Filed 11/29/12 In re Spencer S. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re SPENCER S., a Person Coming Under the Juvenile Court Law.	B237423 (Los Angeles County Super. Ct. No. YJ35114)
THE PEOPLE, Plaintiff and Respondent, v. SPENCER S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephanie M. Davis, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

The minor, Spencer S., appeals from a Welfare and Institutions Code section 602 wardship order. The sole issue raised on appeal is whether the minor was competent to undergo delinquency proceedings. We affirm.

The constitutional competency to stand trial standard is: "A defendant may not be put to trial unless he "'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [and] a rational as well as factual understanding of the proceedings against him.'" *Dusky v. United States* [(1960)] 362 U.S. 402, 402." (*Cooper v. Oklahoma* (1996) 517 U.S. 348, 354.) The federal constitutional standard applies to minors in delinquency proceedings. (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234; *Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 857.) The statutory standard for determining a minor's competence to undergo delinquency proceedings is as follows: "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." (Welf. & Inst. Code, § 709, subd. (a); see 10 Witkin, Summary of Cal. Law (2012 supp.) Parent and Child, § 807, p. 497.) It was the minor's burden to demonstrate that he was not competent. (*People v. Medina* (1990) 51 Cal.3d 870, 881-886; *People v. Hightower* (1996) 41 Cal.App.4th 1108, 1111-1112.) We review the evidence in a light most favorable to the juvenile court's competency findings. (*People v. Marshall* (1997) 15 Cal.4th 1, 31*; People v. Samuel* (1981) 29 Cal.3d 489, 505.) We review this issue for substantial evidence. (*People v. Dunkle* (2005) 36 Cal.4th 861, 885, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 422, fn. 22*; People v. Marshall*, *supra*, 15 Cal.4th at p. 31.)

The following constitutes substantial evidence the minor was competent to participate in delinquency proceedings under the forgoing constitutional and statutory standards. Dr. Lauren Reba-Harrelson testified she administered the Juvenile Adjudicative Competency Interview. Her written report concludes: "Despite symptoms

of [attention deficit hyperactivity disorder, posttraumatic stress disorder], and mild [mental retardation], the minor is competent to stand trial. While it is clear that the minor has intellectual impairment and would greatly benefit from continued services, his level of deficits is not sufficient to impair his competency status. [¶] Based on the sum of the data obtained, the minor has the capacities associated with competence to stand trial in juvenile court. While his understanding and appreciation of the court processes may be less skillful than same-age peers, the minor's cognitive functioning was not sufficiently impaired to the level that he is unable to participate and understand court proceedings. The minor demonstrated a reasonable understanding of the adversarial nature and consequences of his trial, the roles of its participants, and the trial process itself. He understood the [breadth] of consequences of a trial, the role of his attorney and the judge. Generally, he was able to retain information provided to him during this evaluation at the close of the evaluation. While he did not recite details related to the alleged instant offense, it is likely due to embarrassment and avoiding incrimination. He reported being forthright with counsel and appreciating that her role is to help his case, suggesting his ability to cooperate with counsel. His ability to weigh the consequences and magnitude of various penalties is sufficient to allow him to make an informed decision regarding his defense."

In reaching this conclusion, Dr. Reba-Harrelson made the following observations: "The minor reported that he had been exposed to the legal system due to prior offenses. He reported feeling embarrassed about these offenses and initially was reluctant to speak about his experiences in court. However, upon further inquiry, he was able to state that he had a history of 'around four charges' and had experienced going [to] court 'a few times.' He reported that he had been charged with battery and arson in the past and described shame[] in being [so charged]. He stated, 'I really regret it,' suggesting that he understood the negative, antisocial nature of these behaviors. He described his prior experiences in court as 'scary' due to the possibility of sentences leading to 'being away from my family,' suggesting awareness that sentencing can lead to negative penalties."

The minor explained that he had never been detained as a consequence of the prior offenses but "maybe" had been placed on probation. The minor recalled having lawyers representing him in the past trying to help him with his cases.

In addition, the minor accurately described the charges against him and the nature and purpose of a trial. Dr. Reba-Harrelson described the minor's description of the litigation process: "He reported that a trial 'is where a judge decides what happens. Your lawyer tries to help. The other one wants to put me in jail. The judge decides if you['re] guilty or not guilty . . . lets me out [or] sentences me.' The minor stated that pleading guilty means 'you did [the offense]' and that pleading not guilty means 'you didn't do it.' He understood that a consequence of pleading guilty was being sentenced. He appreciated that if the police said you committed the crime, you can plead not guilty because of 'your rights.' He reported that if he was found guilty he could 'be away from my family for years,' and this would be the worst outcome. He reported that being on probation would be a les[s] severe and preferable outcome."

