IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. BILLY RAY WALDON, ALSO KNOWN AS N.I. SEQUOYAH Defendant and Appellant.	No. S025520 (San Diego Superior Court No. CR82986) **CAPITAL CASE**

Appeal from the Judgment of the Superior Court
of the State of California for the County of San Diego

HONORABLE DAVID M. GILL, JUDGE

APPELLANT'S THIRD SUPPLEMENTAL OPENING BRIEF

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XXV.
Like Judge Gill, Judge Edwards violated Penal Code section 1368 and appellant's due process rights by failing to suspend criminal proceedings.

Appellant's Opening Brief argued that Judge David Gill erred by failing to suspend proceedings and declare a doubt about appellant's competence to stand trial. This supplemental brief seeks to expand that claim to include the failure of Judge Raymond Edwards to declare a doubt upon evidence he considered. Judge Edwards announced a doubt about appellant's competence to waive counsel, but he failed to recognize that the same evidence also raised substantial doubts about appellant's *competence to stand trial*. He

erred in failing to suspend the criminal proceedings and ensure that appellant was competent to stand trial.

A. Background

The relevant facts and procedure are related extensively in the parties' existing briefing. This discussion is found at pages 475-502 of the Opening Brief, pages 202-204 of the Respondent's Brief, and pages 256-258 of the Reply Brief. Rather than restate those facts, appellant asks the Court to deem them incorporated here. The following summary will lay the groundwork for the discussion of appellant's incompetence to stand trial.

Judge Edwards was assigned to rule on a discovery dispute between appellant and his former counsel, Geraldine Russell. (2RT 243.) To decide the discovery issues, he reviewed the case file. He read reports by expert witnesses about appellant's inability to assist counsel and his inability to waive his right to counsel. (2RT 261.) He also reviewed filings by appellant that described conspiracies against him among all the parties in the court system. (2RT 271.)

The information Judge Edwards saw startled him so deeply that he raised the issue of appellant's competence sua sponte. At a hearing in August 1990, he cast doubt on appellant's mental state, including making the following statements:

- "[A]ll of these things I've seen, including your conduct here today … lead this court to have some doubt as to whether or not you are mentally competent." (2RT 261.)
- "[I]n going over all of these files …, reading these things that you have filed with the court making outlandish claims of conspirators … I had thought, well perhaps it

was some joke. Then when I read the psychological reports that I've referred to here and then the finding of Dr. Di Francesca and the rulings of Judge Zumwalt, I, in my mind, had a question as to whether or not you were mentally competent to represent yourself." (2RT 278-279.)

- "I do have such a doubt, sir, and that's why I called this hearing here, … . But nothing that I've heard here today has convinced me to the contrary. In fact, I am convinced even further now, sir, that, perhaps, something is amiss." (2RT 279.)

Judge Edwards reviewed opinions from this Court, which held that a defendant who suffers from a "mental disease or defect that prevents [a] voluntary assertion" of the right to self-representation may not represent himself. (2RT 286.) He ordered a psychological examination due to a "grave question as to the defendant's competency to represent himself." (2RT 286.) The examination was to focus on "whether [appellant had] the mental capacity to waive his constitutional right to representation by an attorney with the realization of the probable risks and consequences." (2RT 297-298.)

But Judge Edwards failed to address Penal Code section 1368 or appellant's due process right not to stand trial unless he could rationally assist counsel.[1] That failure is the focus of this brief.

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[1] All statutory citations are to the Penal Code unless state otherwise.

B. Judge Edwards erred in failing to suspend proceedings and order a hearing on appellant's competence to stand trial.

Judge Edwards was right to raise a "grave" doubt about appellant's competence to rationally decide to waive his right to counsel. That doubt was overwhelming given the information he had before him. He erred, though, in failing to realize that the same evidence was also a substantial reason to doubt appellant's competence to stand trial. He erred in failing to suspend the proceedings and hold a hearing under section 1369 to determine appellant's trial competence.

