IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re R.V., A Person Coming Under the Juvenile Court Law.	S212346
THE PEOPLE, Plaintiff and Respondent, v. R.V., Defendant and Appellant.	Ct. App. 4/3 No. G046961 Orange County Super. Ct. No. DL034139

APPEAL FROM THE JUDGMENT OF
THE SUPERIOR COURT OF ORANGE COUNTY
THE HONORABLE DEBORAH CHUANG, JUDGE PRESIDING

APPELLANT'S REPLY BRIEF ON THE MERITS

CINDY BRINES
State Bar # 169125
P.O. Box 138
Verdugo City, California 91046
Telephone: (818) 249-4344
cindybrines@sbcglobal.net

Attorney for Appellant
Appointed by the
Supreme Court of California

TABLE OF CONTENTS

TABLE OF CONTENTS CONT.

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES CONT.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re R.V., A Person Coming Under the Juvenile Court Law.	)	
THE PEOPLE, Plaintiff and Respondent,	)	S212346
v.	)	Ct. App. 4/3 No. G046961
R.V., Defendant and Appellant.	)	Orange County Super. Ct. No. DL034139

APPEAL FROM THE JUDGMENT OF
THE SUPERIOR COURT OF ORANGE COUNTY
THE HONORABLE DEBORAH CHUANG, JUDGE PRESIDING

APPELLANT'S REPLY BRIEF ON THE MERITS

Appellant files the following Reply Brief on the Merits to respondent's Answer Brief on the Merits ("RB"). The failure to respond to any particular argument should not be construed as a concession that respondent's position is accurate. It merely reflects appellant's view that the issue was adequately addressed in Appellant's Opening Brief on the Merits ("AOB").

ARGUMENT

I.

WELFARE AND INSTITUTIONS CODE SECTION 709 REQUIRES A JUDICIAL DETERMINATION OF JUVENILE COMPETENCY BASED ON THE FINDINGS OF A NEUTRAL EXPERT AND RECORD EVIDENCE WITHOUT REQUIRING EITHER PARTY TO BEAR THE BURDEN OF PROOF

The juvenile court and the Court of Appeal erred by presuming appellant was competent and by requiring him to prove incompetency. (AOB 9, 30.) Under Welfare and Institutions Code section 709,[1] there is no presumption of competence and neither party is allocated the burden of proof. (AOB 9-27.) Alternately, the prosecution should bear the burden of proof in a juvenile competency hearing. (AOB 27-30.)

Respondent disagrees. Respondent contends that a minor subject to a section 601 or 602 petition is presumed competent and bears the burden of proving incompetence by a preponderance of the evidence. (RB 4.) Respondent argues that section 709 contains an implied presumption of competence and the burden of proof falls to the party who is alleging incompetence, therefore, the juvenile court did not err by presuming appellant competent and by requiring him to prove his incompetence. (RB 4.) Additionally, respondent argues that under the plain language of section

---

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

709 and Evidence Code section 500, appellant bore the burden of proof as the party alleging incompetence. (RB 4.) Furthermore, respondent argues that as a matter of policy, placing the burden on appellant was proper because (1) minor was a party with access to the type of information necessary to prove incompetence, (2) placing the burden on the People when the minor alleges incompetence would create improper incentives for minors, and (3) a contrary rule would be inconsistent with existing presumptions in juvenile law. (RB 5.)

Respondent agrees with appellant that section 709 neither contains an express presumption of competence, nor states which party bears the burden of proof. The parties disagree, however, on the reasonable interpretation of the statute. (RB 10, 11.)

A. There Is No Presumption Of Competency For Juveniles; Section 709 Does Not Allocate The Burden Of Proof To Either Party

Respondent asserts that the language of section 709, specifically, subdivisions (a) though (c), establish an implied presumption that a minor is competent. (RB 11-12.) Respondent argues that the fact that competency proceedings are triggered by the declaration of a doubt as to competency indicates an initial presumption of competency. This interpretation is not reasonable.

First, the language of section 709, subdivision (a), which states "During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency," merely establishes which parties may declare a doubt as to the minor's competency,

it does not imply a presumption of competency. The adult competency provisions bear this out. Penal Code section 1368, explains the process for declaring a doubt about competency. The presumption of competency, however, is found in Penal Code section 1369, subdivision (f). If the process of declaring a doubt were enough, then § 1369, subdivision (f) would be superfluous.

