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Supreme Court of California
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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 REPLY BRIEF

Mary K. McComb
State Public Defender

HASSAN GORGUINPOUR
Supervising Deputy State Public Defender
California Bar No. 230401

770 L Street, Suite 1000
Sacramento, California 95814
Telephone: (916) 322-2676
Facsimile: (916) 327-0459
Email: hassan.gorguinpour@ospd.ca.gov

Attorneys for Appellant

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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**

APPELLANT'S THIRD SUPPLEMENTAL REPLY BRIEF

ARGUMENT

XXV. JUDGE EDWARDS VIOLATED STATE LAW AND APPELLANT'S DUE PROCESS RIGHTS BY FAILING TO ORDER A HEARING ON HIS COMPETENCE TO STAND TRIAL.

A. Summary of Argument

In the months before trial, evidence of appellant's mental state raised a substantial doubt about his ability to rationally participate in his defense. Paranoia, obsessions, and pervasive conspiracy theories all marred his defense and left him incompetent to stand trial. He had believed his first defense lawyer had tried to kill him. (45ART 512.) But even after she was relieved from the case and he was allowed to represent himself (10CT 1932-1933 [counsel

relieved]; 84ART 64 [self-representation]), he moved on to insisting that his first advisory lawyer was a "dictator[]" who tried to usurp control over the case. (1RT 173.) He insisted a later advisory lawyer withdrew from the case to cover up the murder attempt. (13CT 2756.) Another had abandoned him for money. (*Ibid.*) Two other advisory lawyers could not be trusted to learn the details of his defense or even speak to each other. (1RT 167; 38CT 8306.) A vast conspiracy among judges and his lawyers worked against him to ensure his demise. (E.g., 10CT 2102 [Judge William Kennedy]; 13CT 2747-2752 [Judge David Gill].)

Judge Raymond Edwards erred when he failed to suspend proceedings despite this evidence of appellant's incompetence. Judge Edwards knew that expert witnesses had previously opined that appellant's delusions and paranoia left him incompetent to stand trial because he could never rationally work with any attorney who frankly discussed the case with him. Judge Edwards also reviewed more recent evidence of appellant's delusional behavior toward the lawyers appointed to advise him, evidence that newly showed the expert opinions were correct. Given this new evidence, it was unreasonable to continue to rely on an earlier competence finding as a true indication of appellant's mental state, and a new hearing was required. Judge Edwards's failure to suspend proceedings and order a competence hearing thus violated appellant's right to due process.

Respondent fails to meaningfully rebut these facts. As explained below, it suggests that the evidence was not new because the jury heard claims that appellant suffered from delusions at the early competency trial. But at that trial, the jury heard evidence of

appellant's paranoid distrust of only one lawyer, who had raised questions about appellant's mental state in opposing his demand to represent himself. The prosecutor relied on this to claim that appellant's paranoia was tied only to his relationship with that specific lawyer. That claim was no longer viable by the time Judge Edwards considered the matter: appellant had been granted pro per status, but his paranoia, delusions, and obsessions continued. The new information provided a more complete picture of appellant's mental state and raised doubt anew about his competence.

Respondent also argues that Judge Edwards lacked authority to declare a doubt because he was not assigned as the judge for all purposes. This suggestion misstates the law governing competence and would, if adopted, undermine the purpose of the rule that requires judges to continuously evaluate defendants' competence.

Respondent further suggests that appellant's newly identified behaviors did not raise a doubt about his competence by themselves. But this claim ignores the wealth of psychological evidence that tied those behaviors to the symptoms of mental disorders that left appellant incompetent. The case offered the quintessential showing of reasonable doubt about a defendant's competence to stand trial. The court's failure to hold a hearing violated the Constitution.

