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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.G., a Person Coming Under the Juvenile Court Law.	B275431 (Los Angeles County Super. Ct. No. TJ21976)
THE PEOPLE, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Catherine J. Pratt and Arthur M. Lew, Judges. Conditionally reversed and remanded.

Tonja R. Torres, 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, Stephanie A. Miyoshi and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant C.G. (Minor), born in May 2001, seeks reversal of a juvenile court's true findings and disposition order in connection with a Welfare and Institutions Code section 602 petition alleging he possessed a knife on school grounds and resisted a peace officer. We consider (1) whether the prosecution and the juvenile court complied with the requirements of a statutory deferred entry of judgment program, and (2) whether the court erred in finding Minor competent and then declining to hold a second competency hearing roughly a month later when Minor's attorney again expressed a doubt about Minor's competence.

I. BACKGROUND

A. The Offense Conduct and Initial Juvenile Court Proceedings

On February 5, 2015, Officer Trujillo, a police officer working at a Los Angeles-area middle school, was investigating a report that someone had set off fireworks on campus the previous day. Believing Minor may have been involved, Officer Trujillo interviewed Minor. At the outset of that interview, Officer Trujillo asked Minor if he "had anything in his possession that he should not have." Minor reached into his pocket and pulled out a locking-blade knife, which he told Officer Trujillo he found on the school's physical education field.

After Minor produced the knife and handed it to Officer Trujillo, the officer told Minor to turn around and put his hands behind his back. Minor complied, but as soon as Officer Trujillo grabbed Minor's hands and attempted to handcuff him, Minor swore, protested he didn't do anything, and ran from Officer Trujillo. Officer Trujillo chased Minor and tackled him from

behind. Then, with assistance from his partner, Officer Trujillo overcame Minor's resistance and placed him in handcuffs.

After Minor was handcuffed, he became more compliant. Officer Trujillo's partner advised Minor of his *Miranda* rights, and after Minor indicated he understood his rights and wanted to talk about the incident, the officers interviewed Minor. He said he knew it was wrong to carry a knife on school grounds, and he stated it would have been right for him to give the knife to a school staff member as soon as he found it. Minor also acknowledged he was aware that if he brought a weapon to school he could be "arrested and do time."

Just over a month after this incident, in mid-March 2015, a deputy district attorney in the Los Angeles County District Attorney's office dated and signed a Judicial Council JV-750 form entitled "Determination of Eligibility Deferred Entry of Judgment—Juvenile." The portion of the form that calls for attorney information and the street address of the superior court was left blank, but Minor's name appears in the box on the form pertaining to the "case name"; a "case number" was also included.

The form includes a pre-printed statement indicating the deputy district attorney had reviewed case materials regarding "the above referenced youth and has determined the following (check all applicable boxes)." The deputy district attorney checked boxes indicating Minor was alleged to have committed at least one felony offense; there was no allegation that Minor committed an offense described in Welfare and Institutions Code section 707, subdivision (b); Minor had never been declared a ward of the court based on a finding he had committed a felony; and Minor had never been on formal or informal probation.

Other boxes were left blank, including a box indicating Minor "will be 14 years or older at the time of the hearing."

Further down on the JV-750 form, there are two boxes to indicate whether "the youth" is eligible or ineligible for deferred entry of judgment; the deputy district attorney checked the box indicating Minor was eligible. Just below that, there is a box accompanied by the following notation: "Citation and Written Notification for Deferred Entry of Judgment—Juvenile, Form JV-751, is attached." The deputy district attorney left that box blank.

The appellate record includes a JV-751 form ("Citation and Written Notification for Deferred Entry of Judgment—Juvenile"). Like the eligibility form, boxes used to input attorney information and the street address of the superior court were left blank on the JV-751 form. In the "citation" portion of the form, Minor's name was typed in the "to" field, and the form in pre-printed text states the district attorney "has determined that this youth is eligible to be considered by the Juvenile Court for a Deferred Entry of Judgment on the offense or offenses alleged in the petition filed on [the remainder of the sentence was blank; no date was typed]." The form includes a pre-printed box for use in ordering the "youth" to appear at a court hearing to "consider whether or not to grant a Deferred Entry of [J]udgment." That box was left blank too (no hearing date or court information was included).[1]

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[1] The second page of the JV-751 contains a "WRITTEN NOTIFICATION" section that includes various pre-printed advisements concerning the nature of the deferred entry of judgment program.