The standards that govern competence to stand trial are well known. The Constitution requires states to ensure that no defendant is prosecuted while incompetent. (*People v. Wycoff* (2021) 12 Cal.5th 58, 81 (*Wycoff*).) To protect this right, section 1367 deems a defendant incompetent if, "as a result of a mental health disorder … the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of the defense in a rational manner." Section 1368 requires that courts suspend proceedings, appoint counsel, and hold a hearing on competence whenever there is substantial evidence that raises a doubt about the defendant's competence. (*People v. Pennington* (1967) 66 Cal.2d 508, 518.) If there is substantial evidence raising a reasonable doubt about those matters, the court may not weigh that evidence against other contrary evidence. (*Ibid.*) Doubt about the defendant's competence may be resolved only at a hearing under section 1369.

The court's duty to ensure competence lasts throughout the case, and so the court must weigh these matters even if a jury has

previously rejected a defendant's claim of incompetence. (*People v. Rodas* (2018) 6 Cal.5th 219, 234-235 (*Rodas*).) The court must reinstate competence proceedings if there has been a significant change of circumstances. (*Ibid.*)

These principles show how Judge Edwards erred in this case: on the record before the court, he was duty bound to declare a doubt about appellant's trial competence. He recognized that appellant might have suffered from a mental impairment so severe that it interfered with his ability to intelligently waive his right to counsel. (2RT 286.) Specifically, he read and credited a report from Dr. Katherine DiFrancesca, who opined that appellant suffered from mental health disorders that left him unable to enter a knowing, voluntary, and intelligent waiver of his right to counsel. (67CT 15006.) Judge Edwards read into the record Dr. DiFrancesca's conclusion that appellant was "not competent to waive his right to counsel -- that is, do it with eyes wide open -- because his insight into his psychopathology is nil." (2RT 270.) That report—by a psychologist who had testified at an earlier hearing and whom the court found persuasive—provided substantial evidence that defendant lacked the capacity to waive counsel. (Cf., *Wycoff, supra,* 12 Cal.5th at p. 84 [holding that a report from a psychologist that "[d]efendant's failure to appreciate the logic and wisdom of his attorneys is a function of his paranoid mental disorder" amounted to "substantial evidence as a matter of law"].)

That means, also as a matter of law, that the court had substantial evidence of appellant's incompetence to stand trial. The substantive question of competence to waive counsel is "not

different" from the question of competence to stand trial: "each issue is governed by the same standard." (*Wycoff, supra,* 12 Cal.5th at pp. 81, 89.) They describe the same ability. Substantial doubt about one *is* substantial doubt about the other. (*Cf., Id.* at p. 89 [a report that was substantial evidence of trial incompetence was, "as a matter of law," also "substantial evidence of incompetency to waive the right to counsel"].) The DiFrancesca report, thus, provided substantial evidence sufficient to trigger the section 1368 procedure.

Other evidence furthered this doubt. The evidence from the initial competence trial showed that appellant was so paranoid and distrustful that he would be unable to rationally assist any counsel. (67CT 15103 [report of Dr. Kalish, discussed below].) The evidence after the competence trial offered additional cause for doubt, both through added expert opinion and through appellant's behavior. (2RT 269, 278.) By the time of the hearing before Judge Edwards, appellant had made odd claims about nearly every participant in the case, tying them into what Judge Gill would later call a "monstrous", "all-consuming" conspiracy. (14RT 1217.) The combination of prior information and new information provided a full picture of appellant's inability to rationally assist any lawyer—which is the definition of incompetence. (§1367; *Wycoff, supra,* 12 Cal.5th at p. 84 ["we have repeatedly reaffirmed that a finding of incompetence to stand trial can be based solely on a defendant's 'incapab[ility] of … cooperating with counsel.' [Citation]."][2].)

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[2] That appellant had already waived his right to counsel does not change the test of incompetency. This is so because his inability to rationally assist counsel "was what led to his decision to dismiss

The evidence also met the test for a significant change of circumstances, as defined by this Court in *Rodas.* The trial court in that case deemed the defendant competent based on a doctor's report that his psychological symptoms could be kept in check by medication. (*Rodas, supra,* 6 Cal.5th at p. 226.) The defendant stopped taking his medication as the trial approached, and his symptoms worsened. (*Id.* at p. 227.) The trial court erred in not holding a new competence hearing based on the change in the defendant's medication status. The change of circumstances rule does not "alter or displace" the constitutional rule that the defendant may not be put on trial when his competence is in doubt. (*Id.* at p. 234.) It "simply . . . make[s] clear that the duty to suspend is not triggered by information that substantially duplicates evidence already considered at an earlier, formal inquiry . . . ." (*Id.* at p. 234.) The Court held that the changed circumstances there "made it unreasonable to continue to rely on the prior competence finding . . . ." (*Id.* at p. 235.)

