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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

R.P.,

Defendant and Appellant.

2d Crim. No. B276467  
(Super. Ct. No. TJ22179)  
(Los Angeles County)

Minor R.P. appeals a judgment of the juvenile court declaring him a ward of the court, removing him from the custody of his mother, and ordering him suitably placed. (Welf. & Inst. Code, § 602.)<sup>1</sup> We remand for the court to set the maximum period of confinement and to calculate R.P.'s predisposition custody credit, but otherwise affirm. (*In re Edward B.* (2017) 10 Cal.App.5th 1228, 1238.)

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless stated otherwise.

### *FACTUAL AND PROCEDURAL HISTORY*

On June 22, 2015, the Los Angeles County District Attorney filed a petition pursuant to section 602 alleging that 13-year-old R.P. committed second degree robbery, and attempted second degree robbery. (Pen. Code, §§ 212.5, subd. (c), 664, 213, subd. (b).) The criminal offenses arose from R.P.'s robbery of \$700 from a Los Angeles street vendor at gunpoint, and two days later his attempted robbery of the same vendor at gunpoint. During the first incident, R.P. was accompanied by another minor; during the second incident, a police helicopter observed R.P. enter a black automobile after the vendor ran from R.P. and called for police assistance. Police officers stopped the automobile and R.P. was taken into custody. The street vendor later identified R.P. during a field identification.

On August 26, 2015, the district attorney filed a second petition pursuant to section 602 alleging that R.P. committed assault with a deadly weapon, and misdemeanor battery. (Pen. Code, §§ 245, subd. (a)(1), 242.) The criminal offenses arose from R.P.'s assault on his anger-management therapist as well as on a minor whom R.P. choked. The therapist disarmed R.P. when he made stabbing motions toward him with a knife.

At the request of defense counsel, the juvenile court declared a doubt regarding R.P.'s competency. The proceedings were suspended and the court appointed Doctor Haig Kojian to evaluate R.P. On May 16 and 17, 2016, the court conducted a competency hearing at which expert witnesses for each party testified.

*Competency Hearing Testimony and Evidence*

*Nancy Pina*

Nancy Pina, a certified and licensed speech language pathologist, interviewed R.P. after two unsuccessful attempts. During the third interview, R.P. agreed to the evaluation because the defense social worker was present.

Pina administered the Comprehensive Assessments of Spoken Language subtests to R.P. to assess his abilities to understand others and to express himself. R.P.'s testing age-related results ranged from a low score of six years six months for a test assessing his ability to integrate inferences from prior knowledge, to 10 years two months for a test assessing meaning from context. Other testing results fell in between the two age-related scores. Pina opined that R.P.'s language skills equated to an average student in the third grade who was seven or eight years old, and that R.P. tested in the first percentile for his actual age of 13 years. She also stated that at times R.P.'s language and comprehension improved when a question was repeated.

*Doctor Armando de Armas*

Psychologist Armando de Armas, a psychologist serving on the juvenile court competency and psychological expert witness panels, interviewed R.P. on September 2, 2015, and performed an intelligence quotient (IQ) assessment consisting of multiple subtests. De Armas opined that R.P.'s full IQ is 65, his verbal IQ is 59, and his nonverbal IQ is 76. De Armas opined that it is likely that R.P. has a language disorder. In the similarity subsection of the IQ test, R.P.'s age-related score is six years two months, reflecting R.P.'s inability to engage in higher order thinking. R.P.'s age-related score for the working memory index is 76, placing his age-related score at nine years six months.

That low score, de Armas opined, would make it difficult for R.P. to participate in courtroom proceedings and to assist his attorney.

De Armas met with R.P. in a second interview approximately six months later to assess his competency. During the interview, de Armas administered the Juvenile Adjudicative Competency Interview (JACI). De Armas considered that R.P. had previous diagnoses of attention deficit hyperactivity disorder, bipolar disorder, and developmental disability. De Armas concluded that R.P. lacked the appropriate level of factual understanding of the charges against him; R.P. stated that he was being prosecuted for violating house arrest and did not mention the robbery, assault, or battery charges. R.P. did not otherwise discuss the current charges with de Armas and appeared to not understand the seriousness of the charged crimes.

De Armas also concluded that R.P. did not have an understanding of the nature and purpose of a trial, a plea bargain, or the consequences of a plea bargain. In his written report, de Armas stated that after receiving an explanation of a trial, R.P. stated this understanding: "[T]he prosecutor tells the judge, to tell him I committed the crime and the lawyer comes in and helps you fight and tells the judge you didn't do it. The judge sees if you['re] guilty or not guilty." In discussing plea bargains with R.P., he stated that a plea bargain allowed the prosecutor to "trick" a person and "put [him] in jail."

De Armas concluded that R.P. did not understand how he could assist his attorney. Although R.P. understood his attorney's role and that of the prosecutor, he could not explain that the trial judge reviewed evidence before making a decision.

