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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

M.W., Petitioner, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	A174792 (Contra Costa County Super. Ct. No. J24-00228)

Petitioner M.W., now 18 years old, is charged with a single count of felony battery with serious bodily injury arising out of a fight that occurred when he was 15 years old. Approximately six months after the fight but before the juvenile petition was filed, M.W. suffered a traumatic brain injury in a car accident that left him unable to remember the fight. The injury has also brought about challenges with depression, anxiety, and concentration, and has resulted in M.W.'s involuntary hospitalization. By this petition for writ of mandate/prohibition, M.W. challenges the juvenile court's determination that he is mentally competent to stand trial under Welfare and Institutions Code[1] section 709. He contends the court erred in finding

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part II.

[1] All undesignated statutory references are to the Welfare and Institutions Code.

that he has the "present ability to consult with counsel and assist in preparing his defense with a reasonable degree of rational understanding." (*Ibid*.)

The court-appointed expert opined that M.W. was competent *unless* his testimony were required, in which case his amnesia would prevent him from assisting his counsel in presenting a defense. M.W.'s principal argument is that the juvenile court erred by prematurely concluding that his testimony would not be required because, in its view, the evidence did not show a basis for a potential self-defense claim and the facts of the incident could otherwise be established by video evidence and testimony from other witnesses. The district attorney responds that the juvenile court did not definitively preclude M.W. from asserting a self-defense claim but that it appropriately and correctly evaluated the strength of the evidence before it.

Although the record is not entirely clear, we conclude that the trial court erred to the extent it determined that the evidence demonstrated that M.W. could not assert a claim of self-defense. Even so, at this stage we are not persuaded that M.W. has established that his testimony will be required. We therefore find no prejudicial error, but emphasize that the court may need to revisit its finding at a future stage of the proceedings.

BACKGROUND

On May 7, 2023, then 15-year-old M.W. was involved in a fight with another teenager, Joshua, at the Martinez Marina. Witnesses offered different estimates as to the number of individuals present, but it appears that somewhere between 12 and 20 high school students were there.

There are varying accounts about what precipitated the fight and who started it. According to the police report, Joshua reported that the kids at the Marina were "instigating a fight" between him and M.W. Two witnesses

told police that the entire group of kids were "horse playing" or "fake fighting" before it ultimately became physical. Another witness said that Joshua and M.W. were " 'beefing' for the whole day" and "pushing each other." Yet another witness confirmed that Joshua and M.W. were "beefing all night." Joshua claimed that M.W. threw the first punch. Another witness reported that "during the 'fake fighting,' . . . [M.W.] was pushed into Joshua. Joshua took offense to this because the other subjects present were making fun of Joshua. Joshua punched [M.W.]" Most witnesses agree that at some point Joshua overpowered M.W., placed him in a headlock, and punched him in the head multiple times. Joshua's friends pulled him off M.W. Joshua was then kicked in the face, sustaining a broken jaw. Joshua did not know who kicked him. Three witnesses reported that M.W. kicked Joshua. A fourth was "pretty sure" M.W. kicked Joshua.

Parts of the incident were captured on cell phone video. The first video, which is ten seconds long, shows Joshua taking M.W. to the ground in a headlock and punching him in the face four or five times until other people pull him off. In the first four seconds of the second video, Joshua is lying with his back on the ground, then rises to a seated position and turns to face another person standing next to him when someone kicks him in the face. Only the person's leg is visible in the video, although the dark pants at least appear consistent with what M.W. is wearing in the first video. Joshua falls over backward and appears to be unconscious. The record does not indicate how much time passed between the first and second videos. In both of them, bystanders can be heard shouting, and at several points they use the N-word. The audio is not perfectly clear, but in the first video, while Joshua is punching M.W.'s face, someone shouts what sounds like M.W.'s first name, followed by, "Get that [N-word]!" M.W. is black and Joshua is white. In the

second video, some of the shouting, including the N-word, sounds celebratory after Joshua was rendered unconscious.

In November 2023, M.W. was involved in a car accident. He was later diagnosed with a neurocognitive disorder stemming from the traumatic brain injury caused by the car accident. As a result of his condition, he is unable to remember the fight, has suffered from depression and anxiety, has trouble with concentration and has been involuntarily hospitalized for psychiatric treatment.

In April 2024, the Contra Costa District Attorney filed a petition alleging that M.W. committed felony battery with serious bodily injury in violation of Penal Code section 243, subdivision (d).

In December 2024, M.W.'s counsel declared a doubt as to his competency. The court appointed Dr. Camille Tastenhoye to examine him. In January 2025, Dr. Tastenhoye authored a report concluding that he was competent to stand trial. Specifically, she concluded that M.W. was "able to understand the juvenile delinquency proceedings and is able to assist his counsel in a rational manner." She also noted that he was "able to learn and retain new information and demonstrated abstract reasoning."