Additionally, the declaration of a doubt as to a minor's competency simply raises a question as to whether the minor is competent. It does not imply a presumption of competency. As appellant explained in his opening brief on the merits, because there is a great deal of individual variability in the level of development among youths at any given age it is difficult to pinpoint a particular age at which youths attain adult-like psychological capacities. (AOB 20, citing *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 861.) It follows that at the time a doubt is declared as to a minor's competency, the minor may not have yet ever achieved *Dusky* competence. A presumption of competency would, thus, be developmentally and factually inappropriate. On the other hand, when no doubt about competency is raised, the parties and the court proceed because the juvenile's competency is sufficiently clear that no expert is required and no special proceeding must be held to make the competency determination.

Respondent further argues that because section 709, subdivision (c), provides for suspension of the proceedings if the minor is found to be incompetent, the fact to be established is incompetence, not competence. (RB 11.) Respondent's interpretation of subdivision (c) is incorrect because

respondent fails to consider subdivision (d) in conjunction with subdivision (c).

Section 709, subdivisions (c) and (d) must be considered together. Subdivision (c) provides that, "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, while subdivision (d) provides that, "If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction. (§ 709, subds. (c), (d).) Both subdivisions, taken together, provide instructions for the court once a finding has been made regarding the minor's competency. Moreover, the adult statute includes the same instructions as to how the court should proceed if the court finds the adult defendant competent (Pen. Code, § 1370, subd. (a)(1)(A)), or incompetent (Pen. Code, § 1370, subd. (a)(1)(B)), yet the Legislature expressly set forth a presumption of competency in the adult context. (Pen. Code, § 1369, subd. (f).) The court was not left to infer from the instructions how it should proceed after it made findings at the competency hearing. If the Legislature had wanted to presume competency in section 709, it would have done so expressly, and not left it to implication.

The same is true with respondent's argument that because the expert is charged with evaluating "whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other

condition and, if so, whether the condition or conditions impair his competency," the minor is presumed competent. (RB 1-12, citing § 709, subd. (b).) Section 709, subdivision (b), similar to Penal Code section 1369, subdivision (a), provides for an expert to evaluate the minor to determine whether the minor is competent or not after a doubt has been declared. Yet again, the adult statutes provide a clear presumption of competency. (Pen. Code, § 1369, subd. (f).) Having an expert evaluate the minor does not trigger a presumption of competency. The absence of a presumption of competency in section 709 strongly suggests that the Legislature did not intend to presume all juveniles are competent as it did in the adult context.

Respondent suggests that because the express presumption of competency for adults is contained in a subdivision detailing how to instruct the jury in a jury trial the Legislature may have found it unnecessary to include the express wording in the juvenile context because juvenile matters are handled by the court, rather than a jury. (RB 14.) Respondent's reasoning is unsound. Although Penal Code section 1369, subdivision (f), refers to a presumption of competency for adults in a jury competency trial, the presumption for adults applies in all competency cases whether the competency determination is made by the court or a jury. (See Evid. Code, § 604; Pen. Code § 1369; *In re Christopher K.* (2001) 91 Cal.App.4th 853, 857 [there is no principled distinction between a jury's reliance on a presumption and the court's when the court is acting as the trier of fact].) Therefore, it does not logically follow that the Legislature omitted an

express presumption in the juvenile context because there is no jury.

Respondent contends that presuming all minors competent would be proper and necessary. To support this position, respondent relies on the Court of Appeal's reasoning that presuming a competent minor to be incompetent would deprive him or her of the full panoply of reformative options available under the juvenile justice system. (RB 16-17.) The Court of Appeal essentially said that trial courts should err on the side of competency because there are so many resources available to minors once they are declared a ward of the court. This argument fails to consider the bigger picture. Being able to avail oneself of these resources presupposes that the minor is competent. This is so, in part, because a minor needs to be competent so that he can comprehend the consequences of his actions and the need to reform. The goal of rehabilitation is lost on a minor who is not competent to rationally and factually understand the proceedings against him or her. Being adjudicated while incompetent would certainly not be in the best interest of the minor. Moreover, this reasoning disregards the basic premise that a minor cannot be adjudicated while incompetent.