B. New evidence about the extent of appellant's mental illness required a new hearing on appellant's competence.

The federal Constitution and the Penal Code ensure that no criminal defendant is tried while incompetent. (*Drope v. Missouri*

(1975) 420 U.S. 162 (*Drope*); Pen. Code, § 1368[1].) The United States Supreme Court has laid out specific forms of incompetence that trigger constitutional concerns: (1) where the defendant lacks "a rational as well as factual understanding" of the case; and (2) where the defendant is unable to rationally consult with counsel. A defendant is incompetent when he cannot "assist in preparing his defense." (*Dusky v. United States* (1960) 362 U.S. 402; *Drope, supra,* 420 U.S. at p. 171.)

Due process and the Penal Code require that judges pause criminal proceedings whenever there is substantial evidence raising a reasonable doubt about defendant's competence on any of these criteria. (*Pate v. Robinson* (1966) 383 U.S. 375, 385 (*Pate*); *People v. Pennington* (1967) 66 Cal.2d 508, 521 (*Pennington*); § 1368.) Once the evidence passes the reasonable doubt threshold, the court must suspend proceedings, even if other evidence might suggest competence. (*Pate, supra,* 383 U.S. at p. 386 [a conflict in the evidence of competence may not be "relied upon to dispense with a hearing on that very issue"]; *Pennington, supra,* 66 Cal.2d at p. 521 ["the trial court has no power to proceed with the trial once a doubt arises as to the sanity of the defendant"].) A hearing to resolve reasonable doubt about defendant's competence is mandatory.

A court's duty to consider the defendant's competence "is a continuing one" (*People v. Wycoff* (2021) 12 Cal.5th 58, 87), and it persists even if the court has already considered the defendant's competency at an earlier hearing. (*People v. Rodas* (2018) 6 Cal.5th

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

219, 236, fn.5 (*Rodas*).) "[A] trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." (*Drope, supra,* 420 U.S. at p. 181.)

The court must hold a new hearing if there has been a change of circumstances or new evidence that casts substantial doubt on the validity of the earlier finding. (*Rodas, supra,* 6 Cal.5th at p. 234.) But as this Court has explained, the change of circumstances rule does not "alter or displace" the court's duty to evaluate competence. (*Ibid.*) 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 . . . ." (*Ibid.*) The Court in *Rodas* found error because the trial judge failed to reopen competency proceedings even though new circumstances "made it unreasonable to continue to rely on the prior competence finding . . . ." (*Id.* at p. 235.)

Judge Edwards erred in failing to suspend proceedings under these principles. The evidence before him raised a reasonable doubt about appellant's competence, and it did not substantially duplicate the evidence considered at the earlier competency trial.

At the trial, defense experts opined that appellant's mental disorder left him unable to rationally assist any attorney. (27ART 347; 30ART 989.) He would be overcome with delusions, paranoia, and an obsessive need to control anyone who frankly discussed the case with him. (*Ibid.*) But the jury heard evidence of appellant's relationship with only one attorney: his defense lawyer, Geraldine Russell. As the prosecutor pointed out, Russell concluded that

appellant could not competently waive his right to counsel, and so she opposed his request to do so by revealing information about his history of mental illness. (27ART 446.) The prosecutor highlighted this, urging the jury to find that appellant was simply choosing not to assist the defense team he currently had because of this specific dispute. (31ART 1150.) The prosecutor argued that appellant's counsel had failed to prove incompetence because "no other lawyer has been tried." (31RTA 1122.)