Dr. Reba-Harrelson provided greater detail of the minor's understanding of the role of the prosecutor: "Initially, the minor was not aware that the 'lawyer against me' was named a prosecutor or district attorney; he had difficulty remembering these terms during the evaluation. However, after prompting, he knew [the] prosecutor by title and his or her likelihood of believing the police officer's account of the offense over the minor's account. . . . Further, after the writer described the three parts of the prosecutor's role, the minor was able to repeat that he or she is a lawyer that tries to prove that the defendant did what is charged and offers evidence to prove it."

Dr. Reba-Harrelson expanded on the minor's relationship with his lawyer: "The minor stated that he has met his attorney and acknowledged [her] name after prompting. He reported that he has told her the truth about his case so she could effectively help him. He reported that his lawyer is 'nice,' and is trying to help him. He also understood that he should conduct himself appropriately in court." In addition, after discussing the

matter with Dr. Reba-Harrelson, the minor was able to describe the function of a plea bargain which he described as a "deal."

Dr. Reba-Harrelson testified at the hearing conducted pursuant to Welfare and Institutions Code section 709, subdivision (b). She testified that the minor was able to "rationally and clearly" describe the factors related to court processes. And Dr. Reba-Harrelson concluded the minor was competent to stand trial. When questioned by the deputy district attorney, Dr. Reba-Harrelson acknowledged the minor's intellectual deficits. Nonetheless, Dr. Reba-Harrelson concluded the minor was competent: "He's not able in a very complex manner to describe the workings of the court, describe them from the get-go what certain terms are that you would expect of a 16-or 15-year-old individual. [¶] [H]e was able to recite these terms, to apply these terms to his own case, reason through in albeit a simple but I think sufficient manner how one would discuss their case with their attorney and what good outcomes are, what bad outcomes are, who's for me, who's against me, what are [the] reasonable potential consequences of what I allegedly did, what[] 'guilty' mean[s], what[] 'not guilty' mean[s]." Dr. Reba-Harrelson's competency conclusion was based upon: the minor' responses during the Juvenile Adjudicative Competency Interview; his school records; and their clinical interview.

Dr. Reba-Harrelson testified concerning the minor's ability to participate in the case settlement process: "He was able to understand . . . what 'guilty' means -- 'it means that I didn't do it,' what 'not guilty means' -- 'it means that I did it,' though actually he was able to further elaborate that he could have potentially done the offense and plead guilty." Dr. Reba-Harrelson continued: "So when I initially asked what a plea bargain was, he stated that it was a deal. However, using simple language and follow-up questions in a slow and deliberate manner, he was able to describe to me more details about the deal-making process that one strikes in determining if a plea is [a] good idea or not and going into further detail about in cases where it may be good to go forward in striking a plea deal and in cases where it wouldn't be so good." After explaining the plea

negotiation process, the minor was able to repeat back what he had been told by Dr. Reba-Harrelson. She explained: "He wanted to go home to his family. He didn't want to be detained. He knew that sometimes a plea bargain will get you a lesser penalty . . . and going to trial, that [its] taking a chance. [¶] And he was able to describe that, in a case where the stakes were high and he'd have to be away from his family, for example, as one possible outcome, he wouldn't want to take that chance."

Dr. Reba-Harrelson also testified as to the minor's understanding of the other participants in the litigation process: "[He] was able to describe the role of his attorney, the defense counsel. He named her. He stated initially, without any further prompting or follow-up questions, that 'this lawyer is for me, helps me out in court, argues my case for me,' so he knew that she was a mouthpiece in court, that it was exceedingly important -- those are my words, not his -- . . . to be completely forthright about the nature of the case with his attorney so she can help him as best as she can. Otherwise, it would be detrimental he also expressed." Dr. Reba-Harrelson believes that the minor could work with his a lawyer so long as she avoided speaking too quickly. The minor was able to state that the judge was "the decision-maker" who listen to the evidence presented by both sides to determine guilt. As previously mentioned, the minor was not familiar initially with the terms "prosecutor" or "district attorney" but understood the obligation of the state's lawyer.

When communicating with the minor, Dr. Reba-Harrelson was able to accommodate his cognitive deficits. She testified: "[T]hese deficits were not so pronounced that they inhibited his ability to communicate with me when I made a few reasonable accommodations. [¶] . . . Such as speaking in a slow tone, repeating myself when necessary and using very simple language, so the example I gave before about changing my language from 'prosecutor' to the other lawyer' initially starting in a simple manner. [¶] And if things seemed like they were speeding up too much or going too quickly, slowing it down and then adapting to where he is just based on simple cues that let you know he's understanding . . . ." Dr. Reba-Harrelson testified, "They obviously

know each [other], so he has the ability to sort of nudge and say, 'explain this to me,' or she could sort of check in with . . . him [that] would be sufficient to allow him to assist in his defense . . . ." When pressed by defense counsel as to the minor's ability to assist during an adjudication hearing, Dr. Reba-Harrelson testified, "[The minor], based on the capacity that I saw in the evaluation that I conducted, could do that within -- could sufficiently do that with reasonable accommodations, the accommodations I mentioned . . . ." The sole accommodation identified by Dr. Reba-Harrelson was, "The accommodations of speaking more slowly . . . for example, saying 'can we talk to the side for a second?'"