Respondent argues that because a minor is impliedly presumed competent, "the party alleging incompetence bears the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." (RB 11, 12, quoting Evid. Code, § 500.) Respondent relies on *People v. Rells* (2000) 22 Cal.4th 860, to argue that the presumption and burden established in the adult context should equally apply to section 709. (RB 13-14.)

The premise of respondent's argument is faulty because section 709 does not establish a presumption of competence for minors. But, even if it did, the question of competency is not necessarily considered a claim for relief or a defense under Evidence Code section 500. In *People v. Rells, supra,* this Court was tasked with determining if the presumption of competence and the burden of proof expressly provided under Penal Code section 1369 applied equally under Penal Code section 1372. Ultimately, this Court held both the presumption and the burden for a competency restoration hearing under 1372 were the same as under Penal Code section 1369. (*Rells, supra,* 22 Cal.4th at p. 868.) In so holding, this Court noted that "if mental incompetence were to be characterized as either a 'claim for relief' on the part of a defendant or a 'defense' at his disposal, Evidence Code section 500, as a general matter at least, would impose the burden of proof on the defendant himself rather than the People." (*Id.* at p. 868, fn. 4, citations omitted.) The key word here is ***if*** which indicates that this Court has never characterized mental incompetence as either a claim of relief or a defense.

Regardless of whether mental competency is a claim of relief or a defense, *Rells* actually supports appellant's position that section 709 does not allocate the burden of proof to either party. In *Rells*, this Court was dealing with the statutory scheme established for adults. The law that governs inquiry into the mental competence of an adult defendant in a criminal prosecution consists of a statutory scheme that is codified in chapter 6 of title 10 of part 2 of the Penal Code, commencing with section

1367 and ending with section 1376. Because Penal Code section 1372 is part of that statutory scheme, it reasonably follows that the same presumption and burden would extend throughout that scheme. Indeed, in finding that the defendant in *Rells* was presumed competent and had the burden of proof at a restoration hearing, this Court reasoned that a restoration hearing is triggered by a later finding of competence by a mental health official which puts the defendant in the same position as he was originally with the presumption of competence and burden under Penal Code section 1369. (*Rells, supra,* 22 Cal.4th at p. 868.)

Rells does not mandate that the presumption of competency and the burden of proof established in the adult statutory scheme apply to section 709 nor does such an assumption make sense. Section 709 is not part of the adult statutory scheme. Appellant has argued that because the Legislature specifically adopted some procedures from the adult statutes and chose to omit others that the omitted portions of the adult competency statutes must have been left out intentionally. Because the Legislature is deemed to be aware of existing laws when it enacts a statute, it can be assumed that the Legislature was aware of Penal Code sections 1369 and 1370 when it enacted section 709 and chose not to include a presumption of competence for juveniles or allocate the burden of proof to the minor. (*People v. Overstreet* (1986) 42 Cal.3d 891, 897.)

Even if mental competency is considered a claim for relief or a defense, Evidence Code section 500 gives the court discretion to shift the burden based on other "factors" including the "knowledge of the parties

concerning the particular fact" implicated therein, the "availability of the evidence to the parties," the "most desirable result in terms of public policy in the absence of proof of the particular fact," and the "probability of the existence or nonexistence of the fact" (*Rells, supra,* 22 Cal.4th at p. 868, fn. 4, citing Recommendation Proposing an Evidence Code (Jan. 1965) 7 Cal. Law Revision Com. Rep. (1965) p. 89). Based on these factors, juvenile competency issues require a shifting of the burden, as will be explained below.

B. Policy Concerns Support That Section 709 Does Not Allocate The Burden Of Proof To Either Party

1. The Minor and His Attorney Do Not Have Superior Access To Information Relevant To Competency

Respondent contends that like an adult defendant, the minor and his attorney have superior access to information relevant to competency. (RB 20-24.) Respondent relies on *People v. Medina* (1990) 51 Cal.3d 870 (*Medina I*), to argue that while the court-appointed expert plays a role in a juvenile competency determination, the expert's evaluation does not lessen the superiority of the minor's access to relevant information as compared to the People's. (RB 21-22.) Respondent suggests that because this Court in *Medina I* found the defendant was the party with superior access to information despite that an expert was involved in the process the same is true here. (RB 21-22, citing *Medina I, supra*, 51 Cal.3d at p. 885.)