New evidence arose after that trial in 1987. First, Dr. Katherine DiFrancesca offered a report and testimony that corroborated the conclusions of the defense experts at the competency hearing: appellant was incompetent to stand trial. (67CT 15006 [3/9/1988]; 45ART 448 [3/15/1988].) In addition, Geraldine Russell left the case (10CT 1932-1933 [9/12/1988]), and appellant eventually convinced a judge that he was competent to waive counsel (84ART 64 [11/3/1989]). He then cycled through a series of lawyers appointed as advisory counsel, raising bizarre conspiracy theories about each. He believed Attorney Mark Wolf had left the case in order to cover up Russell's murder attempt against appellant. (13CT 2756 [1/25/1990].) He said Allen Bloom, who helped him secure pro per status, had abandoned him for monetary gain. (*Ibid.*) He claimed that advisory attorney Ben Sanchez was both a dictator who tried to seize control of the case and a user of powerful psychotropic medication that left him unable to function. (1RT 173 [7/9/1990], 178 [7/20/1990].) Appellant exercised strict control over attorneys who were appointed to advise him at trial, setting rules about what documents they could view

and what they could say to each other. (1RT 167 [7/9/1990].) He insisted that at least two judges of the superior court had intimate relationships with Russell and had conspired against him. (10CT 2102 [4/10/1989]; 13CT 2747-2752 [1/22/1990].) These claims all arose after the competency trial in 1987. This new evidence did not "substantially duplicate" that at the competency trial, and so it was "unreasonable to continue to rely" on the competency verdict as a true indication of appellant's mental state. (*Rodas, supra,* 6 Cal.5th at p. 235.)

People v. Tejeda offers a way to analyze the question: comparing the assumptions that must have supported the initial verdict with facts later revealed. (*People v. Tejeda* (2019) 40 Cal.App.5th 785, 791-792.) In *Tejeda*, the defendant was clearly delusional, believing that the government controlled his thoughts, but an expert opined that his delusions would not interfere with his view of the trial. (*Id.* at pp. 790-791.) The court found him competent on that basis. By the time of trial, he still suffered the same kinds of delusions, but they had expanded to affect the way he viewed the charges. He put on a defense that the government controlled his actions during the crime. (*Id.* at pp. 790-791.) The court in *Tejeda* found that this expansion of the delusions required the trial court to hold a new hearing. The factual assumptions that underlaid the first competency finding—that the defendant's delusions were cabined off—had been disproven, and this meant it was no longer reasonable to conclude that the first finding reflected appellant's true mental state. (*Id.* at p. 795.)

This reasoning maps directly onto the facts here. The factual assumptions that grounded the first verdict were invalidated by later events. The prosecutor urged the jury to believe that appellant did not cooperate with his then-current counsel because of factors unique to her. (31RTA 1120, 1121, 1124.) The lack of evidence of his relationships with any other counsel was offered as support for this. (*Ibid.*) Those facts were substantial in the context of the first competency trial.[2] (*People v. Earle* (2009) 172 Cal.App.4th 372, 409 [Other than statements from jurors, "nothing could more vividly demonstrate the crucial role played by [certain evidence] … than the prosecutor's own heavy and pervasive reliance on it in jury argument."]; *People v. Minifie* (1996) 13 Cal.4th 1055, 1072 [the prosecutor's emphasis of a fact in his closing argument showed that it was "not minor, but critical to the jury's proper understanding of the case"].)

In the same way that the defendant's behavior in *Tejeda* provided a new, more accurate picture of his mental state, the new

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[2] Respondent contends the issue is foreclosed because the jury that found appellant competent must have concluded that he could assist attorneys generally. (3 Supp. RB 28.) There are two problems with this. First, it misstates the procedure at a competency trial. The jury did not find appellant affirmatively competent; it was asked only to decide whether he had met his burden to prove incompetence on the evidence presented in that trial. (*People v. Mendoza* (2016) 62 Cal.4th 856, 871.) Moreover, even if the jury had found appellant competent, it did so without the benefit of the new evidence laid out here. The claim on appeal is that this new evidence substantially changed the base of evidence that produced the initial verdict. That cannot be rebutted by pointing to the fact that there was a verdict.

evidence here painted a more complete picture of appellant's mental state. Appellant's delusions continued even after the court granted his request to represent himself, which had been portrayed as the focus of his bitter accusations against Ms. Russell. Other lawyers had "been tried," as advisory counsel, and they were subjected to delusions and obsessions. This substantially altered the evidence base, meaning that a new trial would not have substantially duplicated the first. Under *Rodas*, this new evidence meant that the court was required to hold a hearing to resolve doubt about appellant's competence to stand trial. (*Rodas, supra,* 6 Cal.5th at p. 234.)