After consulting with defense counsel, Dr. Tastenhoye conducted a supplemental evaluation in March 2025, focusing on M.W.'s amnesia resulting from the traumatic brain injury suffered in the car accident. She wrote that his "memory impairments as it relates to the alleged offense are significant enough to impair his ability to participate in his defense. [M.W.'s] deficits are such that he is unable to provide any factual recollection of the alleged offense. As such, if his defense relies upon such testimony, he will be unable to provide it to his attorney." She concluded that his "memory deficits, caused by his traumatic brain injury and subsequent neurocognitive

disorder, are sufficient to impair his ability to rationally assist his counsel, as he is unable to recreate the events surrounding the alleged offense. This impairment may contribute to deficits in mounting a defense or testifying on his behalf." At a hearing in July 2025, Dr. Tastenhoye testified that, in her opinion, M.W. is competent "if we do not consider whether his testimony is necessary." She added, however, that "if his testimony is required as a part of the proceedings in this case, he is unable to render that testimony and, as such, that would render him incompetent to assist his attorney."

In September, the trial court found M.W. competent. It found that the expert's testimony was "balanced and credible," expressly recognizing her opinion that M.W.'s amnesia was a "permanent and precluding factor," and that he would not be able to assist in his defense if his testimony were necessary.

Turning to the videos, the court began as follows: "With respect to the use of the 'N' word, . . . [t]here is no indication, from what I saw, that the victim [i.e., Joshua] was using the word, and I don't think [defense counsel] was suggesting that. I don't know that you could hear anything that either [M.W.] or the victim were saying, if anything, on the videos. [¶] So I did look back through both of the videos to determine whether that would somehow be a justification for the minor feeling as if he needed to act in self-defense, which I think is why it was being mentioned by the defense, not just as someone being physically assaulted, but verbally as well. In the first video, it is being used, I think, pejoratively. Although, it is somewhat unclear. But, as [the prosecutor] indicated, when watching the second video, the individuals who were yelling that epithet became very excited and were celebrating after the victim was rendered unconscious."

The court continued: "It, for what it is worth, was incredibly offensive and pathetic, and, obviously, an abhorrent slur. It appeared as if the people in the second video were ending the word in the 'A,' instead of the 'E-R' form, for what it is worth. I don't know that that matters, except that it relates to how pathetic the individuals are that were making those epithets. [¶] But I will note that after the victim was kicked in the face and was convulsing on the ground, the phrasing was, This how we turn up, 'N' word. 1919, 'N' word. Yeah, 'N' word. [¶] I am not positive, but I think that '1919' is also a concerning epithet, but I don't—I don't know for sure what the reference is. Those individuals appeared to be celebrating, hooting and hollering following the kick to the victim's head. [¶] So, yes, I think there was quite a bit of egging-on behavior from the crowd of juveniles but, again, it appears that the people who were using the—or the slur at the end seemed to be using it in a celebratory way, supporting the minor, in a way. If that could be used to support—the celebration appeared to be in favor of the minor, at the very least, if not the words used. So, certainly, it is still a mitigating factor, but I don't know that it weighs heavily in favor of a defense, per se."

The court then noted that "[t]he case law is clear that amnesia alone is not enough to render an individual incompetent," and said it had considered the factors in a case cited by the defense, *Wilson* v. *United States* (D.C. Cir. 1968) 391 F.2d 460, at pages 463 to 464 (*Wilson*). Returning to the videos, the court stated: "The video of the first portion of the incident is alarming and concerning and certainly of mitigating value. [¶] The second video, I will describe as follows: It starts with the victim first on his back, then sitting up almost, at one point, hugging his knees while surrounded by a number of other teens who are standing over him. One of whom, he is conversing with, and that ends up being one of the boys who starts celebrating at the end of

the video, as I described earlier. [¶] As the youth has his—essentially, his back turned and is looking up at and conversing with that individual, an individual who was not even caught on camera suddenly kicks him, coming from behind his side, once, very hard in the face. The victim then falls back and appears to convulse as he is rendered unconscious."

With those observations, the court turned to the defense's argument "that [M.W.'s] testimony is necessary, essentially, to establish a self-defense claim. However, when we look at the CALCRIM for self-defense and the requirements to establish such a defense, it is clear that what led up to the kicking might be mitigating factors, but not those which would amount to a self-defense claim. The remaining facts can be established by the videos and witness testimony. We are not left in a scenario where it is a 'he said, she said' sort of reconstruction of the facts."

Finding that there were no other reasons to find M.W. incompetent, the court reinstated proceedings on the juvenile petition.