In a juvenile proceeding, defense counsel may often be in the best position to raise the initial doubt about the minor's competency. However,

once the court finds substantial evidence of incompetency and appoints an expert in juvenile development to examine the minor, the expert becomes the person with the best access to relevant information and the necessary skill to assess it properly. Moreover, in juvenile court, unlike adult court, the probation officer plays a critical role in the entire process from the initial detention hearing to disposition. Defense counsel and the prosecution are responsible for providing identifying information to probation, but it is the probation department's responsibility to collect the relevant information from schools, doctors, and other relevant sources to present to the expert.

The facts of the instant case aptly illustrate that respondent's position is unworkable in juvenile court. Here, Dr. Kojian, the court-appointed expert, had access to appellant's school records, testing results, police reports, probation reports, prior medical/psychiatric history, and information from appellant's mother. Although respondent believes defense counsel is supposed to be the party with better access to relevant information, this was not the case here. The expert had access to all relevant information and yet, the court only relied on the expert's opinion and disregarded counsel's opinion. Similarly in *In re Alejandro G.* (2012) 205 Cal.App.4th 472, once defense counsel declared a doubt, the evidence the juvenile court relied on to make its finding came from the two experts, not defense counsel.

2. A System That Does Not Allocate The Burden To Either Party or That Places The Burden On The Prosecution Would Not Provide The Minor With The Wrong Incentives

Respondent asserts that appellant's argument that neither party

should bear the burden of proof should be rejected as unworkable in cases where the minor is alleging incompetence because no one would produce evidence either way. (RB 23.) Respondent fails to recognize that the nature of juvenile proceedings are less formal and require more of a collaborative process than adult proceedings.

A juvenile court system where neither party bears the burden would not cause a lack of evidence being produced because the majority of the evidence of competency or incompetency will inevitably come from the court-appointed expert and the documents the expert relied upon to form his opinion. In addition, juvenile proceedings are less adversarial than adult proceedings. The Legislature recognized this by not including specific requirements regarding who shall offer evidence as provided for in Penal Code section 1369, subdivisions (b)(1), (b)(2), (c), (d), and (e). This case demonstrates how this works since the evidence the juvenile court relied upon in ruling on appellant's competency was the expert's testimony and the documents the expert considered.

Respondent also asserts that if the People have the burden, it would provide the wrong incentives for the minor. (RB 22-23.) Specifically, respondent argues that if the People are charged with proving competence, the minor will have an incentive to remain silent and refuse to submit to a full evaluation or to competency testing. (RB 23.) Respondent further argues that in contrast, a minor who bears the burden of proving incompetence would have every incentive to participate in testing, cooperate with the evaluation, and provide access to relevant witnesses.

(RB 24.) This argument is premised on a faulty assumption - that minors are manipulators out to game the system, a premise unlikely to be true with a minor for whom there is a question about competency.

Interestingly, the facts of the instant case actually run counter to respondent's argument. Here, appellant's counsel declared a doubt as to his competency and was allocated the burden of proof, yet appellant did not participate in all of the testing requested by the expert.

C. Section 709 Sets Forth A Separate Competency Structure For Minors Recognizing The Specific Needs of Juveniles

The plain language of section 709 shows the statute did not allocate the burden of proof to either party in juvenile competency proceedings either explicitly or by implication. Even if the Legislative history were to be considered despite the plain language of the statute, the Legislative history does not support respondent's interpretation of the statute.

Respondent argues that the Legislative history demonstrates that the purpose of enacting section 709 was to codify competency procedures for juveniles, similar to those afforded adults. (RB 18.) Respondent argues that the Legislature recognized particular areas where different procedures were necessary for juveniles and added those to an already existing adult scheme. Specifically, the Legislature recognized that the type of "developmental immaturity" discussed in *Timothy J., supra,* should be incorporated into the statutory definition for juvenile competency and that the experts charged with evaluating minors should have specialized training in the field of child development. (RB 18.)