Respondent's efforts to avoid this conclusion all miss their mark. It first suggests that there was no error because Judge Edwards lacked jurisdiction to declare a doubt about appellant's competence in any event. (3 Supp. RB 21-25.) It cites cases that purport to grant the "trial judge" authority over the substance of the trial. (*Ibid.*) The argument seems to be that only Judge Gill could act on behalf of the court generally, and therefore Judge Edwards could rule only on the narrow discovery dispute over which Judge Gill had given up control.

Or course, even if Respondent were correct, that would mean only that it was Judge Gill who erred in failing to declare a doubt. This claim is already pending in this appeal (AOB 628-680), and it requires reversal of the judgment, as well.

The claim also ignores the statutes that govern competence and the overriding constitutional issues. The duty to consider competency is different in key respects from other matters in the

trial.[3] As noted above, the court has a continuing duty to consider the issue (*Wycoff, supra,* 12 Cal.5th at p. 87), and the relevant statutes do not limit that duty to any specific time or to any specific judicial officer. (§ 1368 ["during the pendency of an action … the judge" may declare a doubt]). That makes sense because every judge has "the power to make and enforce all orders necessary for the disposition of the proceeding that has been assigned to his department . . . ." (*Williams v. Superior Court* (1939) 14 Cal.2d 656, 663, cited by respondent at 3 Supp. RB 22.) Judge Edwards was assigned to view privileged materials. (1 RT 204-206.) He had authority to declare a doubt about appellant's competence based on the materials he viewed, both because they revealed new information about appellant's competence and because he needed to ensure that appellant could competently protect his rights at the discovery hearing. (*Drope, supra,* 420 U.S. at p. 172 [competence is required to ensure a fair adversary process].)

Respondent next suggests that Judge Edwards's statements about appellant's mental state are irrelevant because Judge Edwards was focused only appellant's competence to represent himself. (3 Supp. RB 18-20.) This discussion largely misses the point. The question here is whether substantial evidence raised a

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[3] Respondent relies primarily on *City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, 1127-1128. But that case addressed a court's decision to issue a subpoena. (*Ibid.*) Judge Edwards's order here is governed by a different statutory procedure and by the unique the constitutional principles that underlie it. The Attorney General cites no case supporting its position as to that procedure.

reasonable doubt about appellant's competence. If the evidence reached that threshold and did not substantially duplicate evidence already considered, then a hearing on appellant's competence was mandatory. (*Pennington, supra,* 66 Cal.2d at p. 521; *Rodas, supra,* 6 Cal.5th at 234.) The court had no discretion to deny a hearing in that circumstance, and so the judge's reasoning would not alter the required result on appeal. (*People v. Woodruff* (2018) 5 Cal.5th 697, 721 ["our inquiry is focused not on the subjective opinion of the trial judge, but rather on whether there was substantial evidence raising a reasonable doubt concerning the defendant's competence to stand trial"].)

For that reason, the cases respondent cites do not control. They addressed a trial court's discretionary rulings on competence in cases where the evidence of incompetence was not substantial. (E.g., *People v. Price* (1991) 1 Cal.4th 324, 396–397 [holding that the court did not abuse its discretion in denying a hearing where evidence of incompetence was less than substantial]; *People v. Welch* (1999) 20 Cal.4th 701, 738 [holding that trial court did not abuse its discretion in failing to suspend proceedings because the expert did not opine on defendant's competence to stand trial].) Here, the evidence of appellant's mental state raised a reasonable doubt.