DISCUSSION

Under section 709, subdivision (a), "[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 them." A minor is presumed competent unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. (*K.R. v. Superior Court* (2023) 89 Cal.App.5th 1193, 1199.) The party asserting the minor's incompetency bears the burden of proof on that issue. (*In re R.V. (*2015) 61 Cal.4th 181, 193.) We review the juvenile court's competency determination for

substantial evidence, viewing the record in the light most favorable to the determination. (*Id.* at pp. 199–200.)

I.

M.W. argues that the juvenile court erred by concluding that his testimony would not be required based on a premature determination that the evidence did not support a claim of self-defense. He writes: "Although the defense presented some limited evidence at the competency hearing to show the potential for a self-defense theory, the record remains incomplete. The court foreclosed a self-defense instruction without hearing testimony from percipient witnesses or from the law enforcement officers who investigated the case." M.W. adds that the trial court's conclusion was also erroneous on the evidence presented, which he maintains "constitutes substantial evidence that a self-defense claim would be relevant for consideration by the factfinder at trial."

In her return to the petition, the district attorney responds that "it is not clear on this record that the Juvenile Court has actually precluded the Petitioner from pursuing a self-defense theory at the contested jurisdictional hearing," suggesting the court meant simply that M.W.'s testimony "is not necessary to establish a self-defense claim, not that he was precluded from presenting the affirmative defense." She also contends that it was not premature for the court to comment on the evidence that M.W. submitted given the necessity of deciding prior to the jurisdictional hearing whether M.W. was competent. In her informal opposition, the district attorney was somewhat more definitive in construing the court's comments to mean that M.W.'s testimony would be unnecessary because there is no substantial evidence to support a self-defense theory. She argued that the court's conclusion was correct because both the video and eyewitness testimony

establish that Joshua was sitting on the ground and posed no threat when he was kicked in the face, so no rational trier of fact could conclude that M.W. acted in self-defense.

A.

Before taking up these arguments, we review the case law addressing the effect of a defendant's amnesia on competency to stand trial. "Almost universally, the courts agree that amnesia in and of itself does not render a defendant incapable of standing trial, of receiving a fair trial, or of assisting his counsel in the defense of his case." (*People v. Amador* (1988) 200 Cal.App.3d 1449, 1453 (*Amador*).) In *Amador*, the defendant was convicted of attempted murder and related offenses by a no contest plea. During the commission of the offense, he received a head wound, causing him permanent amnesia regarding the offense. In competency proceedings before trial, the court found him legally competent to stand trial. The court of appeal affirmed. The court explained: "Many times in criminal trials evidence is lost, a material witness dies or the defendant has amnesia as to certain events or times. However, such handicaps cannot prevent the trial from eventually taking place. Rarely is there a defendant who could not contend that he was deprived of some evidence and therefore should not be tried. However, evidence which is never to be obtained because of the death of a witness cannot prevent a criminal trial from proceeding and the same must be said for the case in which the defendant has amnesia. [Citation.] [¶] The amnesic defendant is no worse off than the defendant who cannot remember where he was on a particular day because of the passage of time, or because he was drunk, drugged, unconscious or asleep at the time of the crime." (*Id.* at p. 1454.) The court reasoned further that "amnesia does not inhibit discussion between attorney and client as to tactical decisions

concerning the trial," and that holding that amnesia renders a defendant incapable of standing trial would negate criminal responsibility. (*Ibid.*)

The *Amador* court acknowledged, however, that some federal cases have held that "amnesia is a factor to be considered in determining whether a defendant can receive a fair trial" and that those cases "adhere to the approach that the fundamental fairness of trying an amnesic defendant may vary depending upon the crime and the circumstances surrounding the claimed loss of memory." (*Amador, supra*, at p. 1455, citing *U.S. v. Swanson* (5th Cir. 1978) 572 F.2d 523, 526 (*Swanson*); *U.S. v. Rinchack* (11th Cir. 1987) 820 F.2d 1557, 1569 (*Rinchack*); *Wilson, supra*, 391 F.2d at pp. 463–464; see also *People v. Jablonski* (2006) 37 Cal.4th 774, 808–809, citing *Amador* for the proposition that amnesia "does not, standing alone, establish incompetency" but that the inability to recall "is a factor to be considered in determining whether a defendant is incompetent to stand trial".) Considering the circumstances before it, including the overwhelming evidence at the preliminary hearing of the defendant's involvement in the offense and the lack of any indication that the defendant's amnesia precluded a defense otherwise available, the *Amador* court concluded that the defendant's amnesia would not have "thwarted the factfinding process or denied him a fair trial." (*Amador*, at p. 1456.)

