Cal.App.4th 387, 406–407.)

“Reviewing courts defer to counsel’s reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a ‘strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.’ [Citation.]” (*People v. Lucas* (1995) 12 Cal.4th 415, 436–437.) “‘If the record “sheds no light on why counsel acted or failed to act in the manner challenged,” an appellate claim of ineffective assistance of counsel must be rejected “unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation.”’” (*People v. Lopez* (2008) 42 Cal.4th 960, 966.)

There is evidence in the record that Alfonzo had certain learning deficits. Nevertheless, that evidence does not speak to an inability to understand the criminal proceedings, nor does it indicate he was unable to assist his attorney. In fact, there is

evidence to the contrary. In an exchange with the court, defense counsel expressly indicated his arguments pertaining to the effect of Alfonzo's developmental disabilities related to Alfonzo's intent, rather than his competence:

“[PROSECUTOR]: Your Honor, I did have an opportunity to review the motion to dismiss, as well. I just wanted to make sure that the record was clear on whether the minor or the minor's counsel was raising a doubt as to this minor's competency?”

“THE COURT: All right.

“[PROSECUTOR]: Because—

“THE COURT: I understand the distinction. In dealing with any crime, there is an issue regarding state of mind or intent, and whether or not the appropriate intent was formed. There is a separate issue in any criminal proceeding or juvenile proceeding alleging violations or involving the Welfare and Institutions Code regarding the competence to participate in the trial, which by an analogy is in reviewing the case over the lunch hour that was previously cited—while it is a different code section, essentially the determination is, ‘Can the minor understand the nature of the proceedings and participate with counsel?’”

“I understand the analogy, [defense counsel], that you are drawing, because between the two, but I think [the prosecutor]'s request is an appropriate one to make sure the record is clear as to whether a doubt is being stated concerning the minor's competency from the perspective of the [sic] to participate in the proceedings versus the requisite intent.

“[DEFENSE COUNSEL]: The motion is on the requisite intent, because the minor has testified in court. His testimony speaks for itself. As far as I'm concerned, I'm not raising the issue of whether or not he is unable at this point to assist in trial, since we have all the evidence before the court.

“THE COURT: And the Court shares an obligation as it does in any case, if it feels competency from that perspective becomes an issue, it too is required to act independently. I am not acting on that concern, because I do not have that concern regarding the competency of the minor to participate in ... these proceedings.”

When the court ruled on the aforementioned motion to dismiss, it further commented:

“I have reviewed that motion, it has a tenor of competency to it, though it has been made clear that [defense counsel] is not, nor is the court, raising

any doubt as to [the minor]’s competency. So it’s not being considered for that purpose. The underlying argument of competency as relates to capacity to form the intent is obviously an issue of fact regarding the burden of proof. So I’m denying the motion to dismiss on the grounds stated, though that is intertwined with, in fact, the sufficiency of evidence of the case itself.”

Here then, the record reveals why counsel failed to assert that Alfonzo was incompetent. As counsel indicated, the evidence of Alfonzo’s cognitive and learning deficits did not amount to an inability to consult with counsel and assist in his own defense with a reasonable degree of rational understanding, nor did those deficits amount to a lack of factual understanding of the nature of the charges against him. Rather, counsel reasonably argued that those deficits led Alfonzo to treat his interaction with S.R. as a game only. And in doing so, Alfonzo was unable to appreciate the wrongfulness of his conduct. Hence, he lacked the necessary intent.

The various expert reports assess Alfonzo’s cognitive functioning and reveal certain deficits. Notably, none of those reports include a finding that speaks directly to Alfonzo’s inability to understand the nature of the proceedings or to assist counsel in his own defense. Adolescent psychiatrist Karen Kraus’s testimony amounted to a review of the same reports. Dr. Kraus did not conduct an examination of Alfonzo herself,<sup>3</sup> nor did she express an opinion that Alfonzo’s deficits amounted to an inability to understand the nature of the proceedings or an inability to assist counsel in his own defense.

Under Welfare and Institutions Code section 709, the “minor’s counsel or the court may express a doubt as to the minor’s competency.” Further, “[i]f the court finds substantial evidence” that raises a doubt as to the minor’s competency, proceedings shall be suspended. Thus, the fact Alfonzo has certain cognitive deficits, indeed may be developmentally disabled, does not automatically equate to incompetency. The issue remains whether those disabilities establish an insufficient ability to consult with counsel and assist in the preparation of a defense with a reasonable rational understanding of the

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<sup>3</sup>Dr. Kraus is a social friend of Alfonzo’s parents.

nature of the charges and proceedings. Said another way, while Alfonzo need not show an inability to understand or assist *arises* as a result of a mental disorder or developmental disability, he still must show an inability to understand the nature of the proceedings and to assist counsel in his defense. His evidence simply did not do so.

Next, the minor points to the fact he was permitted to absent himself from the proceedings at various times as evidence he was incompetent. However, we do not agree with his characterization. The court noted at the outset, and at various times throughout the proceedings, that the minor was permitted to absent himself from the proceedings for his own “well-being” and in consideration of “the sensitive nature of the testimony” proffered by his mother.