On April 3, 2015, the same deputy district attorney who completed the JV-750 eligibility form signed and filed a Welfare and Institutions Code section 602 petition charging Minor with a felony violation of Penal Code section 626.10, subdivision (a)(1), possession of a weapon on school grounds, and a misdemeanor violation of Penal Code section 148, subdivision (a)(1), resisting, obstructing, or delaying a peace officer.[2] Minor was arraigned on the petition on April 8, 2015, and entered a denial of the charges. There was no discussion of deferred entry of judgment, or any reference to JV-750 and JV-751 forms, either before or after Minor's attorney entered Minor's denial. So far as the record reveals, no hearing was ever held to consider deferred entry of judgment for Minor.

B. Proceedings Concerning Minor's Competency

At a trial-setting conference in August 2015, Minor's attorney informed the juvenile court she "question[ed] whether [Minor] is able to understand the proceedings; so we need to have a competency expert appointed." The court suspended the wardship proceedings, appointed a psychologist to evaluate Minor's competence, and directed defense counsel to forward to the appointed evaluator any documents she wanted him to consider.

By this point, another forensic psychologist, Dr. Edward Fischer, had already performed an examination of Minor's mental

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[2] The petition bears a court stamp memorializing the filing date. No similar stamp appears on the JV-750 and JV-751 forms that appear in the appellate record after the Welfare and Institutions Code section 602 petition.

condition earlier in June 2015. The forensic psychologist appointed by the court at the August 31, 2015, trial-setting conference, Dr. Nadim Karim, was provided with a copy of Dr. Fischer's report and other materials, and Dr. Karim issued his report in late October 2015. The court held a competency hearing on April 4, 2016, and the only evidence introduced was the two forensic psychologist reports: Dr. Fischer's report, which concluded Minor was incompetent, and Dr. Karim's report, which concluded Minor was competent.

1. Dr. Fischer's report

Over the course of four hours in June 2015, Dr. Fischer interviewed Minor and administered psychological tests. The results of one of the tests were inconclusive because Minor achieved the highest possible score on one portion, but made several errors on the second portion, which Dr. Fischer noted was unusual. Minor's overall score on another of the tests (an intelligence scale test for children) fell in the third percentile, meaning three people out of a hundred function at that low of a level. Minor's performance on the third and final test indicated he was performing well below grade-level, which Dr. Fischer believed was likely due to Minor's "delayed acquisition of the English language," poor school attendance, and failure to pay attention in class.

During the interview portion of the evaluation, Dr. Fischer inquired into various aspects of Minor's history, including social, educational, legal, medical, and psychiatric issues. Dr. Fischer noted Minor "has been diagnosed with Posttraumatic Stress Disorder, Adjustment Disorder with Depressive Symptoms, Oppositional Defiant Disorder, representing an anxiety-based

disorder, a depression based disorder, and [a] childhood diagnosis of Paranoia." Dr. Fischer, however, found no "compelling evidence" Minor suffered from an organic brain dysfunction that would permit a diagnosis of mental retardation or Attention Deficit Hyperactivity Disorder.

Dr. Fischer described Minor's mental status at the time of the evaluation as "cooperative and polite when he was not regressed, angry, or crying." Dr. Fischer believed there were no indications that would justify medicating Minor, but Dr. Fischer believed Minor "has issues in the areas of abandonment, depression, and substance abuse with marijuana." In particular, Dr. Fisher believed Minor was "quite immature and his emotional control decompensates easily."

Dr. Fischer concluded Minor was "not presently [c]ompetent to proceed . . . ." Specifically, Dr. Fischer opined "[M]inor is not presently able to adequately assist counsel or cooperate in a rational manner with counsel in presenting a defense because he is very immature or developmentally delayed. It is difficult to put a name on it, but he is not a mature, well integrated personality that functions on the same level as that of his peers. The diagnosis of Autistic Spectrum Disorder from DSM 5 is a possibility . . . ." Although Dr. Fischer concluded Minor was not "presently" competent, he acknowledged the "base rate for acquiring [c]ompetency is between the ages of 13 and 15, with the brightest and least emotionally disturbed or developmentally impaired minors attaining [c]ompetency first and at the lowest ages." Dr. Fischer believed Minor "will most likely attain [c]ompetency in the next few years."

2. Dr. Karim's report

Dr. Karim issued his report on Minor's competence about four months later, in October 2015. In preparing his report, Dr. Karim reviewed Dr. Fischer's earlier evaluation and other materials; he also conducted a clinical interview of Minor according to the Juvenile Adjudicative Competence Interview (JACI) standard.

In his description of Minor's mental status, Dr. Karim reported Minor was "oriented to time, place, and situation" and generally cooperative, but he "became easily frustrated at times." Minor's "thought process was organized and his responses were rational," though his mood "vacillated from angry to depressed and then anxious." Dr. Karim observed that Minor "presented as somewhat immature, although he was able to maintain rational dialogue . . . and respond to the questions posed to him in a linear manner."