In *Wilson*, *supra*, 391 F.2d at page 463, the court observed that at a pre-trial competency hearing, the trial court must assess whether the amnesic defendant is able to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. The court held further that, because the initial assessment is a "prediction" of the defendant's ability to perform these functions, "where the case is allowed to go to trial, at its

conclusion the trial judge should determine whether the defendant has in fact been able to perform these functions. [The court] should, before imposing sentence, make detailed written findings, after taking any additional evidence deemed necessary, concerning the effect of the amnesia on the fairness of the trial. In making these findings the court should consider the following factors: [¶] (1) The extent to which the amnesia affected the defendant's ability to consult with and assist his lawyer. [¶] (2) The extent to which the amnesia affected the defendant's ability to testify in his own behalf. [¶] (3) The extent to which the evidence in suit could be extrinsically reconstructed in view of the defendant's amnesia. Such evidence would include evidence relating to the crime itself as well as any reasonably possible alibi. [¶] (4) The extent to which the Government assisted the defendant and his counsel in that reconstruction. [¶] (5) The strength of the prosecution's case. Most important here will be whether the Government's case is such as to negate all reasonable hypotheses of innocence. If there is any substantial possibility that the accused could, but for his amnesia, establish an alibi or other defense, it should be presumed that he would have been able to do so. [¶] (6) Any other facts and circumstances which would indicate whether or not the defendant had a fair trial." (*Id.* at pp. 463–464 [footnote omitted].)

In *Swanson*, *supra*, 572 F.2d at page 526, footnote 3, the court declined to require *Wilson's* procedural approach but held that, following a pre-trial competency hearing, "the court may at any time during or after the trial reevaluate the competency of the accused, with or without a motion by counsel." The court explained that "the standard for determining the competency of an amnesiac defendant must remain flexible" (*id.* at p. 526), and suggested that courts may consider factors such as whether the crime

and the defendant's whereabouts can be reconstructed without defendant's testimony, whether the strength of the case against the defendant makes his own testimony less critical than in a weaker case, and whether information held by the prosecution could fill in gaps in the defendant's memory. (*Id.* at p. 527.)

In *Rinchack, supra*, 820 F.2d at page 1569, citing both *Swanson* and *Wilson*, the court outlined a similar set of factors to be applied in determining whether an amnesiac defendant is incompetent to stand trial: "[T]he court should evaluate the nature and extent of the defendant's impairment and determine its impact on the following factors: [¶] 1. The defendant's ability to take the stand and testify and otherwise participate in his defense; [¶] 2. Whether the amnesia is temporary or permanent; [¶] 3. Whether the crime and the defendant's whereabouts can be properly reconstructed without the defendant's testimony, including any facts giving rise to a defense; [¶] 4. Whether access to government files would aid in preparing for trial; [¶] 5. The strength of the government's case against the defendant." (See *U.S. v. Villegas* (2d Cir. 1990) 899 F.2d 1324, 1341 [applying *Rinchack* factors].)

We agree with M.W. that the factors considered in the above federal cases provide a "useful framework" for the court to evaluate "the due process and fundamental fairness considerations of prosecuting an amnesiac defendant." Consideration of the factors should remain flexible; strict adherence to any specific set of factors is not required. As observed in *Wilson, supra*, 391 F.2d at page 464, footnote 4, in applying the factors, it is "the probability of prejudice, not the lack of memory *per se*," that is controlling. (See also *U.S. v. Borum* (10th Cir.1972) 464 F.2d 896, 900 [amnesia is not "a *per se* deprivation of due process. Prejudice must be

shown to exist—that there are, for example, facts available which could not be obtained from the file of the prosecution or from investigation by the defense (fn. omitted)" or that there is "a tenable defense which has been locked in by the amnesia"].)

Given that the only decision before this court is the pretrial competency determination, we need not decide whether *Wilson*'s posttrial procedural requirements are necessary. We emphasize, however, that "[a] pretrial order finding a defendant competent to stand trial does not 'conclusively determine' the defendant's competency." (*U.S. v. No Runner* (9th Cir. 2009) 590 F.3d 962, 964.) As the court observed in *Runner*, "Determining whether memory loss renders a defendant incompetent turns on consideration of several factors, including whether the crime and the defendant's whereabouts at the time of the crime can be reconstructed without the defendant's testimony and the strength of the government's case. [Citation.] The answers to these questions may not be known prior to trial; it may be the trial itself that illuminates them. In such cases, a pretrial finding of competency is necessarily subject to potential reconsideration. . . . '[I]f at any stage during or after trial, with or without motion by counsel, it becomes apparent that the defendant's amnesia may have rendered him incompetent and jeopardize the fairness of the trial, then the district court again must evaluate the defendant's competency.' " (*Ibid.*, fn. omitted.)

B.

Although the cases cited above arose in the context of criminal court and considered the applicable standards for determining competency for adults, we do not believe, as M.W. suggests, that the differences between the adult and juvenile competency schemes and/or the emphasis on rehabilitation and treatment, not punishment, in juvenile commitment proceedings (see,

e.g., *In re Aline D.* (1975) 14 Cal.3d 557, 567) provide a ground for distinguishing this authority.