Moreover, a careful review of those occasions reveals that rather than his being unable to understand the proceedings or assist his counsel, the minor was emotionally affected by the proceedings. His mother’s testimony in particular concerned his eight years in the foster care system, including over two dozen different placements, and also emphasized certain other behaviors or social deficits Alfonzo displayed at the time of his adoption. Alfonzo’s emotional disturbance is understandable in light of the sensitive nature of the testimony, both regarding his intellectual capacities and the sexual incident that led to these proceedings. Later, Alfonzo himself testified he became upset while his mother was testifying because that testimony concerned his years in the foster care system, which is something he tries to forget. Additionally, Alfonzo testified he became upset when the prosecutor earlier mentioned the word “kidnapping” because he knew he did not kidnap S.R., so it upset him to hear that.

Alfonzo relies upon his mother’s testimony that she did not believe he was able to understand “what [was] going on in [the] courtroom the last few days.” The question of whether Alfonzo understood those proceedings was posed to his mother, the first witness called during the first day of trial, on cross-examination. When viewed in context, however, his mother’s comment does not suggest Alfonzo lacked the ability to understand the nature of the overall proceedings or to consult with counsel and assist in

his own defense. Rather, the proceedings just prior to the commencement of trial concerned certain related pretrial motions, as well as motions by third parties seeking to obtain records related to the juvenile delinquency proceeding. Those motions included highly technical and procedurally unusual circumstances. And, “the test for competency in a juvenile court proceeding does not require a minor to understand the juvenile delinquency process sufficiently to pass a civics class.” (*In re Alejandro G.*, *supra*, 205 Cal.App.4th at pp. 479-480.) The minor’s knowledge of the juvenile delinquency process is not a factor in determining competency. (*Ibid.*) In sum, the fact his mother believed Alfonzo was not able to follow the proceedings immediately prior to the commencement of trial is not substantial evidence of his incompetency to stand trial.

Further, following Alfonzo’s testimony that when he touched his foster sister’s breast during a prior placement he did not know what he was doing and did not know it was wrong to do so, Alfonzo was asked whether it would have been acceptable to touch his foster sister’s vagina. In response to the question, Alfonzo responded, “Okay. How is that even relevant?” Alfonzo’s response supports defense counsel’s election not to challenge his competency, and supports the juvenile court’s election not to do so either. Despite his challenges, Alfonzo’s response plainly indicates his competency to stand trial.

Finally, Alfonzo argues trial counsel was ineffective because he misunderstood the concept of developmental immaturity as it relates to Penal Code section 26. Our review of the record does not support a finding counsel misunderstood the concept. Instead, our review reveals an advocate using evidence of developmental immaturity or learning deficits to reasonably argue his client lacked the requisite intent to commit the crime alleged. Perhaps the arguments were not the most artfully asserted, but counsel’s intentions are plain enough. He was distinguishing between his client’s inability to formulate the intent necessary to commit a forcible lewd and lascivious act from his client’s ability to understand the nature of the proceedings and the ability to assist in his own defense.

In light of the foregoing, we conclude it was a reasonable tactical decision for defense counsel to argue the developmental disabilities or immaturity displayed by Alfonzo affected his ability to form the requisite intent associated with his conduct. It was not unreasonable for defense counsel to fail to raise a doubt as to Alfonzo's competency. As a result, counsel's performance did not fall below an objective standard of reasonableness under prevailing professional norms. (*In re Edward S.*, *supra*, 173 Cal.App.4th at pp. 406-407.)

## **2. The Court's Obligation**

Related to the aforementioned argument, Alfonzo asserts the juvenile court erred by "not 'acting independently' and expressing a doubt as to" Alfonzo's competency to stand trial. The court did not err.

As indicated above, under the Welfare and Institutions Code, a juvenile court "may express a doubt as to the minor's competency." Also, where "the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended" and further proceedings concerning competency shall occur. (Welf. & Inst. Code, § 709, subds. (a), (b).)

Here, the juvenile court expressly acknowledged its obligation, yet it determined there was no doubt as to Alfonzo's competency:

"And the Court shares an obligation as it does in any case, if it feels competency from that perspective becomes an issue, it too is required to act independently. I am not acting on that concern, because I do not have that concern regarding the competency of the minor to participate in ... these proceedings."

The court was able to observe Alfonzo throughout the course of the proceedings. The fact it found no reason to doubt Alfonzo's competency is to be accorded deference by this court. (*People v. Kaplan* (2007) 149 Cal.App.4th 372, 383 [reviewing court generally gives great deference to trial court's decision whether to hold competency hearing].) And we find no reason to question the court's determination on this record.

In making its determination following closing arguments by counsel, the court stated:

“[THE COURT:] And I must comment, one of the most remarkable witnesses in this courtroom was [Alfonzo], from two perspectives. The progress that [Alfonzo] has made based on, due to the efforts and hard work of his parents from the time that he came into their household at I believe ten years old, to the date of the offense to now, is more than remarkable. And while his parents obviously are greatly responsible for that progress, so is [Alfonzo].

“I found [Alfonzo] to be very credible. [The prosecutor] described him as bright and intelligent. And I understand that perspective, though that perspective has to be viewed through the lens of what we also know about [Alfonzo] and the challenges that he faces. He did have sophisticated thought as well, again, through that same lens.”

Despite Alfonzo’s assertions otherwise, the juvenile court did not err in refusing to express a doubt as to Alfonzo’s competence.

**DISPOSITION**

The judgment is affirmed.

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PEÑA, J.

WE CONCUR:

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LEVY, Acting P.J.

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FRANSON, J.