During the JACI portion of the interview, Dr. Karim asked Minor questions concerning the nature of the charged offense and juvenile court proceedings. With prompting, Minor was able to describe the charged offense conduct and to differentiate between a felony and a misdemeanor. When asked if he thought his case was serious, Minor replied, "'Yes, because I have a felony case for having the knife."

Though Minor was initially unable to provide a full description of the purpose of a juvenile court trial, he did so after a "brief period of education" by Dr. Karim. Minor was able to explain the difference between the discipline he might receive at school or home and the "punishment" he might receive from the juvenile court. Minor was also able to explain the difference between pleading guilty and not guilty, to predict consequences

that could ensue if a juvenile judge found him guilty, and to describe the roles of a prosecutor, a defense lawyer, a probation officer, and a judge. Specifically, when asked about the role of his juvenile defense lawyer, Minor stated the lawyer's job was "'[t]o prove that the charges are not true and help me in court.'" Dr. Karim asked Minor what he would do if his defense lawyer asked him to discuss the facts of the case with her and he replied, "'It [*sic*] would talk to her so she can help me.'" Minor also recognized that being uncooperative with his lawyer "'would be a problem cause if I don't talk to her, she can't help me.'"

Dr. Karim concluded Minor was "competent to stand adjudication." Dr. Karim believed Minor did suffer from a mental disorder—specifically, Oppositional Defiant Disorder and Cannabis Dependence—and appeared to present with underlying depressive symptoms. But Dr. Karim did not believe Minor lacked sufficient present ability to consult with counsel and assist in preparing a defense due to a mental disorder, developmental disability, immaturity, or other condition. Dr. Karim opined Minor "presents as immature for his age (14)" but was "capable of assisting defense counsel with a reasonable degree of rational understanding if he chooses to do so," especially "given the statements that he made to arresting police officers . . . ."

Dr. Karim further observed Minor "was able to display both a factual and rational understanding of the nature of the charges and the proceedings against him." Dr. Karim explained Minor's mental health issues "do not preclude his ability to follow along during the fluid environment of a court proceeding and/or trial (although he will require breaks at times in order to discuss any complex legal language with his attorney given his need to receive education and due to his low frustration tolerance)."

3. The juvenile court's competency finding

At the competency hearing, after hearing argument from both sides and noting for the record it had considered both forensic psychologist reports, the juvenile court found Minor was competent to stand trial. The court emphasized Dr. Karim's evaluation was done more recently and Minor would be turning 15 years old in one month. In the court's view, the passage of time was significant because Minor "has continued to gain appreciation of everything around him" and it had "been a critical year [from the date charges were first filed], one that is critical in most adolescents as far as gaining understanding of what's going on around them." The court further reasoned: "I think that, ultimately . . . the information provided in Dr. Karim's report[ ] does support the fact that [Minor] is competent; although, there may be some challenges that he faces. The description in Dr. Karim's report indicates that he has a decent understanding of the difference between a felony and a misdemeanor; that he understands the role of the various persons in court including the respective lawyers, the judge, the probation officer; that he understands what his possible punishments are . . . ."

C. Adjudication, Including Defense Counsel's Renewed Expression of Doubt Concerning Minor's Competency

The juvenile court reinstated the proceedings on the Welfare and Institutions Code section 602 petition against Minor and the case proceeded to an adjudication hearing (with a substitute judge presiding) just over a month later on May 12, 2016. Officer Trujillo was the sole witness to testify.

There were no disruptions during the beginning of Officer Trujillo's testimony concerning his initial encounter with Minor and Minor's disclosure of the knife in his possession. When Officer Trujillo began relating his attempt to handcuff Minor and Minor's attempt to flee, however, Minor interjected by swearing at Officer Trujillo, accusing the officer of lying, stating he did not "like cops," and directing a racial epithet at the officer. At defense counsel's request, the court took a recess immediately after Minor's outburst.

The court reconvened in Minor's absence but with the attorneys for both sides present. Minor's counsel told the court she had been talking with Minor since the juvenile court's previous competency finding and still had "concerns as to his competency." In counsel's view, her client's behavior in court was consistent with Dr. Fischer's concern that he would emotionally "decompensate"; counsel asked the juvenile court to "reinstate the competency protocol" and appoint another doctor to re-evaluate Minor. The prosecutor contended Minor's outburst was a product of "an attitude problem" and "anger control issues," which "doesn't make him incompetent."

The juvenile court stated the defense request to reinstitute competency proceedings was "denied at this time." The court observed Minor had been found competent "just about a month ago" (by the judge regularly assigned to the proceedings) and the court hadn't "seen anything that makes me think [Minor's] incompetent."