Initially, M.W. argues that because "a mental disorder" is not required under section 709, "memory impairment alone is sufficient to find [him] incompetent, since 'any condition' can suffice." While we agree that section 709 did not require M.W. to establish that his amnesia is caused by a specific mental disorder, he must still prove under the statute that his "condition" resulted in an inability to assist counsel with a reasonable degree of rational understanding.

M.W. argues further that "*Amador* is distinguishable because the decision in *Amador* turned, in part, on the fact that finding an amnesiac defendant incompetent would result in a defendant avoiding 'criminal responsibility.' " He asserts that this "particular consideration is not relevant here in light of the vastly different objectives in juvenile commitment proceedings: rehabilitation and treatment." The purpose of juvenile system cannot be served, however, if an amnesiac minor is not subject to court supervision. A minor who does not remember a crime may still be in need of rehabilitation and, as the district attorney suggests, the juvenile justice system can fashion an individualized treatment plan that could meet the rehabilitative needs of such a minor.

Pointing to his "multiple psychiatric hospitalizations" since his traumatic brain injury, M.W. argues that "[t]rying a youth who suffers from such major deficits clearly does not align with the Legislature's overarching goals of rehabilitation and effectively safeguarding a juvenile's due process right not to be subject to adjudication while incompetent." He adds that given his current age, the passage of time, and his lack of further involvement with the juvenile justice system, "rehabilitation and treatment

for being involved in a fight when he was 15 years old is simply no longer a present concern." The district attorney disagrees, noting that "[t]here is no evidence in the record to suggest that the underlying behavioral issues that gave rise to this incident have been remediated."

In juvenile as in adult criminal cases, "the exercise of the district attorney's sound discretion as to whether prosecution is or is not warranted in any particular case" is a "critically important element" of the process, and we would trust the district attorney to exercise it "with wisdom and caution." (*People v. Percifull* (1992) 9 Cal.App.4th 1457, 1463.) Moreover, the juvenile court has the discretion to dismiss the juvenile wardship petition under section 782 if it determines that M.W. is no longer in need of rehabilitation. But we cannot say categorically that there can be no reason for the juvenile court to exercise jurisdiction over a minor who cannot recall the incident, and we decline to hold that, in contrast to the adult criminal context, a minor's amnesia necessarily establishes incompetency.

C.

We now take up the parties' principal arguments. To begin with, we need not resolve the parties' disagreement about whether the trial court intended to preclude M.W. from asserting self-defense in the future jurisdictional proceeding. Any lack of clarity in the record aside, the juvenile court was not tasked with making such a determination in the competency hearing, and as in any other case, whether M.W. is entitled to assert self-defense will depend on the trial evidence. A pretrial competency determination cannot be given preclusive effect on the question of the viability of a claim of self-defense—a point on which the district attorney agreed at oral argument.

For similar reasons, we are unpersuaded by M.W.'s argument that the trial court's ruling was premature because only limited evidence was presented. In some cases, a limited evidentiary showing may suffice to establish incompetency. The trial court concluded that the evidence before it did not. In his informal reply, M.W. himself wrote that he "does not contend that the existing record conclusively establishes self-defense. Rather, the point is that it is too soon to determine." Once M.W. raised the issue of his competency, however, the trial court was required to decide it, and it could do so only based on the evidence it received. To the extent the federal cases discussed above indicate that a court should consider the strength of the government's case, including whether the government's case is "such as to negate all reasonable hypotheses of innocence," some evaluation of the strength of M.W.'s possible self-defense claim was appropriate. (*Wilson, supra*, 391 F.2d at p. 464; *People v. Adrian* (1982) 135 Cal.App.3d 335, 340–341 [because self-defense negates culpability for assaultive crimes, the burden of persuasion is on the state].) But as we also noted above, the court's conclusion cannot be treated as having decided the question once and for all because additional evidence could emerge that would require it to revisit the question, either on the defense's motion or on its own motion. (*U.S. v. No Runner, supra*, 590 F.3d at p. 964.) A pretrial decision about whether amnesia renders the defendant incompetent requires a prediction about how the trial will unfold, and the court and the parties must remain open to the possibility that the prediction will prove wrong.[2]

[2] On this issue, too, the district attorney agreed at oral argument that the court may revisit its competency decision based on different or additional evidence that may be presented by either party in the future.