At page 29 of its brief, respondent appears to make a legal error that would, if adopted by the Court, weaken the trial judge's duty to ensure defendants are competent. Citing *People v. Koontz*, respondent argues that a hearing was not needed because "there was *no new evidence that raised a serious doubt* as to whether

Waldon understood the nature of the proceedings or was able to assist in his own defense." (RB 29, citing *Koontz* (2002) 27 Cal.4th 1041, 1064, italics added.) This implies the court is required to hold a hearing only if the new evidence raises a doubt when considered separately from the remainder of the evidence. *Koontz* did not address new evidence, and respondent cites no other authority for the claim that evidence raising a doubt should be weighed in this segmented manner. The rule would permit trial courts to ignore information that paints a complete picture of a defendant's mental state, and it could lead to the unconstitutional result of sending a defendant to trial despite evidence that raises a doubt about his competence.

In *Rodas*, this Court rejected a similar suggestion. (*Rodas, supra,* 6 Cal.5th at p. 238.) Respondent argued there that the trial court lacked substantial evidence of incompetence because the psychological reports opining on the matter were offered in an earlier part of the case. (*Ibid.*) The Court rejected this claim, explaining that the trial court "already had the benefit of" those earlier reports. (*Ibid.*) The court read the new information about appellant's behavior "against the background of medical reports detailing defendant's history" of mental illness. (*Ibid.*) It held that the combined information "raised a reasonable doubt as to defendant's continued competence." (*Ibid.*) In other words, the Court considered the combined effect of the new information about appellant's behavior and the psychological reports from earlier in the case. (*Ibid.*) The totality of the evidence raised a doubt about appellant's competence. The approach respondent suggests here,

separately considering the prior evidence and the new evidence, would conflict with *Rodas.*

The new evidence here showed that appellant's delusions, his obsessions with obscure minutia, and his paranoia were not limited to his relationship with one lawyer or to one proceeding. These symptoms appeared repeatedly throughout the case, and this was a substantial new fact. Once the court recognizes that substantial new evidence has arisen, the question before the court is whether the overall picture of the defendant made it reasonable to doubt his competence. As explained below, the evidence about appellant's mental state met that standard.

C. The overall picture of appellant's mental state included expert opinion that he was unable to rationally participate in the case and new evidence of pervasive symptoms—requiring a competency hearing.

Judge Edwards erred because the evidence about appellant's mental state surpassed the threshold of raising reasonable doubt about his competence to stand trial. Three experts opined that a mental disorder prevented appellant from rationally assisting counsel, and later evidence about appellant's behavior corroborated those conclusions. The Constitution required Judge Edwards to suspend proceedings and hold a hearing.

As noted above, a court must suspend proceedings if there is substantial evidence that raises a reasonable doubt about the defendant's competence. (*Pennington, supra,* 66 Cal.2d at p. 521.) "The word 'substantial' does not mean that for a doubt to arise, there must be a large quantity of evidence of a defendant's

incompetence; rather, it means that there must be some evidence of sufficient substance that it cannot be dismissed as being inherently unpersuasive." (*Wycoff, supra,* 12 Cal.5th at p. 83.) The evidence is substantial if "a psychiatrist or qualified psychologist …, who has had sufficient opportunity to examine the accused, states under oath with particularity" that a mental illness renders the defendant unable to understand "the purpose or nature of the criminal proceedings …,"unable to "assist[] in his defense," or unable to "cooperat[e] with counsel. . . ." (*Pennington, supra,* 66 Cal.2d at p. 519.) Such testimony is "substantial evidence as a matter of law." (*Wycoff, supra,* 12 Cal.5th at p. 84.)