The juvenile court then resumed the proceedings with Minor present. Minor's attorney stated she "want[ed] to put on the record that [Minor] is trying his best to be here. But due to the issue being discussed, he is doing his best to cooperate at this

point. He is currently at counsel table with his head down." The juvenile court confirmed Minor was at counsel table with his arms folded on the table and his head on his arms. Direct and cross-examination of Officer Trujillo then proceeded with no further interruptions.[3]

At the conclusion of testimony and argument, the juvenile court found the petition's allegations true beyond a reasonable doubt, with count one (possession of the knife) being a felony and count two (resisting an officer) being a misdemeanor. At a later dispositional hearing, the court declared Minor a ward of the court and ordered him home on probation under various conditions.

II. DISCUSSION

We hold the record sufficiently supports the juvenile court's finding that Minor was competent to stand trial. Minor correctly acknowledges our review is for substantial evidence and a "court faced with conflicting expert opinions regarding a defendant's competency must assess the weight and persuasiveness of those opinions[ ] and . . . may credit the one it finds more persuasive." We see no basis to conclude, as Minor urges, that "the weight and character of the evidence below was such that the juvenile court could not reasonably reject the evidence of incompetency." We

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[3] Just days later, the juvenile court adjudicated another pending Welfare and Institutions Code section 602 petition against Minor. Defense counsel again raised a doubt about Minor's competence at the outset of that hearing. The court (with the regularly assigned judge presiding) determined no further competency proceedings were required and the hearing proceeded without interruption by Minor.

further hold the juvenile court did not err by declining to order a second competency evaluation after Minor's outburst at the adjudication hearing. The court had determined Minor was competent about a month before, and the court reasonably found there was no evidence of a substantial change of circumstances between the prior competency finding and the adjudication hearing that would warrant restarting competency proceedings.

Although we are therefore of the view that there is no basis for an outright reversal of the true findings on the petition, we do conditionally reverse the judgment and remand for further proceedings in connection with the issue of Minor's eligibility to participate in the statutorily established deferred entry of judgment (DEJ) program. There is insufficient evidence to establish Minor and his mother were advised of his apparent eligibility for the program and, so far as the record reveals, the juvenile court never held a hearing to consider Minor's suitability for DEJ even though the prosecution deemed him eligible. We will order the juvenile court to undertake such consideration after proper notice on remand. If Minor is found suitable for DEJ, the challenged orders will remain set aside and the juvenile court shall proceed accordingly; if not, the true findings and disposition order will be reinstated.

A. Substantial Evidence Supports the Juvenile Court's Competency Finding

Like an adult facing criminal charges, a minor who is the subject of a Welfare and Institutions Code section 602 petition has a due process right not to be tried while mentally incompetent. (*In re R.V.* (2015) 61 Cal.4th 181, 185 (*R.V.*).) Welfare and Institutions Code section 709 states "[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."[4] (Welf. & Inst. Code, § 709, subd. (a).)

A minor is presumed competent and bears the burden of proving incompetency by a preponderance of the evidence. (*R.V.*, *supra*, 61 Cal.4th at p. 196.) "Juvenile incompetency is not defined solely 'in terms of mental illness or disability,' but also encompasses developmental immaturity, because minors' brains are still developing. (*Timothy J. v. Superior Court* (2007) 150 Cal.App.4th 847[ ].)" (*In re John Z.* (2014) 223 Cal.App.4th 1046, 1053.) Thus, developmental immaturity can alone be a sufficient basis for a finding of incompetence. (*Ibid.*)

On appeal, a juvenile court competency finding is a "'mixed question[ ] of law and fact' to which a deferential [substantial evidence] standard of review is applied," the same standard that applies to an adult criminal defendant's challenge to the

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[4] In enacting Welfare and Institutions Code section 709, "the Legislature intended to more effectively safeguard a juvenile's due process right not to be subject to adjudication while incompetent." (*In re R.V.*, *supra*, 61 Cal. 4th at pp. 193-194.) Our Supreme Court has concluded nothing in the legislative history of Welfare and Institutions Code section 709 indicates the legislature "intended to alter juvenile courts' existing practice of relying on the adult competency provisions in other respects." (*Id.* at p. 194.) Accordingly, where there is no rule specific to juvenile competency proceedings, we apply principles developed in the adult competency context.

sufficiency of the evidence supporting a competency determination. (*R.V.*, *supra*, 61 Cal.4th at pp. 198-199.) An "appellate court evaluating a claim of insufficient evidence supporting 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 has been described as "whether the weight and character of the evidence of incompetency was such that the juvenile court could not reasonably reject it." (*Id.* at p. 201.)