While it is true that the Legislature sought to codify competency procedures for juveniles similar to those afforded adults, in looking closer at the plain language used in the Legislative history, the words "similar to those afforded adults" used in the Bill Analysis[2] indicates that the Legislature did not intend to codify competency procedures for juveniles identical to those that apply to adults. If "developmental immaturity" and "specialized training for experts evaluating minors" were the only areas the Legislature recognized as different and necessary for juveniles, the Legislature could easily have included just that language and indicated that *all other sections of Penal Code dealing with competency shall apply in juvenile competency determinations*. Or the Legislature could have repeated all the language from the adult Penal Code sections and just added the two specialized areas for juveniles. The Legislature did not do this however. Instead, Section 709 includes additional procedures that are unique to juvenile competency determinations while adding specific selected similar sections from the adult competency statutes that appropriately apply to juveniles. This indicates that the drafters of section 709 deliberately chose which procedures from Penal Code section 1367 et seq. to include and which procedures to leave out.

The Legislature also recognized that the absence of statutory authority for deciding juvenile competency created a lack of certainty and disparate application of existing case law. (See Exhibit A of Respondent's

---

[2] See Exhibit A of Respondent's Motion for Judicial Notice, filed concurrently with RB.

Motion for Judicial Notice.) The Legislative recognition of the absence of statutory authority for deciding juvenile competency indicates that the Legislature did not view the Penal Code provisions on competency as existing authority for juvenile competency. Hence, the Legislature established section 709 to set forth a separate competency structure for minors.

Nothing in the language or legislative history of section 709 supports the insertion by implication of a presumption of competency or burden of proof that the Legislature omitted. In the present case, the court's presumption that appellant was competent and its imposition of the burden of proof on the defense to prove appellant's incompetency was fundamentally unfair and deprived appellant of his due process rights.

ARGUMENT

II.

BASED UPON THE PRINCIPLES DISCUSSED IN *PEOPLE V. AULT* AND *PEOPLE V. CROMER*, DE NOVO REVIEW IS APPROPRIATE TO ASSESS A JUVENILE COURT'S FINDING OF COMPETENCY

Respondent contends that the Court of Appeal properly applied the substantial evidence standard of review and properly upheld the juvenile court's finding because competency determinations are factual findings. (RB 26-27.) Although a deferential standard of review has traditionally been applied to adult competency findings, the same standard should not apply to review of a juvenile court's competency finding. Based upon the principles discussed in *People v. Ault* (2004) 33 Cal.4th 1250, and *People v. Cromer* (2001) 24 Cal.4th 889, de novo review is appropriate to assess a juvenile court's finding of competency.

In arguing this Court should apply a deferential standard of review, respondent contends that competency determinations are not mixed questions of law and fact. (RB 30.) Respondent makes this argument even though this Court has recognized that competency determinations involve mixed questions of law and fact. (See *Ault, supra,* 33 Cal.4th at p. 1265, fn. 8; *Cromer, supra,* 24 Cal.4th at pp. 894-895.) Despite this, respondent argues that competency determinations are purely subjective and specific to the minor at issue. (RB 30.)

In arguing that competency determinations are factual, respondent likens competency determinations to rulings on whether a minor is fit or unfit for treatment under juvenile court law and whether a capital defendant is mentally retarded. (RB 27-28.) These factual issues are not analogous to competency determinations because they are missing the added step of applying the facts to a constitutionally based legal standard like the *Dusky* standard.

Competency determinations are mixed questions of law and fact. First, it is necessary for the juvenile court to review the expert's findings as to the reasons for the minor's deficits in his abilities and to establish a detailed account of the basis for the expert's opinion on competency. Second, the juvenile court must carefully weigh those findings and decide whether those findings establish that the minor lacks a sufficient present ability to consult with counsel and assist in preparing a 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. That inquiry is a predominantly legal question. Thus, the ultimate determination of competency is a mixed question of law and fact.

Respondent further contends that even if competency determinations are mixed questions, the substantial evidence standard is still appropriate. (RB 31-35.) To support a substantial standard of review, respondent argues that competency determinations do not require application of an objective legal test to the historic facts, are dependent upon the juvenile court's first-person advantage, and are highly individualized and unlikely to have wide-

spread precedential value. (RB 33-34.)