R.P. stated that the judge decided the matter "just by looking at a person."

De Armas opined that R.P. was incompetent to stand trial because he could not retain information to show that he understood the purpose of a trial. De Armas also concluded that R.P.'s reasoning ability was limited and he did not appreciate his role in assisting counsel. De Armas believed that "possibly with some training" that R.P. "may be able to make sense out of things." The reports describing de Armas's two interviews with R.P. and de Armas's conclusions were received into evidence at the competency hearing.

*Doctor Haig Kojian*

Kojian, a forensic psychologist, had performed competency evaluations for approximately 22 years at Patton State Hospital, among other institutions, and was now serving as a court-appointed expert witness. He interviewed R.P. in October 2015, reviewed unspecified records, and prepared a report that was admitted into evidence. In assessing R.P., Kojian considered the standards of section 709. Kojian also used the JACI guidelines during the interview.

R.P. responded to questions regarding his family history and mental health background (commitments and medications) without difficulty. R.P. also answered that robbery was "stealing" and he described one of his current charges as "battery" because he hit someone. R.P. stated that "assault with a deadly weapon" was a more serious charge than a battery.

R.P. indicated that a misdemeanor was not as serious as a felony and that it was more serious to be in trouble with the law than with his mother or school principal because "[representatives] of the law can take you into custody." R.P.

answered a question regarding a judge's role as deciding if a person is guilty. R.P. also stated that the judge would listen to the person's side and then make a decision about who is telling the truth. Following an explanation of his right against self-incrimination in "middle school" language, R.P. understood that the charges had to be proven against him.

Following another explanation from Kojian, R.P. understood the difference between a guilty plea and a not guilty plea – a guilty plea meant that a person "did it" and not guilty meant the person did not. R.P. knew the courtroom was in Compton and the judge was a woman. He also understood that if found guilty, he might be taken into custody. R.P. stated that his attorney's job was "to get [him] home." He indicated that he would give her information concerning the charges because "[s]he needs to know so that she can defend him." R.P. knew the other attorney in the courtroom was the "D.A." whose job was to "go against him." R.P. described the courtroom bailiff as the "sheriff" who could remove him from the courtroom if he became disruptive.

In sum, Kojian opined that R.P. had the present ability to consult with his attorney to prepare his defense, and that he had a rational and factual understanding of the charges against him. Kojian also stated that "[intellectual] [i]mpairment does not de facto mean incompetence."

Following the hearing and argument by the parties, the juvenile court found R.P. competent and it reinstated the proceedings. In ruling, the trial judge commented that neither minors nor adults have a full understanding of the legal language and processes used in court, but that was not the standard to assess competency. The judge also explained that R.P. related

some of his mental health history to de Armas, including denials of sleep or appetite disturbances, symptoms of depression, or suicide ideation. In addition, R.P. related his family social history and that he had not been abused or molested. The judge stated that she had observed R.P. during the proceedings and he appeared to understand Kojian's testimony – he "was paying a lot of attention" during the testimony. In conclusion, the judge stated: "[R.P.] does have a sufficient present ability to consult with counsel and assist in preparing his defense with a reasonable degree of rational[] understanding. And that he does have a rational[] as well as factual understanding of the nature of the charges or proceedings against him."

*Plea and Disposition*

On July 5, 2015, pursuant to a plea agreement, R.P. admitted the second degree robbery count in the first petition and the misdemeanor assault with a deadly weapon count in the second petition. The remaining counts in the two petitions were dismissed. Police reports describing the criminal offenses were accepted into evidence to establish the factual basis for the admissions. The juvenile court found R.P.'s admissions knowing and voluntary, declared him a ward of the court, removed him from his parent's custody, and ordered him suitably placed by the probation officer.<sup>2</sup>

R.P. appeals and contends: 1) insufficient evidence supports the juvenile court's finding of competency; 2) the

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<sup>2</sup> The plea colloquy was extensive to ensure that R.P. understood the nature of the proceeding and the waiver of his constitutional rights. Of note, R.P. stated during the colloquy that he was admitting two counts and that the other counts would be dismissed: "[I]t's good. . . . I have two cases, right? . . . If I admit, it's like you can get one off."

juvenile court erred by not setting a maximum period of confinement; and 3) the juvenile court erred by not awarding predisposition credits.

