

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA JAN 11 2016

In re I.C., A Person Coming Under the Juvenile Court
Law

ALAMEDA COUNTY SOCIAL SERVICES
AGENCY,

Petitioner and Respondent,

v.
Alberto C.,

Objector and Appellant.,

No. S229276 Frank A. McGuire Clerk

Deputy
Court of Appeal Case No.
A141143

Alameda County Superior
Court Case No. SJ12019578-01

RESPONDENT'S ANSWERING BRIEF

After the Published Decision by the Court of Appeal
First District, Division Two
Filed August 6, 2015

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Table Of Contents

	Page(s)
I. INTRODUCTION	1
II. STATEMENT OF CASE AND FACTS	2
A. SECTION 300 PETITION	2
B. DETENTION.....	3
C. JURISDICTION	5
1. THE JURISDICTION TRIAL	5
a. AGENCY REPORTS	6
i. DETENTION REPORT (SEPTEMBER 17, 2012)	6
ii. JURISDICTION/DISPOSITION REPORT (OCTOBER 2, 2012) ..	6
(a) SEPTEMBER, 2012 INCIDENT	7
(b) JULY, 2012 INCIDENT.....	9
iii. ADDENDUM REPORTS (NOVEMBER 26, 2012 AND JANUARY 14, 2013)	10
b. MOTHER'S TESTIMONY	11
c. CHILD WELFARE WORKER SYLVINA COOPER'S TESTIMONY	12
d. A.C.'S TESTIMONY	14
e. CALICO INTERVIEWS.....	15
D. DECISION.....	15
E. DISPOSITION.....	17
III. ARGUMENT	17
A. INTRODUCTION	17
B. HISTORY OF THE LEGAL STANDARD ON RECEIPT OF HEARSAY FROM AN INCOMPETENT MINOR.....	22
C. THE JUVENILE COURT PROPERLY ASSESSED THE TRUTHFULNESS OF THE MINOR UNDER <i>LUCERO L.</i>	27
1. I.C.'S STATEMENTS CONTAINED SUFFICIENT INDICIA OF RELIABILITY AS IDENTIFIED IN <i>LUCERO L.</i>	27
2. THE TRIAL COURT PROPERLY IDENTIFIED AND APPLIED THE <i>LUCERO L.</i> STANDARD.....	31

D. THE COURT OF APPEAL PROPERLY AFFIRMED THE TRIAL COURT'S JURISDICTIONAL FINDING BY APPLYING A SUBSTANTIAL EVIDENCE STANDARD OF REVIEW.....34

IV. CONCLUSION.....38

Table Of Authorities

	Page(s)
Federal Cases	
<i>Maryland v. Craig</i> (1990) 497 U.S. 836.....	20
<i>Pennsylvania v. Ritchie</i> (1987) 480 U.S. 39.....	21
<i>Santosky v. Kramer</i> (1982) 455 U.S. 745.....	19
<i>Idaho v. Wright</i> (1990) 497 U.S. 805.....	23
State Cases	
<i>Belair v. Riverside County Flood Control Dist.</i> (1988) 47 Cal. 3d 550.....	34
<i>Blanca P. v. Superior Court</i> (1996) 45 Cal.App.4th 1738.....	19
<i>Cynthia D. v. Superior Court</i> (1993) 5 Cal. 4th 242.....	19
<i>Denham v. Superior Court</i> (1970) 2 Cal. 3d 557.....	38
<i>In re Angel W.</i> (2001) 93 Cal.App.4th 1074.....	20
<i>In re Angelia P.</i> (1981) 28 Cal. 3d 908.....	19
<i>In re B.D.</i> (2007) 156 Cal.App.4th 975.....	29, 35, 39
<i>In re B.G.</i> (1974) 11 Cal. 3d 679.....	19

<i>In re Bernadette C.</i> (1982) 127 Cal.App.3d 618	33
<i>In re Carmen O.</i> (1994) 28 Cal.App.4th 908	40
<i>In re Cindy L.</i> (1997) 17 Cal. 4th 15	15, 23, 24
<i>In re I.C.</i> (2015) 239 Cal.App.4th 304	1, 31, 35, 36
<i>In re I.J.</i> (2013) 56 Cal. 4th 766	36, 37
<i>Ingrid E. v. Superior Court</i> (1999) 75 Cal.App.4th 751	17
<i>In re Kailee B.</i> (1993) 18 Cal.App.4th 719	40
<i>In re Lesly G.</i> (2008) 162 Cal. App. 4th 904	20, 22
<i>In re Lucero L.</i> (2000) 22 Cal. 4th 1227	<i>passim</i>
<i>In re Malinda S.</i> (1990) 51 Cal. 3d 368	19, 22
<i>In re Stephanie M.</i> (1994) 7 Cal. 4th 295	38
<i>Maria P. v. Riles</i> (1987) 43 Cal. 3d 1281	38
<i>Soto v. State of California</i> (1997) 56 Cal.App.4th 196	26
<i>T.W. v. Superior Court</i> (2012) 203 Cal.App.4th 30	17
<i>Tupman v. Haberkern</i> (1929) 208 Cal. 256	35

State Statutes

Welfare and Institutions Code section 355	<i>passim</i>
Welfare and Institutions Code section 300	<i>passim</i>
Welfare and Institutions Code section 355(c)(1)(B).....	<i>passim</i>
Welfare and Institutions Code section 202(a).....	18
Welfare and Institutions Code section 355(a).....	18
Welfare and Institutions Code section 300(d).....	30

Regulations

Legis. Analyst, Enrolled Bill Rep., Sen. Bill No. 86	22, 23
--	--------

Other Authorities

Jan Bays and David Chadwick, <i>Medical Diagnosis of the Sexually Abused Child</i> , 17 CHILD ABUSE & NEGLECT 91, 92 (1993).....	21, 29
Kamala London, et al., <i>Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?</i> 11 PSYCHOLOGY PUBLIC POLICY & LAW 194 (2005).....	21, 29
Thomas Lyon and Julia Dente, <i>Child Witnesses and the Confrontation Clause</i> , 102 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY, 1181, 1203 (2013).....	21
Thomas Lyon, <i>False Denials: Overcoming Methodological Biases in Abuse Disclosure Research</i> , in DISCLOSING ABUSE: DELAYS, DENIALS, RETRACTIONS & INCOMPLETE ACCOUNTS, p. 41-62, 57 (M. Pipe, M. Lamb, Y. Orbach, & A. Cederborg, Eds. 2007).....	21
Nico Trocmé and Nicholas Bala, <i>False Allegations of Abuse and Neglect When Parents Separate</i> , 29 CHILD ABUSE & NEGLECT 1333, 1337 (2005).....	21

I. INTRODUCTION

This case involves a three-year-old girl who, after being sexually abused by her father, Alberto C. ("Father"), spontaneously and separately disclosed the abuse to her mother, two teachers at daycare, a Child Welfare Worker, and a Child Abuse Listening, Interviewing, and Coordination Center ("CALICO") interviewer. As is typical with child sexual abuse, there were no witnesses to the abuse other than the victim and Father. As is typical with child sexual abuse, there was no physical evidence of the abuse. The only evidence was the statements of the three-year-old victim herself.