In *Ornelas v. U.S.* (1996) 517 U.S. 690 [116 S.Ct. 1657, 134 L.Ed2d 911], the Court held that questions of reasonable suspicion to stop and probable cause to make a warrantless search were mixed questions of law and fact and should be reviewed de novo. The Court viewed the first step as identifying all of the relevant historical facts know to the officer at the time of the stop or search with the second step being a determination of whether, under a standard of objective reasonableness, those facts would give rise to a reasonable suspicion justifying a stop or probable cause to search. (*Ornelas, supra,* 517 U.S. at pp. 696, 697.) The Court adopted a de novo standard of review even though those questions are fact-intensive, and multi-faceted, acquire content only through application, and will rarely serve as precedent for another case. (*Id.,* at pp. 697, 698, quoting *Illinois v. Gates* (1983) 462 U.S. 213, 238, fn. 11 [103 S.Ct. 2317, 76 L.Ed.2d 527].) The mixed questions of competency determinations are no less deserving of de novo review than questions of reasonable suspicion to stop and probable cause to make warrantless searches.

Although a deferential standard of review has traditionally been applied when resolution of an issue takes place in open court on a full record and depends heavily on the trial court's appraisal of witness credibility and demeanor, (*Ault, supra,* 33 Cal.4th at p. 1267; *Cromer, supra,* 24 Cal.4th at p. 901; *Thompson v. Keohane* (1995) 516 U.S. 99, 111, 114 [116 S.Ct. 457, 133 L.Ed.2d 383]), competency determinations made at juvenile competency hearings do not really depend on witness credibility

determinations.

While the initial decision to hold a competency hearing is oftentimes made in the courtroom with a "first-person vantage," juvenile courts generally base their competency findings, in large part, on evidence obtained outside of the courtroom. Section 709 sets up a framework where juvenile courts rely on an expert's evaluation of the minor to make their determinations. The juvenile court does not have a "first-person vantage" on the expert's out-of-court examination of the minor. Witness credibility is rarely the focus for juvenile competency hearings. In addition, the court often relies on the minor's history, probation reports, school reports, police reports, social worker reports and other relevant documents regarding the minor's competency.

On review, appellate courts can readily assess the credibility of these reports relied on by the expert and determine if the court's interpretation of those reports comports with the *Dusky* standard. The juvenile court does not have any more of a "first-person vantage" to make a competency determination then it has for determinations made from events that occurred outside of the courtroom that are reviewed de novo. (See *People v. Jones* (1998) 17 Cal.4th 279 [confession made in police car and at hospital]; *People v. Alvarez* (1996) 14 Cal.4th 155 [reasonableness of search of defendant's car]; *People v. Mickey* (1991) 54 Cal.3d 612 [whether defendant's statements made during a plane flight were in violation of *Miranda*]; *People v. Leyba* (1981) 29 Cal.3d 591 [reasonableness of investigative stop of defendant's car].)

Another key factor in determining the standard of review is whether the trial court makes an individual-specific decision or one likely to have precedential value. (*Ault, supra,* 33 Cal.4th at p. 1267; *Cromer, supra,* 24 Cal.4th at pp. 895, 901.) Determinations that are reviewed de novo, such as what constitutes "in custody" or a "reasonable search" provide guidance in future situations. De novo review of what constitutes competency would similarly unify precedent for the courts and provide guidance to juvenile expert evaluators, probation departments, and attorneys on reaching a proper competency determination.

The reasoning in *Cromer* and *Ault* weighs strongly in favor of independent review of a juvenile court's determination of competency. Appellate courts should independently review a juvenile court's finding that a minor is competent to prevent a miscarriage of justice that might result from permitting a competency determination to rest upon the legal determinations of a single judge.

ARGUMENT

III.

UNDER EITHER STANDARD OF REVIEW, THE EVIDENCE PRESENTED AT THE COMPETENCY HEARING IN THIS CASE DEMONSTRATED BY A PREPONDERANCE OF THE EVIDENCE THAT APPELLANT WAS INCOMPETENT

Respondent argues that under the substantial evidence standard of review this Court should affirm the juvenile court's finding because the juvenile court could reasonably reject the evidence of incompetence. (RB 35.) Specifically, respondent argues that because Dr. Kojian was unable to administer testing, the court was justified in rejecting his opinion. (RB 35.) Respondent further argues that the court was justified in rejecting Dr. Kojian's opinion because there was no evidence in the record about why minor was housed in a special unit and because the documentation from appellant's school did not clearly indicate any developmental disability. (RB 35.) Moreover, respondent argues that the court's finding that many of appellant's responses to Dr. Kojian were "appropriate" was substantial evidence of competency. (RB 36-37.) Respondent's arguments have no merit.