In *Tejeda*, the court elaborated on *Rodas*'s holding. (*People v. Tejeda* (2019) 40 Cal.App.5th 785, 791-792.) It explained that "the assumptions" that grounded the initial competence finding serve as a "yardstick to measure later proceedings." (*Ibid.*) The defendant in *Tejeda* suffered delusional beliefs that his mind was controlled by the government. (*Id.* at p. 790.) The court found him competent to stand trial because a psychologist opined that the defendant could

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his attorneys. If a defendant is mentally incompetent because of an inability to consult with counsel, the dismissal of counsel is not an appropriate remedy." (*Wycoff, supra,* 12 Cal.5th at p. 85, fn. 11.)

separate the delusions from the criminal case. But by the time of trial, it was clear that he could not cabin off his delusions: he testified that the government made him commit the crimes. (*Id.* at pp. 790-791.) The Court of Appeal reversed his conviction because the initial finding of competence assumed that the defendant could "compartmentalize his delusion" from the case. (*Id.* at p. 794.) The court was then "confronted with circumstances that were inconsistent with assumptions on which [defendant's] competency finding was based," and this triggered the court's "duty to declare a doubt as to his competency." (*Id.* at p. 795.)

The same is true here. The prior competency finding was based on the prosecutor's claim that appellant's odd behavior was directed only at his then-current lawyer. The defense theory was offered primarily through Dr. Kalish, who opined that appellant's behavior was caused by "paranoid distrust" that would render him unable to assist *any attorney*: "Mr. Waldon's distrust and paranoia coupled with his own agenda which include picayune detail and tangential issues unrelated to or only marginally related to the major issues in his trial impairs his capacity to disclose to his attorney available pertinent facts surrounding the events of the instant case." (67CT 15103, 15104.)

The prosecutor urged the jury to find instead that the behaviors Dr. Kalish noted were not broad paranoia but were instead limited to his dispute with Ms. Russell. The prosecutor even suggested that Russell may have caused this dispute: "There might be reasons based in reality as to why there was that distrust existing on the part of Mr. Waldon toward his attorney." (31RTA

1120.) She had opposed appellant's request to represent himself, submitted psychological records showing appellant's prior mental health hospitalization, and resisted the defense that appellant had insisted upon presenting.[3] (31RTA 1120, 1121, 1124.) According to the prosecutor, these acts led appellant to distrust only Russell: "No other attorney has been tried. … [T]his is not a situation of someone who is not able to assist an attorney, it's someone who is simply not willing to assist the attorneys that he has now." (31RTA 1122, 1150.)

In short, the jury found appellant not incompetent after the prosecutor repeatedly urged them to find that his paranoid behavior was compartmentalized to his relationship with Ms. Russell.

By the time Judge Edwards took the matter up, that view had been shown false. Other attorneys had "been tried," and appellant had been unable to rationally accept their help. He had suggested that advisory counsel Benjamin Sanchez was a "dictator" who wanted to "cheat him out of" his right to control the case and "take over and command the case." (1RT 173.) He accused Mr. Sanchez of "secretly filing motions" "behind [his] back," of doing no work on

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[3] The prosecutor glossed over a defense lawyer's ethical duty at a *Faretta* hearing. While Ms. Russell's opposing appellant's request may have harmed the relationship, if she doubted his competence, she did not err by seeking to protect his right to counsel. "If defense counsel believes the client may lack competence to waive the assistance of counsel [citations], counsel has a legal and ethical obligation to bring this matter to the trial court's attention. [Citation.]" (*People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1010 [disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390].)

pretrial motions, and of being on a "very powerful medicine known as Elavil" that made him fall asleep in meetings. (1RT 173, 178.) He accused advisory counsel Allen Bloom of abandoning him and accused advisory counsel Mark Wolf of leaving the case to "protect his fellow attorney Geraldine Russell from my attempts to have her prosecuted for her attempted murder upon me [and] her destruction of evidence of my innocence." (13CT 2756.) His paranoia led him to create a strict rule barring his advisory lawyers from speaking with each other about their work, despite their insistence that this would prevent them from advising him. (1RT 167; 38CT 8306 [letter from advisory counsel Nancy Rosenfeld].) The removal of Russell had not resolved these problems.