This Court has asked the parties to brief two issues. First, whether the trial court properly assessed the truthfulness of I.C.'s spontaneous statements to her mother, her daycare staff, and to the CALICO interviewers regarding the molestation when it found the allegations true and took jurisdiction of the matter under Welfare and Institutions Code section 355.¹ Second, whether the appellate court applied the correct standard in reviewing the trial court's jurisdictional findings.

Appellant argues that the trial court incorrectly implemented the test set forth in *In re Lucero L.* (2000) 22 Cal. 4th 1227, when it took jurisdiction based solely on I.C.'s hearsay statements. Appellant further argues that the First District Court of Appeal's decision affirming the trial court's findings as stated in *In re I.C.* (2015) 239 Cal.App.4th

¹ All Code section references hereafter will be to the California Welfare and Institutions Code, and all Rule references will be to the California Rules of Court, unless otherwise indicated. CT refers to the Clerk's Transcript; RT proceeded by the hearing date refers to the Reporter's Transcript for each date.

304 must be overturned because it violated Father's due process rights and contradicts *Lucero L.*

Respondent, Alameda County Social Services Agency ("the Agency"), disagrees with Appellant. The trial court received and thoroughly reviewed significant evidence in coming to its determination that I.C.'s hearsay statements met the requisite standard for reliability set forth in *Lucero L.* The trial court's lengthy decision and discussion of its findings proves that it properly applied *Lucero L.*, and determined that I.C.'s statements met the standards. Thus, the trial court properly found the allegations true and took jurisdiction over I.C.

Furthermore, the Court of Appeal appropriately applied the substantial evidence standard of review, as instructed by *Lucero L.* The appellate court properly declined to conduct a de novo review of the evidence before the trial court. *Lucero L.* instructs appellate courts to review trial court findings for substantial evidence. It does not authorize appellate courts to re-try the case, or independently weigh the evidence before the trial court. It follows that the Court of Appeal applied the proper standard of review, and its holding should be affirmed.

II. STATEMENT OF CASE AND FACTS

A. SECTION 300 PETITION

An original Section 300 petition was filed on September 14, 2012, on behalf of the then-three-year-old minor, I.C.² The petition was amended twice.

² The original Petition included I.C.'s then-five-year-old brother, J.C. (CT 1-7.) The allegations regarding J.C. were subsequently dismissed. (3/27/13 RT 9.)

(CT 1-7, 46-53, 192-195.) As finally amended and sustained, the petition stated Section 300(d) allegations as follows:

D-1: The minor I[.]C[.] has been sexually molested by her father, while living in the home of the mother and father in that;

- a. On more than one occasion, I[.]C[.] has spontaneously stated to others and to her mother, "Daddy put his penis on me."
- b. I[.]C[.] has pointed to her vaginal area and complained that it hurts.
- c. I[.]C[.] states that her father put foreign objects in her vagina, including a "flower" a "train" and that "did not feel good".
- d. I[.]C[.] states that her father will take off her clothes and he will take off his clothes and lay on the bed with her, and kiss her in the mouth.
- e. I[.]C[.] states that her father kisses her vagina when she is in her brother, Julian's bed.
- f. I[.]C[.] states that she watched a movie where a boy kisses a boy and a girl kisses a girl, and they were not wearing clothes.

D- 2: The mother does not believe that the father has sexually molested the minor, I[.]C[.]

(CT 194.) A Detention hearing was scheduled for September 17, 2012. (CT 2.)

B. DETENTION

The Agency prepared a report for the Detention hearing. (CT 10-30.)

On September 11, 2012, I.C. told Mother that Father had sexually molested her.³ (CT 13.) Mother confronted Father about the allegations. (*Id.*)

As a precautionary measure, Mother arranged for I.C. to attend daycare for the full day on September 12 so that Father would not pick her up from school.

(*Id.*) Mother intended to investigate the matter after work on September 12.

³ Although the Detention report identified the date of disclosure as September 10, later reports and testimony confirm that I.C.'s initial disclosure of the abuse to Mother occurred on September 11. (CT 63, 94) The Agency has corrected the dates for clarity's sake.

(*Id.*)

While at preschool on September 12, I.C. stated: "Daddy put his penis in me." (CT 12.) When asked whether she was hurt, I.C. said, "Well it hurts a little" and pointed to her pubic area. (CT 12, 93.) I.C. later stated to a child welfare worker that, "Daddy put his penis on me." (CT 12; 24.) She stated that this happened in her brother J.C.'s room in their home. (CT 24.)

I.C. was later transported to the CALICO interview center, where she once again repeated her allegations of molestation by her father. (CT 12.) I.C. described the molestation in detail. (CT 24-25.) She stated that Father kissed her, and "puts his penis on me." (CT 24.) She stated that it "did not feel good" while pointing to her genitals. (*Id.*) She stated that it hurt when Father put his penis inside of her, and opened her legs, pointing to her vagina. (*Id.*)

Afterward the interview, I.C. was transported to Children's Hospital, Oakland where doctors conducted a Sexual Assault Response Team ("S.A.R.T.") forensic examination. (CT 13.) The results of the examination were inconclusive. (*Id.*)

Mother did not believe that Father molested I.C. (*Id.*) I.C. had been sexually abused by a neighborhood boy on or about July 2, 2012 (*Id.*) I.C. saw the boy on September 10, 2012. (*Id.*) Mother believed that I.C. was re-traumatized by that encounter. (*Id.*) Father also denied the allegations. (*Id.*)

The Detention hearing proceeded as scheduled on September 17, 2012. (CT 8.) The court appointed counsel and elevated Father to Presumed Father

status. (CT 8; 9/17/12 RT 3, 13.) Father's counsel offered to submit documentation regarding a temporary restraining order against the father, which the court stated it would issue. (CT 9; 9/17/12 RT 15-16.)

The court detained I.C. but gave the Agency discretion to release her to Mother or another suitable adult relative. (CT 9; 9/17/12 RT 12, 19.) The court scheduled a Jurisdiction/Disposition and Restraining Order hearing for October 2, 2012.⁴ (CT 9.)

C. JURISDICTION

The parties appeared on October 2 for the Jurisdiction hearing. (CT 140.) On September 29, the Agency had released I.C. to Mother, under the condition that Father remain out of the home. (CT 61.) The Agency recommended that the court take jurisdiction of I.C., and order Family Maintenance services to Mother. (CT 54.) The Agency recommended informal child welfare services for Father. (*Id.*)

Mother and Father objected to the Agency's recommendations, and a contested hearing was set for December 3, 2012. (CT 140.) The court issued a permanent restraining order against Father, which would expire on the date of the contested Jurisdiction hearing. (CT 140; 10/2/12 RT 3.)