Under either standard of review, the evidence did not support the juvenile court's finding that appellant failed to prove his incompetency. For an appellate court to find that a juvenile court's findings were supported by substantial evidence, that evidence must be "reasonable, credible, and of

solid value." (*People v. Marshall* (1997)15 Cal.4th 1, 35.)

No reasonable trier of fact could have rejected the expert's finding of incompetency based on the failure to administer the REY 15 test, school reports from 2011, and a few isolated statements by appellant. Here, the appellate court failed to examine whether the juvenile court's reasons for rejecting the expert's opinion of incompetency and finding appellant competent were reasonable, credible and of solid value.

This Court has addressed the difficulty of examining people with competency issues. (*People v. Samuel* (1981) 29 Cal.3d 489.) In *Samuel,* the expert was unable to complete psychological testing; yet, this Court was satisfied that the expert's opinion and the opinion of several others was based on observations that Samuel's condition would seriously impair his ability to assist his counsel at trial. (*Id.,* at p. 501.) This conclusion was supported by Samuel's long history of mental illness, his tolerance for massive doses of psychotropic drugs, his extremely regressive behavior, his low intelligence, and his involuntary psychological symptoms. (*Id.,* at p. 504.) This Court found that the trier of fact could not reasonably reject the persuasive and uncontradicted evidence proving Samuel's incompetence. (*Id.,* at p. 506.)

As in *Samuel,* the expert's opinion in this case that appellant was incompetent even without the REY 15 test, was supported by extensive evidence from Dr. Kojian's interviews with appellant, appellant's mother, teachers, and social worker, the probation department, and the police. Dr. Kojian testified that he was 100% sure of his opinion and he would not

have changed his opinion even if he had given appellant the tests for malingering. (RT 45, 46.) Given the plethora of evidence supporting incompetence, the juvenile court's reliance on the failure to administer testing for malingering was not reasonable.

Respondent asserts that it was reasonable for the court to reject the documentation from appellant's school because it did not clearly indicate any developmental disability. (RB 35-36.) This assertion has no merit. Respondent, as well as the juvenile court, misinterpreted the Manifestation Determination Report. The section of the report that the court referred to actually dealt with whether appellant met the criteria for mental retardation. (Appellant's Judicial Notice Exhibit A, p. 22.) The Manifestation Determination Report had concluded that appellant's behavior was a manifestation of his disability which was apparently a mood disorder with extremely low cognitive and comprehensive skills. (Appellant's Judicial Notice Exhibit A, p. 23.) The court's reliance on this aspect of the report was not proper; a minor does not need to be mentally retarded to be incompetent. Additionally, the court did not consider that the testing done in 2011, which was included in the Manifestation Determination Report, showed that appellant had significant cognitive and adaptive delays. (Appellant's Judicial Notice Exhibit A, pp. 18-20.) Rejecting Dr. Kojian's opinion based on the misinterpretation of the Manifestation Determination Report was error and not reasonable.

With respect to the juvenile court's finding that appellant's responses were "appropriate," the court focused on a few isolated statements and did

not look at appellant's overall lack of understanding of the nature of the proceedings against him or the evidence of his inability to rationally assist in the preparation of his defense.

Substantial evidence did not support that appellant was competent. No reasonable trier of fact could have rejected the expert's finding of incompetency based on the reasons provided by the juvenile court. The Court of Appeal failed to determine whether the juvenile court's reasons for declining the expert's opinion of incompetency and finding appellant competent were reasonable, credible and of solid value.

The rationale as to why no reasonable trier of fact could have rejected the expert's finding of incompetency applies equally to a de novo standard of review. As appellant argued in this brief, as well as Appellant's Opening Brief on the Merits, the juvenile court considered irrelevant and inconsequential factors compared with the extensive evidence of incompetence.