The evidence here met this test. It included sworn testimony and reports from three experts—Drs. Mark Kalish, Vance Norum, and Katherine DiFrancesca—who explained how appellant's behaviors arose from mental disorders that left him unable to rationally assist counsel or assist in the defense.[4]

Dr. Kalish was appointed by the court to opine on appellant's request to waive counsel (2CT 389-392), and he concluded that appellant was incompetent both to waive counsel and to stand trial. (20ART 28.) He testified at the competency hearing that appellant suffered from a combination of affective and thought disorders. (27ART 346.) The affective disorders included features of depression and paranoia, which affected appellant's ability to concentrate. (*Id.* at p. 347.) This, combined with the thought disorder, severely

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[4] Other experts also appeared for the defense, but these three are discussed here because Judge Edwards specifically relied on their opinions in evaluating appellant's mental state. (2RT 261.)

impaired his ability to relate to his attorney or to think clearly and assess the proceedings. (*Ibid.*) His paranoia led him to take disagreements with counsel and spin them into conspiracy theories about bias against him. (*Id.* at pp. 359-360.) Dr. Kalish concluded that appellant's "distrust and paranoia, coupled with his own agenda, which include picayune detail and tangential issues unrelated or marginally related to major issues in his trial, impairs his capacity to disclose to his attorney available pertinent facts . . . ." (*Id.* at p. 382.) His ability to "relate to the average attorney" was "severely impaired" because of his "paranoid distrust and need for control …" (67CT 15103.)

Dr. Norum was a staff psychiatrist at Patton State Hospital and a defense expert who testified and wrote a report about appellant's competence to stand trial. (67CT 15109, 15112.) He spoke with appellant and reviewed documentation about appellant's mental state both prior to and during the criminal case. (*Ibid.*) Dr. Norum could offer a "tentative DSM-III diagnosis" of "subchronic paranoid schizophrenia, untreated." (*Id.* at p. 15112.) Although the specific diagnosis was tentative, Dr. Norum found appellant incompetent based on the available evidence and appellant's behavior. For example, appellant's Navy records revealed a psychiatric hospitalization for major depression with mood congruent "psychotic features." (*Id.* at p. 15111.) Within months before Dr. Norum's report, appellant had been seen "responding to inner stimuli." (*Id.* at p. 15111.) Dr. Norum found that appellant's social withdrawal, flat affect, and poverty of speech or thought were typical "negative symptoms" of schizophrenia. (*Id.* at p. 15111.) His

"thought disorder, his responding to inner stimuli and his guardedness and mistrustfulness" suggested a "paranoid attitude that qualified him for a diagnosis of paranoid schizophrenia." (*Id.* at p. 15111.) Collectively, appellant's symptoms prohibited him from cooperating with and assisting his legal advisors in his defense. (*Id.* at p. 15111.) Dr. Norum concluded that appellant was incompetent to stand trial because he was not able to cooperate with counsel or make cogent decisions on his own behalf. He could not "rationally/logically communicate with the legal attorney advisor to prepare his defense appropriately or wisely." (*Id.* at p. 15109.)

Dr. DiFrancesca offered her opinion shortly after the competency trial as a defense expert witness and wrote a detailed report about her work on appellant's case. (67CT 15003-15007.) She conducted the Minnesota Multiphasic Personality Inventory, the Shipley Institute of Living Scale, and the Rorschach Psychodiagnostic, in addition to personally interacting with appellant. (67CT 15003.) Appellant's responses to the tests revealed a "high number of unusual characteristics," as he struggled to answer the questions. (*Id.* at p. 15003.) Dr. DiFrancesca believed that appellant suffered from major depressive episodes with psychotic features and borderline personality disorder, all producing symptoms like those the other experts described: paranoia, obsessive behavior, anger, irrationality, and distrust. (*Id.* at p. 15006.) She concluded that appellant was unable to rationally develop a defense because doing so was too threatening to him. (*Id.* at p. 15006.) He could neither rationally decide to waive counsel nor rationally assist counsel in his defense: he was incompetent to stand

trial. (*Id.* at p. 15006; 45ART 448.) His inability to cooperate with counsel would extend to any lawyer who confronted him with the negative facts of his case. (45ART 448.) Moreover, she concluded that his condition was chronic and would require years of psychotherapy to ameliorate. (67CT 15006.)