1. THE JURISDICTION TRIAL

The Jurisdiction trial spanned nearly five months. The court received extensive documentary and testimonial evidence from the parties. The court admitted the following

⁴ The court subsequently bifurcated the matters of Jurisdiction and Disposition per the parents' request. (CT 176; 1/14/13 RT 38-39.)

Agency reports into evidence: the September 17, 2012 Detention report, the October 2, 2012 Jurisdiction/Disposition report, the November 26, 2012 Addendum report, and the January 14, 2013 Addendum report. (CT 157; 176; 178.) The court also admitted I.C. and J.C.'s CALICO interviews into evidence, and they were viewed in open court. (CT 157; 12/2/12 RT 5, 6.) The court also received testimony from Mother, Child Welfare Worker Sylvina Cooper, and I.C.'s adult half-sister, A.C. (CT 176-183.) Appellant acknowledges that Father's trial counsel did not at any time object to the admission of I.C.'s hearsay statements. (Opening Brief ("OB"), pg. 22.)

a. AGENCY REPORTS

i. DETENTION REPORT (SEPTEMBER 17, 2012)

The content of the Agency's Detention report (CT 10-30) is detailed above in Section (II)(B).

**ii. JURISDICTION/DISPOSITION REPORT
(OCTOBER 2, 2012)**

The Agency's comprehensive Jurisdiction/Disposition report addressed the family's current situation and detailed I.C.'s molestation disclosure. (CT 54-139.)

Since the September 11 disclosure, Mother had been somewhat cooperative with the Agency. However, she refused to consent to the release of the S.A.R.T. report to the Agency. (CT 61.) She acknowledged that Father had a substance abuse problem, but refused to disclose what type of illegal drugs (belonging to Father) she found in her home in February, 2012. (CT 61; 63; 66.) Mother described Father's substance abuse problem as "binging, not chronic." (CT 110.)

Father, who remained out of the home, declined to visit with I.C., stating that he did not want to complicate the matter. (CT 61.) The Agency discussed Father's drug use with both parents. They stated that family stressors contributed to his drug use, and that drugs had not been a problem since February, 2012. (CT 61-62.)

Father was not involved in any counseling or substance abuse treatment program. He was willing to resume individual counseling, but refused to engage in any drug treatment program or drug testing. (CT 62.) He reported that he last used illegal drugs in February, 2012, and last drank alcohol in August, 2012. (*Id.*)

The Agency attached the following documents to the report: the Fremont Police Department Report for the September, 2012 molestation incident, the Fremont Police Department Report for the July, 2012 incident, and the minors' Kaiser Hospital Medical Reports. (CT 63; 86-134.) The Agency's report comprehensively detailed I.C.'s multiple spontaneous disclosures of the molestation and the surrounding incidents.

(a) SEPTEMBER, 2012 INCIDENT

On Tuesday, September 11, I.C. told Mother that Father had sexually abused her. (CT 63.) Mother disbelieved I.C. She denied that Father molested I.C., stating that I.C. was traumatized by a July, 2012 incident with a neighbor. (CT 64.) I.C. told Mother that she did not want to stay at home with Father while Mother was at work. (CT 63; 77.) Mother took I.C. to daycare the next day in order to avoid Father having access with I.C. (CT 63; 78.)

On Wednesday, September 12, I.C. reported the sexual abuse to two preschool teachers on separate occasions. (CT 63.) I.C. first disclosed the abuse to Teacher A. around 8:10 a.m. (CT 93.) I.C. approached Teacher A. at a table and said "Dad did something real bad. He hurt me with his penis. My mommy's taking me to the doctor later." (*Id.*) I.C. later told Teacher M. that "Daddy took his penis and put it on me. Mommy is upset and I went to the doctor. I am fine." (*Id.*)

I.C. spoke to Emergency Response Unit Child Welfare Worker Alma Villa later that day. I.C. told Ms. Villa, "Dad touched my vagina with his penis." (CT 24; 93.) Ms. Villa noted that although I.C. was open and cooperative, she was unable to tell the difference between a truth and a lie. (*Id.*)

I.C. was transported to CALICO that evening for a forensic interview. (CT 24; 93-95.) I.C. gave a descriptive and thorough interview regarding her molestation. (CT 24-25; 93-95.)

I.C. stated that "Daddy put his penis" on her. (CT 24-25, 93, 105.) She accurately described the shape of a penis, and stated that the incident occurred at her house in J.C.'s bed. (CT 93-94.)

I.C. made numerous physical gestures describing the incident during the interview. (CT 93-95.) When asked to describe what happened, she sat on her bottom with her back upright, and spread her legs far apart. She gathered the fingers of her right hand together, made a point, spread her legs apart, and place the tips of her fingers on her pubic region. She quickly moved her hand back and forth in a

thrusting motion, and stated "He does this, and this and this." (CT 94.) I.C. repeated that this happened on September 11 while Mother was at work. (*Id.*)

I.C. again used physical gestures later in the interview to describe the molestation. (*Id.*) She lay on her back, raised her legs in the air, spread them apart, placed her fingers on her vagina, and rubbed them together. (*Id.*)

I.C. stated that Father "put his penis on me" and kissed her on the mouth while on the bed. (*Id.*) She later stated that Father kissed her on the head, vagina, hands, and legs. (*Id.*) She told Father to stop and asked him to "leave my vagina alone." (*Id.*) She stated that Father hurt her vagina "on the inside." (*Id.*) I.C. got excited and was on the verge of tears as she explained this to the interviewer. (*Id.*) I.C. stated she had seen adult movies with naked boys and girls kissing. (CT 94-95.)

The interviewer later asked I.C. to describe what happened again. (CT 94.) I.C. repeated "He put his penis on me. He did it five times." (*Id.*)

When asked if something came out of the penis, I.C. said "yes a train." (*Id.*) I.C. also stated that Father had done this before, and had also done this to R.J. (*Id.*) I.C. also described an incident where she was in J.C.'s bed with her Father, babysitter, and the babysitter's sister, and Father took her clothes off. (*Id.*)

(b) JULY, 2012 INCIDENT

In July, 2012, I.C. was allegedly molested by an eight-year-old neighbor who put a toy train and his penis in her vagina while playing at her house. (CT 57.) I.C.'s brother, J.C., claimed to have witnessed the incident. (*Id.*) Immediately following the incident, the Agency attempted to contact Mother and Father by phone, mail, and

in person on multiple occasions. (*Id.*) The Agency requested that the parents contact the Agency so that the matter could be investigated. (*Id.*) Mother and Father failed to respond. (CT 57; 77.) When interviewed by police, the neighbor admitted to kissing I.C., but knew nothing about a train, and stated that he never exposed his private parts her. (CT 63; 90.) The neighbor adamantly stated that he only kissed I.C. on the mouth and never did anything else. (CT 90.) Police records identified Father as a person in a suspicious circumstance investigation at this time. (CT 108.)