Putting aside questions about future proceedings, we do understand the trial court's statements to constitute a decision that the events shown in the two videos would not entitle M.W. to assert a claim of self-defense—which, again, is how the district attorney also read the record in her preliminary opposition. To repeat, the court stated that "when we look at the CALCRIM for self-defense and the requirements to establish such a defense, it is clear that what led up to the kicking might be mitigating factors, but not those which would amount to a self-defense claim."[3] M.W. argues that the trial court impermissibly made credibility determinations in deciding whether the evidence was sufficient to warrant a claim of self-defense (see *People v. Salas* (2006) 37 Cal.4th 967, 982), but we are not so sure. The district attorney plausibly interpreted this statement to mean that, even though Joshua was previously punching M.W. in the head, the fact that he was seated on the ground when he was kicked shows that no rational jury could conclude that M.W. reasonably believed that he was in imminent danger of suffering bodily injury. (See CALCRIM No. 3470.)

Assuming the district attorney correctly describes the court's analysis, we are not entirely persuaded by it. The CALCRIM instruction includes the following: "When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. . . . [¶] [If you find that <*insert*

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[3] The court then added, "The remaining facts can be established by the videos and witness testimony. We are not left in a scenario where it is a 'he said, she said' sort of reconstruction of the facts." We understand this statement to mean that, aside from self-defense (which the court determined would not be at issue), the court did not believe that M.W.'s testimony would otherwise be necessary to establish the facts of the incident.

name of victim> threatened or harmed the defendant . . . in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.] . . . [¶] [Someone who has been threatened or harmed by a person in the past is justified in acting more quickly or taking greater self-defense measures against that person.] . . . [¶] [A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of (death/bodily injury/ <*insert crime*>) has passed.]" (CALCRIM No. 3470.)

The videos do not show who started the fight, and the witness statements are conflicting on that question. But there was evidence that Joshua and M.W. had been "beefing" all day and one witness stated that Joshua threw the first punch. M.W. is correct that, in deciding whether substantial evidence exists in support of a claim of self-defense, a trial court cannot make credibility determinations and must resolve any doubts about the sufficiency of the evidence in favor of the accused. (*People v. Lemus* (1988) 203 Cal.App.3d 470, 476–477.) Here, there was sufficient evidence to permit a rational factfinder to conclude that Joshua was responsible for starting the fight.

Moreover, as M.W. further argues, there is no evidence about how much time passed between the two videos, how much physical distance was traveled, or whether Joshua made threats to him in the time between the videos. In the second video only a few seconds pass before Joshua is kicked. In our view, the fact that he was on the ground at that moment does not conclusively establish that he had abandoned the fight or that M.W. could not reasonably have believed he still faced imminent danger.

M.W. also emphasizes that "racial slurs were being hurled at [him,] the only Black youth, during the chaotic incident."[4] The trial court concluded that the context is more ambiguous than M.W. makes it out to be, although it believed the N-word was used "pejoratively" in the first video notwithstanding that it was "somewhat unclear." Even allowing for the ambiguity, however, we do not find bystanders' repeated use of racial slurs irrelevant to how M.W. might have assessed the threat presented. Our Supreme Court has "join[ed] the chorus of other courts in acknowledging the odious and injurious nature of the N-word in particular," explaining that it "carries with it, not just the stab of present insult, but the stinging barbs of history, which catch and tear at the psyche the way thorns tear at the skin." (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 631; see *McGinest v. GTE Service Corp.* (9th Cir. 2004) 360 F.3d 1103, 1116 [noting that the word evokes "a history of racial violence, brutality, and subordination"].) In *Bailey*, which involved a workplace harassment claim, the court held that allegations of a racially hostile workplace must be considered " 'from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff.' " (*Bailey*, at p. 629.) We think the same rule should apply in evaluating what M.W. might reasonably have believed about the threat presented to him given the repeated shouting of the N-word by other individuals present.

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[4] M.W. does not cite anything in the record to establish that he was the only black youth present that night, and he elsewhere acknowledges that "[t]he exact number of kids present at the Marina is unknown." We have found nothing in the record that could confirm M.W.'s assertion, and even limited to the videos, which are grainy and dark in portions, we do not find it possible to discern even the apparent race of every person visible in them.

While we therefore disagree with the trial court insofar as it concluded that the video evidence precludes a claim of self-defense, we do not disagree with its ultimate conclusion that, on the present record, M.W. has not established that his amnesia would prejudicially impair his ability to assert a claim of self-defense. M.W.'s testimony is not the sole means by which the facts necessary to support self-defense can be established. In addition to the two videos, there are multiple witnesses whose testimony could assist in establishing the circumstances of the crime. M.W. disagrees. He contends the police investigation was faulty insofar as the officers failed to interview M.W. or his friends following the fight or to obtain surveillance video of the incident, and instead only gathered statements by Joshua and his friends. He also faults the prosecution for waiting nearly one year before charging him. As a result, M.W. argues, "the defense, completely ignorant as to this investigation, did not have the opportunity during that entire year to interview witnesses when their memories were fresh, nor gather any extrinsic evidence of the event." These are valid concerns that may be raised at the jurisdictional hearing if the defense believes it is unable to obtain necessary evidence. M.W. has not established, however, that such evidence is unavailable with reasonable diligence. Nor does he argue that his memory of the incident is necessary to identify relevant witnesses.