Dr. Reba-Harrelson testified that the minor was able to repeat back "concrete information and more" during their discussion. Concrete thinking involves a very basic level of assessment. Abstract thinking involves assessments which are "a bit more complex" than mere concrete judgments. According to Dr. Reba-Harrelson, not all minors possess the capacity to engage in concrete thinking.

In terms of the ability to process information in the adjudication hearing situation, Dr. Reba-Harrelson acknowledged the minor may be unable to process *all* testimony in real time. However, Dr. Reba-Harrelson refused to make a blanket assessment about the minor's abilities during an adjudication hearing: "That depends on [who is] speaking and what's being said. I don't feel comfortable making a blanket statement about that." Dr. Reba-Harrelson distinguished though between having cognitive deficits and being competent to participate in the delinquency process: "So one can have significant cognitive deficits -- one can have a diagnosis of mild mental retardation, for example, and also be competent to stand trial. The determination is based on two prongs specifically set forth by the State of California that one needs to meet. [¶] . . . [I]n terms of the cause of . . . cognitive functioning is one thing, and the ability to demonstrate a rational understanding of the facts and the ability to cooperate with counsel and make decisions is something else. That's what I was able to observe he had sufficient ability to do during our evaluation."

The foregoing constitutes substantial evidence the minor meets the constitutional and statutory test for competence to participate in delinquency proceedings. There is testimony: the minor had previously been the subject of delinquency proceedings; the minor identified the charges pending against him; he understood the concept of pleading guilty or not guilty; he knew had a right to plead guilty or not guilty; he understood the effect of a guilty finding was that he would be removed from his family for a period of years which was the worst outcome; he understood that probation would be a preferable outcome rather than being committed to the juvenile justice division; he comprehended the role of the juvenile court judge, defense counsel and the prosecutor; he understood the need to be candid with defense counsel; he understood the plea bargaining process; the minor could work with his attorney so long as she was patient in explaining matters to him and listening to his concerns; he could engage in concrete thinking; and some minors could not engage in even concrete thinking. In the opinion of Dr. Reba-Harrelson, the minor was competent and could rationally cooperate with defense counsel. No doubt, there was evidence which indicated the minor was not competent to participate in delinquency proceedings. However, we are prohibited from reweighing the evidence as the minor would have us do. (*People v. Marshall*, *supra*, 15 Cal.4th at p. 31*; People v. Samuel*, *supra*, 29 Cal.3d at p. 505.)

In addition, there is no basis for concluding that the juvenile court misunderstood the law in a manner that prejudiced the minor. At the outset, it is presumed that the juvenile court knew and properly applied the law including issues related to the burden of proof. (Evid. Code, § 664; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913-914.) As will be noted, the juvenile court applied an incorrect burden of proof which benefited him in derogation of the rights of the prosecution. In any event, the juvenile court found the minor understood: the participants within the court process; the concept of plea bargaining; the advisability of entering into a plea bargain; the consequences of the petition being found true; and the consequences of being removed from the community and his family. The juvenile court noted that the minor had previously been involved in

the delinquency process, has the ability to assist his counsel and participate in his defense. The juvenile court erroneously believed that the prosecution had the burden of proving competence. Despite that misunderstanding, the juvenile court found that the prosecution had met what it incorrectly believed was the prosecutor's burden to prove competency.

The minor argues that the juvenile court found he "could be assisted to be" competent by slowing down proceedings. The Attorney General argues that no such finding was ever made. We agree with the Attorney General. The minor has failed to sustain his burden of showing that the juvenile court applied a competency standard which prejudiced him.

The wardship order is affirmed.

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TURNER, P. J.

I concur:

KRIEGLER, J.

MOSK, J., Dissenting

I disagree with the majority's holding that the juvenile court applied the correct standard in determining Spencer's competence. Dr. Lauren Reba-Harrelson testified that 16-year-old Spencer had the understanding of court proceedings of a nine or 10 year old. Although she opined that Spencer was competent to stand trial, she explained that her opinion depended on "accommodations" being made, such as "his attorney being able to assist him in a relatively simplistic manner, of using slow and deliberate speech, simple language. They obviously know each know [*sic*] so he has the ability to sort of nudge and say, 'Explain this to me,' or she could sort of check in with that [*sic*] him would be sufficient to allow him to assist in his defense I believe."