Mother engaged in counseling for herself as a result of the July, 2012 incident. (CT 77.) However, the parents did not obtain counseling for I.C., even though they claim that she became aggressive following the occasion. (*Id.*)

**iii. ADDENDUM REPORTS (NOVEMBER 26, 2012
AND JANUARY 14, 2013)**

The Agency prepared an Addendum report for the November, 26, 2012 hearing. (CT 147-151.) The Agency maintained its recommendation that the court declare I.C. a dependent with Family Maintenance services to Mother and that Father remain out of the home. (CT 147.) Mother and the minors were attending counseling. (CT 150.) Father was scheduled to have his first visit with the minors on November 21, 2012. (*Id.*) The parents had viewed the minors' CALICO interviews. (*Id.*) Father maintained that I.C. was confused about who molested her. (*Id.*)

The Agency also prepared an Addendum report for the January 14, 2013 hearing. (CT 159-175.) The Agency maintained its previous recommendations. (CT

159.) The Agency attached the S.A.R.T. examination results to the Addendum report. (CT 168-175.) During the examination, I.C. complained of vaginal pain, and the doctor noted vaginal discharge. (CT 170.) Urine tests were negative for STDs. (CT 175.) Although the examination showed no visible trauma, the doctor diagnosed I.C. with vulvovaginitis and sexual abuse. (CT 63; 105; 171; 173.)

Father's visitation with I.C. was sporadic. (CT 163.) Mother refused to allow the Child Welfare Worker to transport I.C. to visit with Father because Mother distrusted the Agency. (CT 163.) I.C. was happy to see Father during a brief visit at McDonalds, and asked if Father could come home. (CT 163.)

b. MOTHER'S TESTIMONY

Mother testified over the course of two days. (1/14/13 RT 5-1/25/13 RT 38.) Prior to I.C.'s removal, Mother worked from about 7:30 a.m. until about 6:30 p.m. (1/14/13 RT 7.) Father worked from 5 p.m. until 12:30 a.m. (1/14/13 RT 8:25-28.) I.C. attended preschool on Tuesdays and Thursdays from 8:30 a.m. to 3 p.m. (1/14/13 RT 10-11; 25.) Father dropped her off and picked her up from preschool. (1/14/13 RT 11.) Around 2:30 to 3 p.m. every weekday afternoon, I.C.'s half-brother's girlfriend babysat I.C. and J.C. until Mother returned home from work. (1/14/13 RT 11.) On Mondays, Wednesdays, and Fridays, Father was the sole caretaker of I.C. from 9 a.m. until 2:30 p.m. (1/14/13 RT 26.)

Mother stated that on the evening of September 11, I.C. told her, "My dad put his penis on me." (1/14/13 RT 18.) I.C. indicated that it happened in the lower bunk of the room that she shared with her brother. (1/14/13 RT 20.) When Mother asked I.C.

for details, I.C. "kept saying the same thing," namely, that "Daddy put his penis on me." (1/14/13 RT 20.) The following morning, Mother asked I.C., "Do you remember what you told me last night?" (1/14/13 RT 25.)

According to Mother, I.C. responded, "Yes ... I was just kidding." (1/14/13 RT 25.)

Mother told Father what I.C. said and he responded, "That's crazy." (1/14/13 RT 28.)

Later that morning, I.C. asked Mother not to go to work. (1/25/13 RT 22.) Mother took I.C. to preschool, even though it was not a day that I.C. usually went to preschool. (1/14/13 RT 25.) Mother testified that she took I.C. to preschool so she "could figure out what was the reason why she was saying this," and so that I.C. would not be alone with Father. (1/14/13 RT 26; 1/25/13 RT 38.)

Mother testified regarding the July, 2012 sexual assault of I.C. by the neighborhood boy and the efforts she made to get help for I.C. afterwards. (1/14/13 RT 40-68; 1/25/13 RT 6-22, 23-35.) Mother testified that I.C.'s brother told her that he saw the neighborhood boy put a wooden train into I.C.'s vagina. (1/14/13 RT 43.) Mother took the wooden train, put it in a plastic bag, and kept it in the trunk of her car. (1/14/13 RT 54.) Mother testified that since then, neither the children nor Father had access to the wooden train. (1/14/13 RT 54-55.)

c. CHILD WELFARE WORKER SYLVINA COOPER'S TESTIMONY

Sylvina Cooper, the child welfare worker assigned to the case, also testified. (CT 179; 1/25/13 RT 40-87.) Ms. Cooper had been a Child Welfare Worker for over 36 years. (1/25/13 RT 41.) She had worked in the Alameda County Dependency

Investigations Unit for nearly 28 years. (*Id.*) She earned a Bachelor's Degree in Psychology and Sociology, and a Master's Degree in Social Work. (*Id.*) She had viewed over 200 CALICO interviews over the course of her career. (CT 52.)

Approximately 120-150 of those interviews involved sexual abuse. (*Id.*) The parties stipulated that Ms. Cooper was an expert in risk assessment for child abuse and child sexual abuse. (CT 179; 1/25/13 RT 44-45.)

Ms. Cooper described I.C. as "being very, very intelligent and very, very mature, beyond the age of three. And she has a very high level of language development." (1/25/13 RT 49.) Ms. Cooper opined that I.C. knew the difference between the truth and a lie. (1/25/13 RT 53.)

Ms. Cooper believed that most of I.C.'s statements in the CALICO interview regarding what Father did to her were credible. (1/25/13 RT 53.) Given I.C.'s age, Ms. Cooper did not think it was unusual that I.C. would sometimes get time and space confused. (1/25/13 RT 59.) For example, Ms. Cooper did not believe that Father inserted an actual toy train inside of I.C. (1/25/13 RT 60.) However, based on the fact that I.C. first disclosed the sexual abuse to Mother, the consistency of I.C.'s disclosures, and with her detailed descriptions of what Father did to her, Ms. Cooper believed that I.C. was sexually abused by Father. (1/25/13 RT 57-58, 62.) I.C. had no possible motive to make these allegations. (1/25/13 RT 58.) Ms. Cooper did not believe that I.C. could confuse her father with somebody else, and did not believe that I.C.'s statements that she was sexually abused by Father were a result of seeing

the neighborhood boy who had sexually assaulted her previously. (1/25/13 RT 53, 66-67.)

Ms. Cooper supervised two visits between I.C. and Father. (1/25/13 RT 7-9.) The only time I.C. mentioned her Father to Ms. Cooper was at the end of one supervised visit when I.C. asked if Father could return home. (1/25/13 RT 46.)

d. A.C.'s TESTIMONY

Father called I.C.'s adult sister, A.C., as a witness. (3/14/13 RT 7-30.) A.C. stated that contrary to what I.C. stated in the CALICO interview, A.C. has never been in bed together with I.C., the babysitter, and the father. (3/14/13 RT 10.) Father never inappropriately touched A.C. (*Id.*) A.C. was not worried or afraid for I.C. with regard to their father. (3/14/13 RT 10.) A.C. has never seen Father touch I.C. inappropriately. (3/14/13 RT 15.) A.C. has never seen I.C. or J.C. recoil from or be frightened of their father. (*Id.*)

A.C. visited her Father's house approximately every three weeks. (3/14/13 RT 17.) She babysat I.C. for three days in January, 2013. (3/14/13 RT 13.) The first night, I.C. kept touching her vagina over her clothes. (3/14/13 RT 13, 18.) I.C. told A.C. "it was because [the neighborhood boy] hurt her." (3/14/13 RT 13.)

e. **CALICO INTERVIEWS⁵**

I.C. and J.C.'s CALICO interviews were admitted into evidence and viewed in open court. (CT 157; 12/2/12 RT 5, 6.) Father's counsel did not object to their admission, but rather merely stated that she would later argue as to the weight that the court should give the evidence. (12/3/12 RT 4.)