M.W. points out that his amnesia precludes him from testifying to his "beliefs, fears, and impressions" at the time of the fight. However, the subjective element of self-defense may be established without his testimony at trial. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262; *People v. Oropeza* (2007) 151 Cal.App.4th 73, 82 [to establish the subjective element of self-defense when a defendant does not testify, there must be other evidence of his state of mind, such as his out-of-court statements or the testimony of a

witness to events which appeared to frighten the defendant].) M.W. makes no argument that his state of mind could not be established by the many other witnesses in conjunction with the video evidence.

We do not imply that we think it *likely* that other evidence will prove an adequate substitute for M.W.'s testimony. That is something we do not know. But M.W.'s emphasis on the incompleteness and inconclusiveness of the existing evidence supports the court's finding that he has not established *at this time* that his ability to receive a fair trial will be prejudiced by his amnesia because, for example, there are "facts available which could not be obtained from the file of the prosecution or from investigation by the defense" or because there is "a tenable defense which has been locked in by the amnesia." (*U.S. v. Borum, supra*, 464 F.2d at p. 900.)[5]

D.

In our order to show cause, we asked the parties to consider whether "the juvenile court's determination of the viability of a self-defense claim at the contested competency hearing [is] appropriate where it appears the case was assigned to a single judge for all purposes, and where the same judge who ruled on competence may be the sole trier of fact at the jurisdictional hearing? (See, e.g., *In re Gladys R.* (1970) 1 Cal.3d 855, 858–862.)" This question was occasioned by an argument in M.W.'s informal reply that the

[5] The parties' briefing largely adopted the expert's framing that M.W.'s competency turned on whether his testimony would be necessary at the jurisdictional hearing. At oral argument, M.W.'s counsel contended that the expert's opinion was potentially broader and that under some circumstances the trial court could find that M.W.'s memory deficits would prevent him from assisting counsel in his defense to such an extent that he should be found incompetent even if his testimony were not essential. We do not preclude that possibility in a future competency assessment, but as discussed below, find that M.W. has not shown error on the record before us.

prejudice from the claimed error in the juvenile court's competency decision was exacerbated by the fact that the same judge would also serve as the finder of fact at the jurisdictional hearing.

In *Gladys R.*, the Supreme Court concluded that the juvenile court committed reversible error by reviewing, prior to the jurisdictional hearing at which the court would decide whether to declare the minor a ward of the court, a social study report prepared by the probation department. (*Gladys R., supra*, 1 Cal.3d at p. 858.) It reasoned that the court's premature review of the report, which contained some negative indications about the minor and her home environment, undermined the fairness of the jurisdictional hearing, noting that the Legislature established a bifurcated procedure that "affords a necessary protection against the premature resolution of the jurisdictional issue on the basis of legally incompetent material in the social report." (*Id.*, at pp. 859–862.) M.W. argued that he is similarly situated to the minor in that case insofar as he has "suffered the resolution of a jurisdictional question, specifically his self-defense claim, on the basis of material presented to the court for the preliminary purpose of evaluating his competency." In his view, the court's pretrial finding that he may not claim self-defense "improperly undermines the presumption of neutrality required of the trier of fact and infringes on the minor's due process right to a fair trial."

We have already explained that any decision the juvenile court makes at the competency hearing cannot be given preclusive effect at the jurisdictional hearing, and that M.W.'s ultimate entitlement to assert self-defense will depend on the trial evidence. Therefore, to the extent M.W.'s complaint is simply that the trial court decided he would not be able to claim self-defense at the jurisdictional hearing, we have already addressed that

issue. We also agree with the district attorney that *Gladys R.* is distinguishable in any event because there was no reason in that case for the trial court to review the social study report before the jurisdictional hearing, whereas here the juvenile court properly considered the evidence that M.W. himself submitted at the competency hearing.

M.W. did not address our question in his traverse, so we will not opine further on it. We note only that, if M.W. believes that he is unable to obtain a fair trial before the same judge, the remedy on remand is to exercise a challenge for cause under Code of Civil Procedure section 170.1, subdivision (a)(6). We offer no opinion on the merits of any such challenge.

II.

M.W.'s remaining arguments are without merit. First, M.W. argues that the juvenile court erred by arbitrarily rejecting the expert's conclusion that his amnesia rendered him incompetent. He asserts, "Dr. Tastenhoye was the only expert who testified at the competency hearing, and as such this is an instance where there is unanimous and uncontroverted expert testimony that Petitioner is not competent to rationally assist counsel. To reject the expert's testimony in the case, the court must cite nonarbitrary reasons. The record reveals none." The expert, however, did not find M.W. incompetent. As set forth above, she found that M.W. was competent *unless* his testimony were necessary at trial. The juvenile court found that his testimony was not necessary, and thus that he was competent.