## *DISCUSSION*

### *I.*

R.P. argues that the juvenile court erred by rejecting de Armas's opinion of incompetency because his opinion established by a preponderance of the evidence that R.P. lacked a rational understanding of the judicial process. R.P. asserts that flaws in Kojian's analysis support an appellate determination that the court could not have reasonably rejected the evidence that he was incompetent to continue proceedings. (*In re R.V.* (2015) 61 Cal.4th 181, 201.) Thus, R.P. points out that Kojian interviewed him when he was 13 years 8 months old and a presumption of competency does not apply to minors under the age of 14 years; he did not test his retention of knowledge according to JACI guidelines; he did not test intelligence quotients, review school records, or review a prior psychological assessment; and he did not communicate with R.P.'s mother. R.P. also asserts that the court's inferences drawn from his courtroom demeanor are speculative. He adds that the court did not consider his mental disorders or developmental disabilities. (§ 709, subd. (b).) In sum, R.P. argues that the court failed to properly weigh de Armas's opinion.<sup>3</sup>

Section 709, subdivision (a) provides that a minor is deemed incompetent "if he or she lacks sufficient present ability

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<sup>3</sup> We grant R.P.'s request for judicial notice of the "Amended Competency to Stand Trial Protocol" of the Los Angeles County Juvenile Court, dated September 30, 2010. (Evid. Code, §§ 452, subd. (h), 459.)



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." This language is consistent with the standard adopted in *Dusky v. United States* (1960) 362 U.S. 402, 402. (*In re R.V., supra*, 61 Cal.4th 181, 188.)

Generally, the law presumes a minor is competent, and the party asserting the minor's incompetency bears the burden of proving incompetency. (Pen. Code, § 26; *In re R.V., supra*, 61 Cal.4th 181, 193 ["most straightforward reading" of section 709 is that minor presumed competent and party asserting incompetency bears burden of proof].) We apply a deferential substantial evidence test to review a finding of competency. (*Id.* at p. 198.) The reviewing court evaluating a claim of insufficient evidence to support a determination of competency "defers to the juvenile court and therefore views the record in the light most favorable to the juvenile court's determination." (*Id.* at p. 200.) The inquiry on appeal concerns "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; *id.* at p. 211 [juvenile court could not reasonably reject sole expert witness's well-supported and unequivocal opinion that minor was incompetent to proceed to trial].)

Sufficient evidence supports the juvenile court's finding of competency. Here the court faced two conflicting expert opinions, each opinion from an experienced forensic psychologist serving on the court's juvenile competency panel. The court added its observations of R.P.'s courtroom demeanor during his many courtroom appearances to the competency evidence. "[A] juvenile court's determination regarding competency, even if made in the

absence of an evidentiary hearing, may be informed by the court's own observations of the minor's conduct in the courtroom generally, a vantage point deserving of deference on appeal." (*In re R.V.*, *supra*, 61 Cal.4th 181, 199.)

R.P. communicated family social history to each evaluator, and explained that he was in the eighth grade. R.P. accurately conveyed medical history to Kojian, but not de Armas. The juvenile court could reasonably infer that R.P. had a better rapport with Kojian and so, answered his questions accurately. Each evaluator applied the JACI guidelines, but Kojian explained that the guidelines are not the test of competency, but "guidelines that are established . . . to help clinicians . . . assist in their interview of individuals." Kojian also reviewed unspecified records concerning R.P.

Kojian's testimony regarding a presumption of competence arose in response to a general question by defense counsel. Kojian did not base his opinion of R.P.'s competence upon a presumption of competence. (*In re R.V.*, *supra*, 61 Cal.4th 181, 197-198 [presumption of competence arises only after a minor under 14 years of age is proved to have capacity pursuant to Penal Code section 26].)

The juvenile court heard the testimony of the three expert witnesses and received the written reports of the psychologists. It also observed R.P. during numerous courtroom proceedings. The court properly considered and weighed the opinions of the expert witnesses and found witness Kojian more persuasive.

## II.

R.P. contends that the juvenile court erred by not setting a maximum term of physical confinement. The Attorney General

concedes and requests that the matter be remanded for that purpose.

When a minor is removed from parental custody, the juvenile court must specify in the court's minutes during the disposition hearing, the maximum period of physical confinement that the minor may be held. (§ 726, subd. (d)(1); Cal. Rules of Court, rule 5.795(b); *In re Eddie L.* (2009) 175 Cal.App.4th 809, 812 ["The statute requires the juvenile court to set the maximum term for such a minor by taking the upper term for the offense and adding a term for any enhancements that have been pled and proved"].) We will remand the matter with directions to remedy the oversight.

### *III.*

R.P. also asserts that the juvenile court erred by not calculating his predisposition custody credit. (Pen. Code, § 2900.5, subd. (a).) The Attorney General concedes. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067-1068.) Accordingly, we will also remand the matter for calculation of predisposition custody credit.

We remand the matter to the juvenile court with directions to set the maximum period of confinement and to calculate the predisposition custody credit. The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Donna Quigley Groman, Judge

Superior Court County of Los Angeles

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Mary Bernstein, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant  
Attorney General, Margaret E. Maxwell, Supervising Deputy  
Attorney General, Douglas L. Wilson, Deputy Attorney General,  
for Plaintiff and Respondent.