D. DECISION

The court issued its decision on March 27, 2013. (CT 186-87; 3/27/13 RT 2-8.)

The court provided a lengthy explanation of its thought-out decision.

The court acknowledged that this was a particularly difficult case. (3/27/13 RT 2.) I.C.'s hearsay statements were the only evidence before the court. (3/27/13 RT 3.) The court acknowledged Section 355(c)(1)(B) and the requirement that the hearsay statement provide a "sufficient indicia of reliability." (3/27/13 RT 3.) It identified the standards set forth in *In re Cindy L.* (1997) 17 Cal. 4th 15, and *In re Lucero L.*, *supra*, 22 Cal. 4th 1227, as guiding its determination of the reliability of such statements. (3/27/13 RT 3.)

The court found that I.C.'s statement to her mother that "Daddy put his penis on me" was a completely spontaneous statement, made without prompting. (3/27/13 RT 4.)

The court noted that I.C. made the same statement shortly thereafter to her daycare

⁵ On June 18, 2014, the Alameda County Superior Court clerk informed the parties and the Court of Appeal that although it had sent the original DVD of the CALICO interviews to the Court of Appeal, it was unable to provide copy to counsel due to copyright issues. On July 22, 2014, the Court of Appeal granted Appellant's Motion for the interviews to be transcribed and ordered that a written transcript of the CALICO interviews be produced for Appellant only. The Court of Appeal ordered that if the Agency wanted a copy, it would need to file its own motion. The Agency did not file a motion, and thus it has no copy of the DVD or transcript.

teachers, and again, they were completely spontaneous. (*Id.*) I.C. repeated the same core allegations to the CALICO staff. (*Id.*) When speaking to CALICO staff, I.C.

“...depicted the incident with great detail, using gestures, hand signs, words, and actions....She repeats the details throughout the 40 minutes or so of the interview.” (*Id.*)

I.C. was not prompted by her mother, the daycare staff, CALICO interviewers, or any other adults with whom she spoke. (*Id.*) The morning after I.C. told Mother about what happened, she asked Mother not to go to work, not wanting to be alone with Father.

(3/27/13 RT 7.) I.C. told the CALICO interviewer that what her father did to her hurt, and indicated that it hurt when she made certain movements. (*Id.*) The court further found that I.C. had no motive to lie about the statements. (3/27/13 RT 5.)

The court rejected the parents’ theory that the minor was merely having a flashback to the July incident and projecting that incident onto Father. (3/27/13 RT 6-7.) The court noted several distinctions between the incidents. The court further noted that I.C. was very clear in her statement that “Daddy put his penis on me.” (3/27/13 RT 6.) The court further noted that I.C. “did not refer to anyone other than the father, she did not mention the eight-year old, and she did not mention any other male in the house, including her brother, when she made these statements initially to her mother.” (3/27/13 RT 6-7.) The two incidents involved very different scenarios. (3/27/13 RT 7.) The court concluded:

So to this court, reviewing all the evidence that’s been presented, the core allegations of the minor have remained consistent, they have remained spontaneous throughout the recounting of this incident, and the Court can find no motive on her part to lie about this. The court can find no credible evidence that there is or was a psychological process that was involved here that caused the

minor to somehow misstate what had happened to her in July with what she claims her father did to her. The court can find no evidence of any fraud or deceit or any undue influence.

(*Id.*)

The court found the allegations true and took jurisdiction over I.C. (CT 186-87; 3/27/13 RT 2-8.) A contested Disposition hearing was scheduled to begin on April 5, 2013. (CT 187; 3/27/13 RT 19.)

E. DISPOSITION

After a ten-month Disposition hearing, the court found that I.C. would be at risk if Father returned home. (CT 484-485.) It found by clear and convincing evidence that I.C. must be removed from Father's physical custody. (CT 484-85; 2/5/14 RT 20-23, 28.) It ordered the Agency to provide Mother with Family Maintenance services, and that Father remain out of the family home until further order of the court. (CT 484-485.)

Because this Court has only requested briefing on matters related to the trial court's Jurisdictional findings and the appellate court's affirmation of the same, the Agency will not discuss the lengthy Disposition trial.

III. ARGUMENT

A. INTRODUCTION

"The purpose of the California dependency system is to provide maximum safety and protection for dependent children, and to ensure their physical and emotional well-being." (*T.W. v. Superior Court* (2012) 203 Cal.App.4th 30, 42-43, quoting Section 300.2) Accordingly, the juvenile court must, as mandated by statute, be afforded broadest possible scope of operation in making decisions that promote best interests of the minor. (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 758.)

Juvenile dependency laws were also created with parents and families in mind. Appellant correctly states that these laws were drafted to provide for the protection and safety of children, while preserving and strengthening families whenever possible. (Section 202(a).) Appellant correctly identifies the initial procedural steps of the juvenile dependency system. The Agency first files a petition under Section 300, followed by a Jurisdiction hearing under Section 355. (OB, pg. 31.) At Jurisdiction, the Agency must prove that the minor falls within the jurisdiction of the juvenile court as defined in Section 300(a)-(j). (Section 355(a).) Generally speaking, Section 300 defines jurisdiction in terms of serious harm suffered by a child or the substantial risk of such serious harm to a child. (Section 300.)

Appellant misrepresents the nature of the proceedings. Appellant insinuates that the Agency's acts with antagonism and untoward aggression in its interaction with innocent parents, and remains uncontrolled due to an insignificant burden of proof. (OB, pg. 30-31.) Appellant laments the adversarial nature of hearings, claiming that the juvenile court "can easily assume jurisdiction" over a minor. (*Id.*)

This is simply untrue. The courts and the Legislature have acted to ensure that the dependency process, including Jurisdiction hearings, respects parents' rights while protecting the child. For example, the Agency bears the burden of proof throughout the majority of the dependency proceedings. The Agency must investigate and provide evidence sufficient to support its recommendations. A parent whose child may be found subject to the dependency jurisdiction of the court enjoys a due process right to be informed of the nature of the hearing, as well as the allegations upon which the

deprivation of custody is predicated, in order that he or she may make an informed decision whether to appear and contest the allegations. (*In re B.G.* (1974) 11 Cal. 3d 679, 688–689.)