Defense counsel asked Dr. Reba-Harrelson, "You don't know how these accommodations would need to be made in order for [Spencer] to be able to understand his trial process as it's happening?" Dr. Reba-Harrelson responded, "I mean, I know to the best degree I could know or one could know without actually being in the court setting with him, you know, by trial and error."

Defense counsel asked Dr. Reba-Harrelson, if Spencer "were made to stand trial, do you think he could process and understand, for instance, what a witness was testifying to on the stand in real-time as the information is being presented?" The doctor responded, "Probably not. It really depends on whose [*sic*] speaking and what's being said. I don't feel comfortable making a blanket statement about that."

"It is well established that the criminal trial of an incompetent defendant violates the due process clause of the state and federal Constitutions. (*Medina v. California* (1992) 505 U.S. 437, 453 [120 L.Ed.2d 353, 368, 112 S.Ct. 2572, 2581].) Like an adult defendant, a minor has a right to a competency hearing in juvenile delinquency proceedings. (*James H. v. Superior Court* (1978) 77 Cal.App.3d 169, 174-175 [143 Cal.Rptr. 398].) The standard applied in adult criminal proceedings is also applied in juvenile delinquency proceedings, namely, whether the accused '"'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against

him.’”’ (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847, 852, 857 [58 Cal.Rptr.3d 746].)” (*In re Ricky S.* (2008) 166 Cal.App.4th 232, 234; Welf. & Inst. Code, § 709, subd. (a)[1].) A defendant in a criminal proceeding bears the burden of proving incompetence by a preponderance of the evidence. (Pen. Code, § 1369, subd. (f); *People v. Ary* (2011) 51 Cal.4th 510, 518.)

In *In re Ricky S., supra,* 166 Cal.App.4th 232, a doctor opined that a minor was not competent to stand trial. At the competency hearing, counsel for the minor asked the doctor whether the minor could become competent with “assistance of a therapeutic nature.” (*Id.* at p. 235.) The doctor said it was possible, but was unable to estimate the length of such therapy. (*Ibid.*) The juvenile court asked the doctor if a lawyer could provide the same assistance “if the lawyer or a judge were to ‘continually explain things to him.’” (*Ibid.*) The doctor responded, “‘It’s possible if the lawyer would take the time and spend time with the individual. It’s possible.’” (*Ibid.*) The juvenile court found the minor competent, finding that “‘working with him over time I think will lead him to be able to at least understand on a basic level what he’s been accused of and whether he should admit to it or not.’” (*Id.* at p. 236.)

Vacating the juvenile court’s competency finding, the Court of Appeal held that the juvenile court’s finding that the minor could be worked with to enable him to understand the charges against him and how he should respond to those charges flew “directly in the face of the second prong of the applicable standard, namely, that the minor ‘presently’ has a reasonable, factual understanding of the proceedings. In other words, the question is not whether the minor can become competent in the future with assistance; rather the question is whether he is presently competent, which the court impliedly found he was not.” (*In re Ricky S., supra,* 166 Cal.App.4th at p. 236.)

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[1] Welfare and Institutions Code section 709, subdivision (a) provides, in relevant part, “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.”

In this case, the issue is whether Spencer had a "present ability" to participate in his defense when he was unable to understand the adjudication hearing proceedings without "accommodations" that included slowing down the proceedings.[2] Dr. Hope Goldberg unequivocally opined that Spencer was not competent to stand trial. Dr. Reba-Harrelson's opinion that Spencer was competent depended on there being "accommodations" in place in the adjudication hearing that enabled Spencer to understand what was taking place. Other than slowing the proceedings and allowing Spencer to speak with defense counsel as necessary, Dr. Reba-Harrelson could not specify the accommodations Spencer would need and suggested they would have to be determined based on "trial and error." Implicitly and necessarily, the juvenile court resolved Dr. Goldberg's and Dr. Reba-Harrelson's opposing competency opinions in Dr. Reba-Harrelson's favor. In doing so, however, it had to rely on Dr. Reba-Harrelson's caveat that accommodations would have to be in place to make Spencer competent to stand trial. The need for such accommodations violated Welfare and Institutions Code section 709, subdivision (a)'s mandate that to be competent to proceed a minor must have a "present ability" to consult with counsel and to assist in preparing his defense and have a rational and factual understanding of the proceedings against him. (*In re Ricky S., supra,* 166 Cal.App.4th at pp. 236.) Thus, there was not substantial evidence that Spencer was presently competent to stand trial, and the juvenile court erred in finding Spencer competent. Accordingly, I would reverse the juvenile court's order finding Spencer competent and vacate the adjudication order.

MOSK, J.

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[2] Although Spencer discusses the inadequacy of the accommodations provided at the adjudication hearing and argues that the attempted accommodation of his intellectual deficiencies demonstrated that he was not competent to stand trial, he does not contend on appeal that the inadequacy of the accommodations constitutes reversible error.