The thrust of Minor's argument for reversal is not a challenge to his rational and factual understanding of the nature of the charges or proceedings against him—appropriately so, for the evidence that Minor had such an understanding (recounted *ante*) is strong. Rather, Minor argues the juvenile court unreasonably rejected Dr. Fischer's incompetence conclusion because Minor was too emotionally immature to assist in his defense. Substantial evidence supports the juvenile court's finding to the contrary.

Dr. Karim's report, of course, is the primary source of that evidence. He acknowledged Minor had been diagnosed with certain disorders and had received borderline low scores on some of the tests administered by Dr. Fischer. But with that in mind, Dr. Karim was still of the view that Minor had sufficient present ability to consult with counsel and assist in preparing a defense if he so chose. Dr. Karim specifically opined Minor did "present[ ] as immature for his age" but was nevertheless "capable of assisting defense counsel with a reasonable degree of rational understanding if he chooses to do so," especially "given the statements that he made to arresting police officers . . . ." Minor's statements during his interview with Dr. Karim concerning the

role of a defense attorney and the importance of communicating with his lawyer ("'if I don't talk to her, she can't help me'") supported Dr. Karim's conclusions in this respect.

The juvenile court reasonably credited Dr. Karim's determination that Minor would be able assist in his defense over the contrary opinion offered by Dr. Fischer. (*People v. Lawley* (2002) 27 Cal.4th 102, 132 ["[T]he trial court properly could assess the weight and persuasiveness of [two doctors' opposing conclusions concerning the defendant's competency] without having to resort to a third expert"] (*Lawley*); see also *People v. Pace* (1994) 27 Cal.App.4th 795, 798 [declining to reweigh evidence credited by the trier of fact].) As the juvenile court emphasized, Dr. Karim's report was prepared several months after Dr. Fischer's report, and Minor was nearly 15 years old at the time of the competency hearing in April 2016 (several months after Dr. Karim's report). Dr. Karim's more recent psychological opinion, combined with the passage of time and the court's own observations of Minor (*R.V.*, *supra*, 61 Cal.4th at p. 199), is ample evidence supporting the juvenile court's competency finding. Indeed, even Dr. Fischer's report lends some support to the court's finding under the circumstances—he noted the "base rate for acquiring [c]ompetency is between the ages of 13 and 15" and he expected Minor would "most likely" attain competency in the coming years.[5]

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[5] Minor complains Dr. Karim's competence finding was "equivocal" because it was subject to the caveat that Minor would need "frequent breaks in the trial so that defense counsel could explain to him what was happening given his cognitive deficits." That, however, is not precisely what Dr. Karim said. Rather, his report indicated Minor would "require breaks at times in order to

B. The Juvenile Court Was Not Obligated to Convene Another Competency Hearing Roughly One Month Later

The juvenile court made its competency finding on April 4, 2016. On May 12, 2016, the court denied the request by Minor's attorney, following her client's outburst during the adjudication hearing, to appoint another competency expert and hold another competency hearing. Reviewing courts give "great deference to a trial court's decision [regarding] whether to hold a competency hearing" (*People v. Marshall* (1997) 15 Cal.4th 1, 33 (*Marshall*)), and we assess the juvenile court's decision here with that same deference in mind.

Under Welfare and Institutions Code section 709, a juvenile court "shall" suspend proceedings for a competency hearing "[i]f the court finds substantial evidence raises a doubt as to the minor's competency." (Welf. & Inst. Code, § 709, subd. (a).) Evidence is substantial if it raises a reasonable doubt concerning

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discuss any complex legal language with his attorney given his . . . low frustration tolerance" and his "[b]orderline intellectual functioning."

Dr. Karim's observation does not make his finding equivocal, nor does it indicate Minor would need frequent breaks so his attorney could explain the proceedings. Rather, Dr. Karim noted Minor would need breaks if complex legal language were to arise, and at least during the testimonial portion of the adjudication hearing, we see no indication that complex legal language inhibited Minor's ability to assist his attorney. Minor did, of course, interrupt the proceedings when Officer Trujillo testified about his attempt to resist handcuffing, but the juvenile court took a break at that time. Defense counsel made no other request to take a break during the remainder of the proceedings.

the competence of the accused to stand trial. (*People v. Jones* (1991) 53 Cal.3d 1115, 1152.) "'"When a competency hearing has already been held and defendant has been found competent to stand trial, however, a trial court need not suspend proceedings to conduct a second competency hearing unless it 'is presented with a substantial change of circumstances or with new evidence' casting a serious doubt on the validity of that finding."' [Citation.] A . . . court may appropriately take into account its own observations in determining whether the defendant's mental state has significantly changed during the course of trial." (*Lawley*, *supra*, 27 Cal.4th at p. 136; accord, *Marshall*, *supra*, 15 Cal.4th at p. 33.)