At Jurisdiction, the Agency can meet its burden of proof through the submission of a report (also known a social study). These reports must include subjective impressions, and may not merely be conclusory. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738.) Furthermore, the preparer of the report must be available for cross-examination in order for the report to be admissible. (*In re Malinda S.* (1990) 51 Cal. 3d 368, 382-385.) Furthermore, if a party makes a timely objection to specific hearsay statements within a Jurisdiction report, the Agency must satisfy additional statutory requirements regarding the statements to which the objection was made if those statements are the sole basis for jurisdiction. (Section 355.) The Agency must prove its case by at least a preponderance of the evidence. (Section 355; *Cynthia D. v Superior Court* 1993) 5 Cal. 4th 242, 248.) Courts have declined to require a more stringent burden of proof. (*See Santosky v. Kramer* (1982) 455 U.S. 745, 769; *See also In re Angelia P.* (1981) 28 Cal. 3d 908, 919.)

Parents are provided numerous tools to ensure their rights are protected during a Jurisdiction hearing. They are entitled to counsel, to present his/her own evidence, the opportunity to cross-examine the preparer of the report, and to subpoena and cross-examine witnesses whose statements are contained in the report or its attachments. (*Malinda S., supra*, 51 Cal. 3d at 382-385, Sections 341, 353, 355.) These protections

sufficiently protect a parent's due process rights.⁶ It follows that the courts and Legislature have acted to ensure that parents are not unduly burdened or victimized by the dependency process.

Indeed, the state has a vitally important interest in producing "an accurate and just resolution" of dependency proceedings. (*In re Lucero L.*, 22 Cal. 4th at 1247.) However, as Justice Chin stated in his concurring opinion in *Lucero L.*, "This observation cuts both ways. Although the parent has an interest in avoiding an erroneous finding of jurisdiction, the child-and, accordingly, the court-has at least as important an interest in avoiding erroneous findings of *no* jurisdiction....Children must be protected, too; they have rights, too." (*Id.* at 1257, Chin, J., conc.)

Ensuring a parent's due process rights are protected is no doubt important. However, "[d]ue process is a flexible concept which depends upon the circumstances and a balancing of various factors." (*In re Lesly G.* (2008) 162 Cal. App. 4th 904, 914.) A perpetrator should not be given a free pass merely because they victimized a member of society too young and vulnerable to testify, and in a way that cannot be independently corroborated. "The need to protect the child is especially compelling" in a situation such as that before us, where a parent has abused a young child in private. (*In re Lucero L.*, 22 Cal. 4th at 1254, Chin, J., conc.) Unfortunately, such circumstances occur all too often.

⁶ Because dependency proceedings are not criminal proceedings, the express right of confrontation guaranteed by the federal and state constitutions to criminal defendants does not apply. (*In re Angel W.* (2001) 93 Cal.App.4th 1074, 1080.) However, even in criminal cases, the United States Supreme Court has held, "...a state's compelling interest in protecting child victims of sex crimes from further trauma may in some instances outweigh the right of confrontation." (*Maryland v. Craig* (1990) 497 U.S. 836, 852.)

“[I]n the typical case of child abuse, the perpetrator is a parent, a parent figure, or a familiar and authoritative adult. The perpetrator selects his victim on the basis of immaturity, vulnerability, and private access.” (Lyon, T. D., & Dente, J. (2012). Child Witnesses and the Confrontation Clause. *Journal of Criminal Law & Criminology*, 102, 1181, 1203.) Perpetrators often acknowledge that they look for the most vulnerable children, defining vulnerability based on factors such as the child’s status (i.e. age) or psychological state (i.e. a needy or depressed child). (*Id.* at 1205.)

This vulnerability is compounded by the fact that in most child sexual abuse cases, there is no medical evidence. (Jan Bays and David Chadwick, *Medical Diagnosis of the Sexually Abused Child*, 17 *Child Abuse & Neglect* 91, 92 (1993).) There are often “no witnesses except the victim.” (*Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 60.) Thus, a young victim is rarely able to provide corroborating evidence of sexual abuse.

Appellant paints a portrait of incessant false abuse accusations victimizing innocent parents. However, this is simply not the case. Most sexually abused children remain silent about their abuse. “[T]he nondisclosure of sexual abuse among truly abused children is a real and serious phenomenon.” (Thomas Lyon, *False Denials: Overcoming Methodological Biases in Abuse Disclosure Research*, in *DISCLOSING ABUSE: DELAYS, DENIALS, RETRACTIONS & INCOMPLETE ACCOUNTS*, p. 41-62, 57 (M. Pipe, M. Lamb, Y. Orbach, & A. Cederborg, Eds. 2007).) Most sexually abused children do not later recant their disclosure. (Kamala London, et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?* 11 *PSYCHOLOGY PUBLIC POLICY & LAW* 194, 217 (2005).) In fact, false

accusations represent only four percent of all sexual abuse allegations. (Nico Trocmé and Nicholas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, 29 CHILD ABUSE & NEGLECT 1333, 1337 (2005).)

Yes, parents' due process rights should be protected. However, "[d]ue process is a flexible concept which depends upon the circumstances and a balancing of various factors. [Citation.]" (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 914.) As detailed below, the Legislature and courts have enacted laws protecting parents' rights in dependency hearings while maintaining the purpose of protecting the most vulnerable members of society.

B. HISTORY OF THE LEGAL STANDARD ON RECEIPT OF HEARSAY FROM AN INCOMPETENT MINOR

Appellant correctly identifies that *In re Malinda S.*, *supra*, 51 Cal. 3d 368, concluded that hearsay contained within a social study created by a social worker was admissible in a Jurisdictional hearing. The court further held that the preparer of the report must be available for cross-examination in order for the report to be admissible. (*In re Malinda S.*, *supra*, 51 Cal. 3d at 382-385.)

In 1996, the Legislature amended Section 355(c)(1)(B), which controlled the admission of hearsay in Jurisdictional hearings, to codify and modify the Court's holding in *Malinda S.* The Legislature intended to balance the juvenile court's special need for flexible trial court procedures to ensure a child's interests are met, with concerns regarding the unreliability of hearsay statements and the trial court's reliance on such statements contained within Agency reports. (Legis. Analyst, Enrolled Bill Rep., Sen.

Bill No. 86 (1995-1996 Reg. Sess.) Apr. 25, 1996, p. 1.) The Legislature intentionally took a middle ground, allowing the report to serve as the basis of jurisdictional findings, “while placing reasonable limitations on the use of hearsay evidence when there are reasons to doubt the reliability of the statements in the social study.” (*Id.*) Section 355(c)(1)(B) was thus amended as follows:

If a party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions...The hearsay declarant is a minor under 12 years of age who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under 12 years of age shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

This court further examined the admissibility of hearsay statements where the declarant was unavailable for cross-examination at trial in *Cindy L.*, *supra*, 17 Cal. 4th 15.