In the words of *Tejeda*, the "trial court was confronted with circumstances that were inconsistent with assumptions" on which the initial competency verdict was based, and this triggered the court's duty to declare a doubt.[4]

Judge Edwards was not required to wait for additional expert opinions. He had already reviewed Dr. Kalish's opinion and that of Dr. DiFrancesca. (2RT 261.) He relied on these as persuasive. (2RT 269, 278-279.) As in *Rodas, supra,* 6 Cal.5th at p. 238, Judge Edwards "already had the benefit of" these earlier reports. Coupled

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[4] The prosecutor reaffirmed the assumptions built into the earlier competence finding. He argued again that appellant had righteous complaints about Ms. Russell, which Dr. Kalish had miscast as generalized paranoia. (2RT 266, 280-282.) He also stated, falsely, that appellant had "gotten along with" other lawyers. (2RT 266.) The court should have used these claims as a yardstick to measure its current doubt about appellant's competence.

with appellant's current behavior—the way his paranoia had expanded beyond Ms. Russell—the reports amounted to substantial evidence raising a reasonable doubt about appellant's competence. (*Ibid.*)

To be clear, this evidence did not need to *prove* that appellant was incompetent or disprove claims of malingering. But Judge Edwards expressed "grave" concerns about the mental state of a criminal defendant. Those concerns were supported by evidence that raised at least a reasonable doubt about appellant's competence. Whether or not appellant's claims of vast conspiracies were actually caused by his documented mental health issues was to be resolved at a new competency hearing. "[S]ubstantial evidence of mental incompetence necessarily raises such a doubt irrespective of whether other evidence … suggests the defendant is competent." (*Wycoff, supra,* 12 Cal.5th at p. 82.) The procedure laid out sections 1368 and 1369 is the method of ensuring that the trial that follows meets basic principles of due process. Judge Edwards had a duty to resolve the doubt by suspending the criminal case. (§ 1368.)

The trial in this case was riddled with questions about appellant's mental state. The failure to resolve reasonable doubts about his competence resulted in a bizarre spectacle, in which appellant—representing himself—pursued a paranoid conspiracy theory that a CIA agent named Mark Williams kidnapped and framed appellant as part of a counterintelligence operation to end appellant's linguistic work and advocacy of Cherokee rights. (E.g., 63RT 12689; 64RT 12897.) Appellant's delusional defense and bizarre behavior taxed the patience of the trial judge. (67RT 13646

["You're oblivious to the effect it has on the jury, driving the jurors crazy … ."].) And the prosecutor cited that behavior as evidence that appellant deserved the death penalty. (76RT 15961[arguing that appellant's obsessive behavior showed "a total lack of respect for the rights of anyone else"], 15985 [appellant showed "total disregard" for jurors].)

California law and the Constitution are supposed to prevent such spectacles, by prohibiting the trial of defendants who are not mentally competent. Judge Edwards had substantial evidence to doubt appellant's competence to stand trial. His failure to declare a doubt and invoke the process to determine appellant's competence was an error under state law and due process principles and requires reversal of the judgment.

CONCLUSION

For all of the reasons argued above and in appellant's prior briefing in this case, the judgment against appellant must be reversed.

Dated: May 12, 2022

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CERTIFICATE OF COUNSEL
(Cal. Rules of Court, Rule 8.630(B)(2))

I am the Supervising Deputy State Public Defender assigned to represent appellant, BILLY RAY WALDON, A.K.A. N.I. SEQUOYAH, in this automatic appeal. I conducted a word count of this brief using our office's computer software. On the basis of that computer-generated word count, I certify that this brief, excluding tables and certificates is 2,932 words in length.

Dated: May 12, 2022

/s/

HASSAN GORGUINPOUR
Supervising Deputy State Public Defender

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San Diego County Superior Court
Case No. CR82986

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APPELLANT'S THIRD SUPPLEMENTAL OPENING BRIEF

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