So far as the record reveals, all that had really changed by the time of defense counsel's request to "reinstate the competency protocol" was Minor's outburst during the adjudication hearing. Precedent holds, however, that "more is required to raise a doubt of competence than the defendant's mere bizarre actions or statements, with little reference to his ability to assist in his own defense." (*People v. Medina* (1995) 11 Cal.4th 694, 735 (*Medina*).) That principle obtains here. It would be a different matter, perhaps, if Minor's outburst had come at the very outset of the proceedings or at a random moment, which would suggest trouble understanding the proceedings or heightened mental difficulty. But the fact that the outburst occurred when Officer Trujillo was delivering the only truly disputable portion of his testimony (that Minor resisted being handcuffed) suggests defendant was quite rationally aware of the proceedings and able to identify (albeit more broadly than appropriate) the portions of the officer's testimony that he believed his lawyer should contest.

Minor protests his attorney's renewed expression of a doubt concerning his competence is an additional factor that should have caused the court to again suspend the proceedings. Precedent again holds, however, a defense attorney's opinion concerning his or her client's competence does not *require* a court to hold a competency hearing. (See *People v. Sattiewhite* (2014) 59 Cal.4th 446, 465; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1111-1112.) Minor's counsel did not raise any new concerns that were not accounted for in the dueling forensic psychologist reports that served as the basis for the court's competence finding just over a month earlier. Plus, the juvenile court noted for the record that it had not seen anything that made it think Minor was incompetent, and far from being an indication that the court "substituted its own judgment" for a proper competency hearing, the court's observations were an appropriate consideration on which it could rely to conclude there was no substantial evidence of incompetence requiring such a hearing. (*R.V.*, *supra*, 61 Cal.4th at p. 199 ["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"]; *Lawley*, *supra*, 27 Cal.4th at p. 136.)

In light of the very recent finding at the competency hearing (which we have upheld) and the circumstances surrounding Minor's outburst, the adjudication hearing proceedings did not rise to the level of a "substantial change of circumstances" or "new evidence casting a serious doubt on the validity of [a prior competency] finding." (*Lawley*, *supra*, 27 Cal.4th at p. 136; cf. *Medina*, *supra*, 11 Cal.4th at p. 735 [the

defendant's unwillingness to assist in his defense did not necessarily bear on his competence to do so, or reflect a substantial change of circumstances or new evidence casting serious doubt on the validity of the prior finding of the defendant's competence].) The juvenile court reasonably determined there was no substantial evidence of incompetence and no further competency proceedings were warranted at the time.

C. Conditional Reversal Is Required to Permit Consideration of Minor's Suitability for Deferred Entry of Judgment

Although we have rejected Minor's competency-based arguments for reversal, he additionally argues we should remand the matter to the trial court because he did not receive proper notice of his eligibility for the statutory DEJ program and the juvenile court never assessed his suitability for DEJ. This contention has merit, and we will conditionally reverse the true findings on the petition and the associated disposition order, as other courts have done under similar circumstances.

"The DEJ provisions of [Welfare and Institutions Code] section 790 et seq. were enacted as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a [Welfare and Institutions Code] section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the

court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. ([Welf. & Inst. Code,] §§ 791, subd. (a)(3); 793, subd. (c).)" (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558.)

"Under [Welfare and Institutions Code] section 790, the prosecuting attorney is required to determine whether the minor is eligible for DEJ. Upon determining that a minor is eligible for DEJ, the prosecuting attorney 'shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this information available to the minor and his or her attorney.' ([Welf. & Inst. Code,] § 790, subd. (b).) The form designed for this purpose is a form JV-750, the completion of which requires the prosecutor to indicate findings as to the eligibility requirements by checking, or not checking, corresponding boxes. (Cal. Rules of Court, rule 5.800(b).)" (*In re C.W.* (2012) 208 Cal.App.4th 654, 659 (*C.W.*).)

If the prosecuting attorney finds a minor eligible for DEJ, form JV-751 is used to provide notice to the minor and his or her parent or guardian. (*C.W.*, *supra*, 208 Cal.App.4th at p. 659; see also Welf. & Inst. Code, § 791 [describing what the "prosecuting attorney's written notification to the minor" must include].) To that end, there is a box to check on the form JV-750 to indicate that the form JV-751 is attached. (*C.W.*, *supra*, at p. 659.) The California Rules of Court impose additional notice requirements, providing that "[t]he [juvenile] court must issue *Citation and Written Notification for Deferred Entry of Judgment—Juvenile* (form JV-751) to [a] child's custodial parent, guardian, or foster parent" and stating the form "must be personally served on the custodial adult at least 24 hours before the time set for the

appearance hearing." (Cal. Rules of Court, rule 5.800(c); *In re Trenton D.* (2015) 242 Cal.App.4th 1319, 1324 [finding no indication that a form JV-751 was "properly served" and noting rule 5.800(c)'s service requirements] (*Trenton D.)*.)