In *Cindy L.*, this Court affirmed the need for a hearsay exception in sexual abuse cases where a child is not competent to testify because he or she is unable to understand the duty to tell the truth or does not possess the ability to distinguish between the truth and a lie. (*Cindy L.*, 17 Cal. 4th at 18.) The Court balanced the need for such an exception with the need to protect parents’ due process rights. (*Id.*) The Court formally recognized a child dependency exception to the hearsay rule. It further held that out-of-court statements of children subject to juvenile dependency hearings may be admitted if the statements show particular indicia of reliability, if the statements are corroborated, and if interested parties have notice that the statements will be used. (*Id.* at 29.) Relying

partially on *Idaho v. Wright* (1990) 497 U.S. 805, the Court identified the following non-exhaustive list of factors as relevant to the reliability of hearsay statements: (1) the spontaneity of the statement, (2) the constant repetition of the statement, (3) the mental state of the declarant, (4) the use of terminology expected of a child of a similar age, and (4) the lack of a motive to lie. (*Cindy L.*, 17 Cal. 4th at 29-30; 34.)

Three years later, this Court revisited *Cindy L.* and examined Section 355(c)(1)(B) in *Lucero L.*, *supra*, 22 Cal. 4th 1227. This Court considered whether Section 355(c)(1)(B) controls when the hearsay statement comes from a minor who is deemed incompetent to testify because he or she lacks the capacity to distinguish between truth and falsehood.

In *Lucero L.*, three-year-old Lucero reported to a social worker that her father had touched her vagina, pointing and touching her vaginal area. (*Id.* at 1232.) Lucero had previously disclosed the abuse to her older sister, Maribel. (*Id.*) Lucero's mother denied that the father molested Lucero, or that he had a substance abuse problem. (*Id.* at 1233.)

The Social Services Agency filed a petition alleging sexual abuse, and Lucero was detained out of the home. (*Id.*) The Agency's report contained Lucero and Maribel's hearsay statements regarding the abuse. (*Id.*) It also noted that while with her foster mother, Lucero had pointed to her rectal area and stated "Poppy owee." (*Id.*) The Agency report also included the police report, wherein the officer stated that the minor had limited verbal skills, had difficulty identifying body parts, and it was difficult to tell if she knew the difference between the truth and a lie. (*Id.* at 1233-34.) Likewise, the report noted that medical examination results were normal, and could neither support nor

negate a history of sexual abuse. (*Id.* at 1234.) Although a videotaped interview between Lucero and a police officer existed, that interview was not admitted into evidence. (*Id.* at 1235.) The parents, multiple social workers, and psychologist expert witnesses for each side testified regarding the allegations and the reliability of Lucero's disclosure. (*Id.*) After receiving and considering the evidence, the court found that Lucero had been molested, and took jurisdiction. (*Id.* at 1236.)

The Court of Appeal affirmed the trial court's findings, holding that Section 355(c)(1)(B) created an exception to the rule against hearsay, and provided sufficient safeguards for the parents' due process rights. (*Id.* at 1237.) The Court of Appeal further concluded that the juvenile court's jurisdictional finding was supported by substantial evidence. (*Id.*)

This Court reviewed the case, and a plurality held that Section 355 was constitutional with regard to the admissibility of a minor's hearsay statements contained in Agency reports. However, the Court recognized that "the admissibility and substantiality of hearsay evidence are different issues." (*Id.* at 1244.) The Court held that due process does not require that an incompetent minor's statement be corroborated. (*Id.* at 1248-1249.) Thus, the minor's hearsay statements do not need corroborating evidence to be found reliable. Nonetheless, the Court was concerned by Section 355's delegation of power to a hearsay statement of an incompetent minor. (*Id.* at 1245.) Because no corroboration was required, additional scrutiny was necessary for the hearsay statement of an incompetent minor unavailable for cross-examination. (*Id.* at 1249.) Thus, the Court imposed an additional requirement. The Court held that, Section 355

notwithstanding, due process concerns require that the trial court find that “ ‘the time, content and circumstances of the statement provide sufficient indicia of reliability’ ” in order for an incompetent minor’s hearsay statement to form the exclusive basis for sustaining jurisdiction over the minor. (*Id.* at 1248.) The Court later explained the standard in another way, stating: “the court may rely exclusively on these out-of-court statements only ‘if the declarant’s truthfulness is so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility.’ ” (*Id.* at 1249.) The Court stated that “the factors bearing on a statement’s reliability are not limited to those specifically enumerated in *Cindy L.* or *Idaho v. Wright*—any factor bearing on reliability may be considered.” (*Id.* at 1250.)

In examining the case before it, the Court noted that the trial court had found that the minor’s hearsay statements possessed sufficient indicia of reliability because the minor’s statements to the social worker were spontaneous. (*Id.* at 1249.) The Court noted that it was bound by the substantial evidence standard: “we must uphold the court’s findings if they are supported by substantial evidence,” citing to *Soto v. State of California* (1997) 56 Cal.App.4th 196, 199.⁷ (*Id.* at 1249.) The *Lucero L.* court did not call for a de novo standard of review of truthfulness. The *Lucero L.* court did not reexamine all of the testimony to determine if it thought the minor was truthful. Rather, the *Lucero L.* court reviewed the court’s findings under a substantial evidence standard.

⁷ The *Soto* court applied a traditional substantial evidence standard of review, where “The court must draw all reasonable inferences from the evidence set forth in the papers except where such inferences are contradicted by other inferences or evidence which raise a triable issue of fact...and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion.” (*Soto*, 56 Cal.App.4th at 199.)

The court found the trial court did not abuse its discretion in finding the statements reliable. (*Id.* at 1250.) It held that “substantial evidence supports a finding of reliability” and affirmed the appellate court’s ruling. (*Id.*)

C. THE JUVENILE COURT PROPERLY ASSESSED THE TRUTHFULNESS OF THE MINOR UNDER *LUCERO L.*

1. I.C.’S STATEMENTS CONTAINED SUFFICIENT INDICIA OF RELIABILITY AS IDENTIFIED IN *LUCERO L.*

I.C.’s statements contained the sufficient indicia of reliability required by *Lucero*

L. I.C.’s statements contained several, if not all, of the characteristics of reliability identified in *Cindy L.* and *Lucero L.* I.C.’s statements were spontaneous, consistent in their repetition, and precocious given her age. She lacked a motive to lie. An expert witness testified that I.C. was credible, and knew the difference between the truth and a lie.

First, I.C.’s statements about the abuse were spontaneous. I.C. spontaneously disclosed the abuse to Mother on the evening of September 11. (1/14/13 RT 18.) The next day, I.C. spontaneously disclosed the abuse again to a preschool teacher. (CT 93.)

The evidence demonstrated that I.C. disclosures were consistent and repeated. She disclosed her abuse on five separate occasions to five separate people. On September 11, I.C. told Mother, "My dad put his penis on me." (1/14/13 RT 18:17-24.) On the morning of September 12, I.C. approached Teacher A. and said “Dad did something real bad. He hurt me with his penis....” (CT 93.) I.C. later told Teacher M. that “Daddy took his penis and put it on me.....” (*Id.*) She later told Child Welfare Worker Villa “Dad

touched my vagina with his penis,” and described where the incident occurred in her home. (CT 24; 93.) She subsequently provided a detailed description of the incident to the CALICO interviewer several times. Among other things, she specifically stated that Father “put his penis on me” and kissed her on the mouth while on the bed. (CT 94.) As the *Lucero* court stated, “Given this consistency over a considerable period of time reported by multiple sources, we cannot conclude the trial court abused its discretion in finding the statements reliable.” (In re *Lucero L.*, supra, 22 Cal. 4th at p. 1250.)