Second, M.W. argues that the juvenile court erred by "failing to consider" whether his amnesia prejudicially impaired "other aspects of rational assistance" apart from his ability to assert a claim for self-defense. He suggests that because he has no independent memory of the alleged crime, "[h]e will not be able to assist his attorney by correcting aspects of

witness testimony or pointing out contrary witnesses or evidence on any certain topic. Petitioner will not be able to advise his counsel as to inaccuracies in the witnesses' testimony and propose effective questioning." As set forth above, however, before separately addressing the possible self-defense claim, the court indicated that it had considered the parties' arguments regarding the impacts of M.W.'s amnesia on his competency, including the arguments made by defense counsel as to the *Wilson* factors. The court quoted *Amador* in support of his conclusion that M.W.'s amnesia alone did not render him incompetent because he was no different from a defendant who is unable to remember the "dispositive" facts due to inebriation or other loss of memory. Accordingly, the record supports the conclusion that the court considered how his amnesia impacted his competency as a whole.

Third, M.W. suggests that the juvenile court erred by focusing only on whether his amnesia rendered him incompetent and failed to consider how the other symptoms of his traumatic brain injury impacted his ability to assist with his defense. He cites his father's testimony that he cannot remember things even moments after he learns them and struggles to remain organized, and that he gets overwhelmed and frustrated when he cannot remember things, which has led to depression, anxiety and multiple psychiatric hospitalizations. He argues that "this overwhelming evidence regarding [his] inability to focus, short-term memory impairment, inability to multi-task, frustration, and depression points to an inability to consult with his lawyer in a rational and meaningful way."

Contrary to M.W.'s argument, the trial court considered "whether, based on [M.W.'s] father's testimony, . . . there were other reasons to find [M.W.] incompetent" and found that they did not establish incompetency.

The court explained, "While I am very sad that [M.W.] and his family have suffered through such trauma, and I am sympathetic to it, I think, based on Dr. Tastenhoye's first report and her testimony, and based on the case law that I have been provided by all of the parties, that he is competent to proceed."

Substantial evidence supports the trial court's finding that, apart from his amnesia, M.W. was in all other respects competent. The expert reported that M.W. "was cooperative and respectful during my evaluation. While he occasionally required a question to be repeated or took some time to answer a question, his answers were coherent, logical, and appropriate. . . . [He] demonstrated the ability to adequately reason through relevant legal concepts, learn and retain new information, and apply new information as it pertained to his case. He expressed wanting to work with his defense lawyer and identified that they would be the appropriate person to ask questions if confused during the proceedings."

Fourth, M.W. contends that a new competency hearing should be held because it is unclear whether the court applied the correct competency standard. Specifically, he argues that the record is silent as to whether the court applied the juvenile competency standard rather than the standard applicable to adults; the court failed to make "specific findings" as to whether he (1) lacks sufficient present ability to consult with counsel and assist in preparing his defense with a reasonable degree of rational understanding, or (2) lacks a rational as well as factual understanding of the nature of the charges or proceedings against him; and the court did "not state the legal standard by which the evidence at the competency proceeding is to be evaluated." He acknowledges that, under Evidence Code section 664, we

presume "that official duty has been regularly performed," but suggests that this presumption has been rebutted by contrary evidence. We disagree.

Nothing in the record suggests that the court was applying the adult standard rather than section 709. Contrary to M.W.'s suggestion, the court did not find M.W. competent based on his failure to establish that he suffered from a specific "mental disorder" rather than a "condition" that resulted in his incompetency. Nor was the court required to make any express findings regarding whether his condition rendered him incompetent in any particular manner. (See *People v. Marks* (1988) 45 Cal.3d 1335, 1343 [no "magic words" are required of the trial court in ruling on a defendant's competency but the trial court must "*expressly and unmistakably state on the record,* either orally or in writing, its determination as to whether the defendant is mentally competent to stand trial"].) Finally, the court's limited citation to the CALCRIM instruction on self-defense does not suggest, as M.W. argues, that the court applied the trial standard for the giving of jury instructions to the determination of whether he was competent, rather than the preponderance of the evidence standard.

DISPOSITION

The petition for writ of mandate/prohibition is denied. This court's November 21, 2025 stay order is vacated.

GOLDMAN, J.

WE CONCUR:

BROWN, P. J.
STREETER, J.

Trial Court:	Contra Costa County Superior Court
Trial Judge:	Honorable Colleen Gleason
Counsel for Petitioner:	Ellen McDonnell, Contra Costa County Public Defender, Kira Klement, Deputy Public Defender
Counsel for Respondent:	No appearance
Counsel for Real Party in Interest:	Diana Becton, District Attorney, Ricky De Herrera, Deputy District Attorney