"While [a juvenile] court retains discretion to deny DEJ to an eligible minor, the duty of the prosecuting attorney to assess the eligibility of the minor for DEJ and furnish notice with the petition is mandatory, as is the duty of the juvenile court to either summarily grant DEJ or examine the record, conduct a hearing, and make 'the final determination regarding education, treatment, and rehabilitation . . . .'"[6] (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123.) "The court is not required to ultimately grant DEJ, but is required to at least follow specified procedures and exercise discretion to reach a final determination once the mandatory threshold eligibility determination is made." (*Ibid.*; accord, *In re D.L.* (2012) 206 Cal.App.4th 1240, 1243-1244 (*D.L.*).)

Here, the district attorney executed a JV-750 form determining Minor was eligible for DEJ. However, the prosecutor did not check the box on the JV-750 that is used to indicate the JV-751 notice form is attached. The form JV-751 included in the appellate record also does not contain a hearing date (or a filed stamp), and there is no evidence in the record

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[6] Although the decision to grant DEJ is a matter of discretion for the juvenile court, appellate courts have concluded that the procedures for considering DEJ reflect a "'strong preference for rehabilitation of first-time nonviolent juvenile offenders'" and limit the court's power to deny DEJ to an eligible minor who wants to participate only when the juvenile court finds "'the minor would not benefit from education, treatment and rehabilitation.'" (*In re A.I.* (2009) 176 Cal.App.4th 1426, 1434.)

demonstrating Minor was served with the JV-751 form or otherwise given notice of his eligibility for DEJ. DEJ was not discussed during Minor's appearance on April 8, 2015, when he denied the Petition's allegations, and there is no indication the juvenile court ever held a DEJ hearing.

The Attorney General argues the juvenile court was excused from holding a DEJ hearing because "it appears that [Minor] and his counsel were put on notice that the prosecuting attorney had made a determination that [Minor] was eligible" for DEJ but Minor entered a denial of the charges in the Welfare and Institutions Code section 602 petition. The Attorney General's theory for why "it appears" notice was given is the contention that the charging document and the JV-750 and 751 forms "appear consecutively in the clerk's transcript and were presumably all filed in court at the same time."

We agree a juvenile court is not required to determine whether a minor is suitable for DEJ when the minor is properly advised of his or her DEJ eligibility and fails to admit the charges or waive the adjudication hearing. A minor's failure to do so under those circumstances amounts to a rejection of the DEJ's expedited procedure. (*In re Usef S.* (2008) 160 Cal.App.4th 276, 283, 286; *In re Kenneth J.* (2008) 158 Cal.App.4th 973, 979-980.) But where, as here, there is insufficient evidence Minor was properly notified of his eligibility, the juvenile court is not excused from holding a DEJ hearing.

Division Four of this court considered a somewhat similar factual scenario in *C.W.*, *supra*, 208 Cal.App.4th 654. In that case, the prosecutor determined C.W. was eligible for DEJ and filed a form JV-750 with the charging petition. (*Id.* at p. 658.) The prosecutor did not, however, check the box to indicate a form

JV-751 was attached and "failed to otherwise notify C.W. of the detailed advisements required by [Welfare and Institutions Code] section 791, subdivision (a)(1)-(6)." (*Id.* at pp. 658, 660.) The Attorney General argued, relying on Evidence Code section 664, that the court should presume the prosecutor's official duty was regularly performed and notice was provided. (*Ibid.*) The court rejected this argument, noting, "no form JV-751 appears in the record, nor is there any evidence that the juvenile court served C.W. and her parent or guardian with such a form, as required by California Rules of Court, rule 5.800(c). Likewise, DEJ was never mentioned at any of the hearings. In our view, the existence of these omissions, in the context of an otherwise complete record, is sufficient to rebut the presumption that C.W. was properly advised of her DEJ eligibility either by the prosecutor or by the juvenile court." (*Id.* at pp. 660-661.)