- Dr. Kojian observed that appellant had inappropriate affect[3], was very slow and deliberate in his speech and movements; he was stiff legged, his gait was inhibited and he appeared to be responding to internal stimuli. (RT 47, 52.) Appellant was somewhat catatonic in his presentation. (CT 38.)
- The school records indicated that appellant was very slow and that all his testing came back very low. (See Appellant's Judicial Notice Exhibit A, pp. 4-23.)

---

[3] The reporter's transcript uses the word "effect". (RT 47.)

- Appellant had difficulty explaining his charges, appeared to have a difficult time understanding the questions asked of him and was very unresponsive and confused about the incident. (RT 53, 54.)
- Dr. Kojian found evidence for response latency, which is a significant clue in assessing whether there is any cognitive impairment. (RT 52.)
- The police report stated that appellant appeared to have a difficult time understanding the officer's questions and was very unresponsive to his questions.
- The record also indicated that on February 17, 2012, probation had requested terminating probation for appellant on a prior case because of appellant's mental disabilities. (See Appellant's Judicial Notice Exhibit A, pp. 1-2.)
- Appellant had a history of mental health problems. (CT 40; RT 53, 54.)
- A letter from appellant's social worker finding that appellant has a developmental disability. (See Appellant's Judicial Notice Exhibit A, p. 3.)

Under either standard of review, the evidence did not support the juvenile court's finding that appellant was competent.

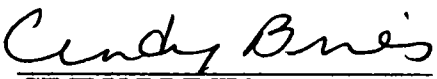
CONCLUSION

For all of the reasons articulated in this brief, as well as Appellant's Opening Brief on the Merits, appellant respectfully urges this Court to find that:

- There is no presumption of competency for juveniles once substantial evidence raises a doubt as to the minor's competency;
- Neither party bears the burden of proof at the subsequent hearing wherein the court considers whether the minor is competent;
- The standard of review of a juvenile court's finding of competency should be independent, de novo review because the competency question ultimately touches upon a minor's constitutional right not to be adjudicated when incompetent;
- Finally, in light of all the evidence presented at appellant's competency hearing, appellant was incompetent and the juvenile court's true finding should be vacated.

DATED: June 27, 2014

Respectfully submitted,



CINDY BRINES
Attorney for Appellant
R.V.

CERTIFICATE OF COMPLIANCE

I certify pursuant to California Rules of Court, rule 8.520(c)(1) that this reply brief on the merits contains 6078 words according to my word processing program (Wordperfect X4).

DATED: June 27, 2014

Respectfully submitted,

Cindy Brines

CINDY BRINES
Attorney for Appellant
R.V.

PROOF OF SERVICE BY MAIL
(Cal. Rules of Court, rules 1.21, 8.50.)

I, Cindy Brines, declare that: I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is P.O. Box 138, Verdugo City, CA 91046.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United State Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I caused to be served the following document: **Appellant's Reply Brief on the Merits**, by placing a true copy in a separate envelope addressed to each addressee, respectively, as follows:

R.V.
c/o Cindy Brines
P.O. Box 138
Verdugo City, CA 91046

Clerk of the Court
California Court of Appeal
Fourth Appellate District,
Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701

Clerk of the Court
For Delivery to:
The Honorable Deborah Chuang
Superior Court, County of Orange
341 The City Drive South
P.O. Box 14170
Orange, CA 92863-1569

District Attorney
Lamoreaux Justice Center
341 The City Drive South
Orange, CA 92863-1569

I then sealed the envelope and, with the postage fully prepaid, I placed the envelop in the United States mail, this same day, at Verdugo City, California.

PROOF OF SERVICE BY ELECTRONIC SERVICE
(Cal. Rules of Court, rules 2.251(i)(1)(A)-(D) & 8.71(f)(1)(A)-(D).)

Furthermore, I, Cindy Brines, declare I electronically served from my electronic service address of cindybrines@sbcglobal.net the above referenced document on June 27, 2014 by 5:00 p.m. to the following entities: CALIFORNIA SUPREME COURT, via e-submission, APPELLATE DEFENDERS INC., eservice-criminal@adi-sandiego.com, ATTORNEY GENERAL'S OFFICE, ADIService@doj.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2014

Cindy Brines
CINDY BRINES