The opinions of these three experts individually and in combination “constituted substantial evidence as a matter of law” raising a reasonable doubt about appellant’s competence to stand trial. (*Wycoff, supra,* 12 Cal.5th at p. 84.)

And as explained above, each of these opinions was later corroborated by new evidence about appellant’s behavior. After the competency trial and after Dr. DiFrancesca’s report, appellant raised bizarre conspiracy theories about each advisory counsel appointed to assist him and about judges of the superior court. He had proven himself unable to form trusting relationships with any attorney who discussed the facts of the case with him—just as the experts said he would. This Court explained in *Wycoff* that prior expert opinions may be read in concert with the defendant’s later acts to provide a full view of his mental state: “Defendant’s bizarre behavior at trial served only to confirm and reinforce [the expert’s] conclusions. Indeed, even behavior that would be insignificant if viewed in isolation tended cumulatively to present an overall picture of a man whose behavior reflected the precise traits [the expert] described.” (*Wycoff, supra,* 12 Cal.5th at p. 87.) In the same way, the “overall picture” of appellant came into full view as his behavior over time revealed that he was incompetent in the way that the experts

described. This substantial evidence raised a reasonable doubt about his competence.

Respondent seeks to rebut this by listing factors that are insufficient to raise a reasonable doubt by themselves—ignoring that those factors do not appear here *by themselves*. Thus, it argues that a defendant's bizarre and paranoid claims are not sufficient to raise a doubt, by themselves. (3 Supp. RB 26, citing *People v. Buenrostro* (2018) 6 Cal.5th 367, 409.) It states also that evidence of a defendant's mental illness is insufficient. (*Id.* at p. 6, citing *People v. Ghobrial* (2018) 5 Cal.5th 250, 270.) And it points out a defendant's mere refusal to work with counsel is insufficient. (*Id.* at p. 29, citing *People v. Lewis* (2008) 43 Cal.4th 415, 526, overruled on another point in *People v. Black* (2014) 58 Cal.4th 912, 919.) There is no dispute about these discrete claims. Courts have held that each of these factors is insufficient by itself to raise a reasonable doubt. But the combined effect of these holdings reveals what *is* sufficient to raise a doubt: testimony from an expert tying those factors together, showing how the mental illness produces symptoms that cause bizarre thoughts and behavior and leaves the defendant unable to assist his lawyer. (E.g., *Wycoff, supra,* 12 Cal.5th at p. 84.) That is exactly what Judge Edwards had before him. The Attorney General's own argument thus highlights how strongly the evidence in this case raised a doubt.

At page 26 of its brief, respondent challenges the relevance of Dr. DiFrancesca's opinion. Respondent appears to argue that Dr. DiFranceca's opinion should not be deemed new evidence because she based it on symptoms that predated the competency trial. A

similar claim was rebutted in the prior section of this brief. Whether or not Dr. DiFrancesca's opinion was sufficiently new by itself, appellant's behavior in the years after the competency trial was substantial new evidence. That behavior, read in concert with all the other evidence of his mental state, raised a substantial doubt about his competence.

On page 28, respondent appears to shift to a different claim, a claim that Dr. DiFrancesca's opinion was not sufficiently contemporaneous because mental illnesses fluctuate. This claim fails for roughly the same reason. The court "already had the benefit" of the expert opinions. (*Rodas, supra,* 6 Cal.5th at p. 238.) The new evidence corroborated those opinions and showed that appellant's mental illness was not waning. He remained overtly psychotic and obsessive. This information raised a reasonable doubt about his competence.