Here, unlike in *C.W.*, the record on appeal does include a JV-751 form. The distinction does not compel a different result, however, because: (1) the box on the JV-750 eligibility form was not checked to indicate the JV-751 form was attached; (2) large portions of the JV-751 notice form were blank, including the portion used to provide information about a scheduled suitability hearing; and (3) there is no reliable evidence in the record from which we can infer Minor and his mother were actually served with a copy of the JV-751 form—much less at least 24 hours before a suitability hearing that was never held, as required by rule 5.800 of the California Rules of Court.[7] (*Trenton D.*, *supra*,

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[7] The Attorney General does not argue Minor's age at the time he denied the petition (13) made him ineligible notwithstanding the prosecutor's determination of eligibility. Such an argument would fail, in any event, because a minor need

242 Cal.App.4th at p. 1326 ["Where, as here, the prosecuting attorney filed a determination of eligibility but the accompanying citation failed to provide notice of a date when a suitability hearing would be conducted, we cannot conclude that the juvenile court met its obligations"]; *D.L.*, *supra*, 206 Cal.App.4th at p. 1242, 1244-1245 [reversing dispositional order where DEJ hearing never scheduled]; see *In re Spencer S.* (2009) 176 Cal.App.4th 1315, 1323 [minor had no opportunity to admit petition's allegations where prosecutor did not initiate procedure for court to consider DEJ, and thus DEJ claim was not foreclosed on appeal].)

The question remains as to what remedy is appropriate for the DEJ procedural deficiencies. In similar circumstances, at least two other courts have set aside juvenile court true findings and disposition orders and remanded to the juvenile court with directions to comply with the DEJ procedures and to reinstate the previously entered findings and orders only if the minor is found unsuitable for DEJ. (*Trenton D.*, *supra*, 242 Cal.App.4th at pp. 1327-1328; *D.L.*, *supra*, 206 Cal.App.4th at pp. 1245-1246.) That is the remedy we will order here.

DISPOSITION

The juvenile court's adjudication and disposition orders are conditionally reversed. The case is remanded to the juvenile court for further proceedings in compliance with Welfare and

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only be 14 *at the time of a hearing to consider suitability for DEJ*, no such hearing was ever set by the juvenile court, and Minor turned 14 on May 7, 2015, just about a month after the Welfare and Institutions Code section 602 petition was filed.

Institutions Code section 790 et seq. and California Rules of Court, rule 5.800. After proper notice under the statutes and rule, the juvenile court shall consider C.G.'s suitability for DEJ based on the record as it existed at the start of the May 12, 2016, adjudication hearing. If the juvenile court grants DEJ to minor C.G., the juvenile court shall enter an order stating its prior adjudication and disposition orders are vacated and the court shall thereafter proceed in accordance with Welfare and Institutions Code section 790 et seq. and California Rules of Court, rule 5.800. If C.G. is found unsuitable for DEJ the juvenile court shall reinstate the adjudication and disposition orders challenged in this appeal, subject to C.G.'s right to have the denial of DEJ reviewed on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

I concur:

RAPHAEL, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

KRIEGLER, Acting P.J., dissenting

I respectfully dissent. As the majority correctly holds, the appellate record is insufficient to demonstrate compliance with the procedures relating to deferred entry of judgment. (Welf. &. Inst. Code, § 790 et seq.) That conclusion, however, does not end the inquiry for purposes of appeal, because we are commanded by Article VI, section 13 of the California Constitution that "[n]o judgment shall be set aside . . . for any error as to a matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of resulted in a miscarriage of justice." Procedural errors in juvenile dependency and delinquency cases are subject to state-law harmless error analysis. (See *In re James F.* (2008) 42 Cal.4th 901, 915 ["We conclude that error in the procedure used to appoint a guardian ad litem for a parent in a dependency proceeding is trial error that is amenable to harmless error analysis rather than a structural defect requiring reversal of the juvenile court's orders without regard to prejudice. Determining prejudice in this context does not necessarily require 'a speculative inquiry into what might have occurred in an alternate universe.' (*United States v. Gonzalez–Lopez* [(2006)] 548 U.S. [140,] 150.)"]; *In re Jose R.* (1983) 148 Cal.App.3d 55, 61 [failure to make statutorily required finding that commitment to the Youth Authority would benefit minor deemed harmless error because it "is not reasonably probable that a result more

favorable to appellant would have been reached in the absence of such error"].)

Sadly, in this case, there is no possibility that C.G. would have been granted deferred entry of judgment. A review of the record shows that C.G. faces a myriad of educational, psychological, and familial difficulties. He has abused drugs and been a dependent child. The deputy probation officer who supervised C.G.'s school advised the juvenile court at the disposition hearing that C.G. was habitually truant and disruptive of campus. C.G.'s commitment offense is felony possession of a weapon on campus. This at-risk youth is not now, nor has he ever been, a viable candidate for deferred entry of judgment. A grant of deferred entry of judgment would have been a manifest abuse of discretion by the juvenile court and a terrible disservice to C.G. Any error is non-prejudicial.

KRIEGLER, Acting P.J.