Wycoff is remarkably similar to this case. The trial court there appointed a psychologist as an expert to evaluate the defendant's competence to waive counsel. (*Wycoff, supra,* 12 Cal.5th at p. 75.) Like Drs. Kalish and DiFrancesca, the expert found that the defendant was incompetent to waive counsel and offered that he was also incompetent to stand trial. (*Ibid.*) The expert there, like the experts here, could offer only a tentative diagnosis: Wycoff was "most probably suffering from Paranoid Schizophrenia." (*Id.* at p. 76.) But the symptoms were clear: whatever the precise diagnosis, the mental illness caused grandiose and paranoid thoughts, distrust, flat affect, and bizarre decisions. (*Id.* at p. 76.)

The expert explained specifically how these symptoms would prevent the defendant from rationally assisting counsel. The defendant's incompetence grew out of his "misperception of [his lawyers'] motives, a misunderstanding of the risk involved [in his case], a minimizing of the precariousness of his predicament, and impaired judgment, all of which are symptoms of his paranoid mental state." (*Wycoff, supra,* 12 Cal.5th at p. 77.) The expert deemed appellant incompetent because his "[s]elf importance," "prideful independence," and "grandiosity," left him unable to "rationally consider 'telling his story' with the assistance of an attorney." (*Id.* at p. 76.) These symptoms mirror appellant's.

Wycoff held that this evidence was sufficient to raise a reasonable doubt about appellant's competence, which meant that a hearing was required to protect defendant's right to due process. (*Wycoff, supra,* 12 Cal.5th at p. 88.) The striking similarities in the evidence require the same holding here.

All told, the evidence here surpassed the threshold of reasonable doubt about appellant's competence. The combination of expert opinions and appellant's behavior cast doubt on his ability to rationally assist counsel or participate in the defense. The initial competency trial took place at an early stage of the case when appellant had had only one lawyer and when he was represented against his wishes. Later, when the case reached Judge Edwards's courtroom, appellant had been granted pro per status but had cycled through multiple advisory attorneys, unable to assist any, and had spun bizarre conspiracy theories about each. This was new evidence because it voided the key contention at the at the initial trial. A new

trial could not turn so heavily on appellant's relationship with a single lawyer. The factual assumptions that brought about the first decision were undermined by these later events. And the total picture of appellant's mental state raised a reasonable doubt about his competence. Judge Edwards erred in failing to recognize this fact and failing to ensure that appellant was competent to proceed to trial.

D. Conclusion

For the reasons stated here and in the briefing throughout this appeal, appellant asks the court to reverse the judgment. His trial went forward despite significant evidence that he was not competent to rationally cooperate with counsel or assist in his defense. The trial thus lacked the constitutionally required assurance that the adversarial process was fair.

Dated: September 2, 2022

MARY K. McCOMB
State Public Defender

/s/
____
HASSAN GORGUINPOUR
Supervising Deputy State Public Defender

Attorneys for Appellant

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 5,267 words in length.

Dated: September 2, 2022

/s/
____
HASSAN GORGUINPOUR
Supervising Deputy State Public Defender

DECLARATION OF SERVICE

Case Name: ***People v. Billy Ray Waldon a.k.a. NI Sequoyah***
Case Number: **Supreme Court Case No. S025520**
San Diego County Superior Court
Case No. CR82986

I, **Brenda Buford**, declare as follows: I am over the age of 18, and not party to this cause. I am employed in the county where the mailing took place. My business address is 770 L Street, Suite 1000, Sacramento, California 95814. I served a true copy of the following document:

APPELLANT'S THIRD SUPPLEMENTAL REPLY BRIEF

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Attorney General – San Diego *sdag.docketing@doj.ca.gov*	California Appellate Project 345 California Street San Francisco, CA 94104 *filing@capsf.org*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **September 2, 2022**, at Sacramento County, CA.

Brenda Buford Digitally signed by Brenda Buford
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Brenda Buford

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Date

/s/Brenda Buford
Signature

Gorguinpour, Hassan (230401)
Last Name, First Name (PNum)

Office of the State Public Defender

Law Firm