The evidence also demonstrated that I.C.’s knowledge of sexual matters was precocious given her age. I.C. was intelligent with good communication skills for her age. Throughout her disclosures, I.C. consistently used proper terminology for male and female genitalia. Ms. Cooper, with 36 years of experience as a child welfare worker, described I.C. as “being very, very intelligent and very, very mature, beyond the age of three. And she has a very high level of language development.” (1/25/13 RT 49.)

The evidence also established that I.C. lacked a motive to lie. Ms. Cooper, stipulated to be an expert witness in child sexual abuse, testified that I.C. had no possible motive to make these allegations. (1/25/13 RT 58.) There was likewise no evidence of “fraud, deceit, or undue influence.” (Section 355(c)(1)(B).)

Other factors, including Ms. Cooper’s expert witness testimony, provided additional indicia of reliability. (*Lucero L.*, supra, 22 Cal. 4th at 1250.) Ms. Cooper is an expert in risk assessment for child abuse and child sexual abuse. (1/25/13 RT 44-45.) Ms. Cooper opined that I.C. knew the difference between the truth and a lie. (1/25/13 RT 53.) Ms. Cooper testified that most of I.C.’s statements in the CALICO interview

regarding what Father did to her were credible. (1/25/13 RT 53.) Ms. Cooper did not believe that I.C. could confuse her father with somebody else, and did not believe that I.C.'s statements that she was sexually abused by Father were a result of seeing the neighborhood boy who had sexually assaulted her previously. (1/25/13 RT 53, 66-67.) Ms. Cooper believed that Father sexually abused I.C. (1/25/13 RT 57-58; 62.)

Appellant argues that I.C.'s CALICO interview is unreliable because it occurred in the presence of closed-circuit cameras. (OB, pg. 64-65.) First, such an argument is meritless because it would necessarily exclude all CALICO interviews, since all are recorded by closed circuit camera. In any event, research demonstrates that once children have made an abuse disclosure, they are likely to maintain their allegations during formal assessments such as CALICO. (Kamala London, et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?* 11 PSYCHOLOGY PUBLIC POLICY & LAW 194, 209.) I.C. had previously disclosed her abuse to Mother, preschool teachers, and Child Welfare Worker Villa. (1/14/13 RT 18, CT 93.) There is no reason to believe that she would have "acted" for the camera at the CALICO interview. In any event, it is not the place of appellate courts to gauge the credibility of witness testimony. "Issues of fact and credibility are questions for the trial court." (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.)

Appellant likewise highlights the lack of physical evidence of the sexual abuse, claiming that it demonstrates unreliability. However, *Lucero L.* specifically stated that no such corroborating evidence is required. (*In re Lucero L.*, *supra*, 22 Cal. 4th at 1248-1249.) Furthermore, in most child sexual abuse cases, there is no medical evidence, and

the child is the only eye witness. (Bays, Chadwick, *Medical Diagnosis of the Sexually Abused Child*. (1993) 17 Child Abuse and Neglect 91–110.) Justice Chin’s concurring opinion in *Lucero L.* noted as much, stating: “The need to protect a child is especially compelling in this situation. If a parent abuses a particularly young child in private and leaves no physical marks, two common scenarios, the child *cannot be protected* if the trial court does not consider and act on his or her hearsay statements.” (*In re Lucero L.*, *supra*, 22 Cal. 4th at 1254, Chin, J., conc.)

Lucero L. is instructive to the instant action. In *Lucero L.*, the trial court found the Section 300(d) count true based solely on Lucero’s statements to the social worker and her older sister. (*Id.* at 1236.) *Lucero L.* is similar to the instant action, in that the minors were approximately the same age, and made repeated, consistent statements disclosing their abuse. (*Id.* at 1232, 1250.) However, it is quite apparent that Lucero’s statements had far fewer indicia of reliability than I.C.’s. Unlike I.C., it appears that the video of Lucero’s forensic interview was not submitted into evidence. Unlike I.C., it was unclear whether Lucero knew the difference between the truth and a lie. (*Id.* at 1233-1234.) Unlike I.C., Lucero had limited verbal skills and difficulty identifying relevant body parts. (*Id.*) Lucero did not disclose her abuse to as many people as I.C. (*Id.* at 1232.) Despite these supposed shortcomings, the lower court found Lucero’s statements to be reliable, and the Court of Appeal and this Court affirmed that finding. (*Id.* at 1236-1237, 1250.) It follows that I.C.’s statements, which contain far more indicia of reliability than those in *Lucero L.*, likewise contain sufficient indicia of reliability.

There was sufficient indicia of reliability surrounding I.C.'s statements to prove that cross-examination of I.C. would have been of marginal utility. The trial court properly took jurisdiction based on I.C.'s hearsay statements.

2. THE TRIAL COURT PROPERLY IDENTIFIED AND APPLIED THE *LUCERO L.* STANDARD

As stated above, under *Lucero L.*, “the out-of-court statements of a child who is subject to a jurisdictional hearing and who is disqualified as a witness because of the lack of capacity to distinguish between truth and falsehood at the time of testifying may not be relied on exclusively unless the court finds that ‘the time, content and circumstances of the statement provide sufficient indicia of reliability.’” (*In re Lucero L., supra*, 22 Cal. 4th at 1247-48.)

There is no doubt that the trial court acknowledged and applied the *Lucero L.* standard when making its determination. As the Court of Appeal remarked, “[t]he principles outlined in *Cindy L.* and *Lucero* were clearly in the juvenile court’s mind when it made its decision at the jurisdictional hearing.” (*In re I.C., supra*, 239 Cal.App.4th at 317-318.) The appellate court noted the trial court decision’s multiple references to *Lucero L.* in its own opinion. (*Id.*)

The trial court’s record is likewise replete with such references. The parties referenced *Lucero L.*, the factors indicating reliability, and the requirement for a reliability finding in their closing arguments. (3/15/13 RT 9; 27-28; 34-35; 39; 42.) Although this is not evidence, it demonstrates the court’s awareness of the legal standard at issue.

The court's decision likewise demonstrates that it found that "the time, content, and circumstances" of I.C.'s statements provided a sufficient indicia of reliability. (*In re Lucero L.*, *supra*, 22 Cal. 4th at 1247-48.) The trial court acknowledged the *Lucero L.* standard, noting that "if the court finds that the type, content, and circumstances of the statement provide sufficient indicia of reliability, they can be used as basis for the Court in taking jurisdiction of the matter." (3/27/13 RT 3.) The trial court then cited to *Cindy L.* and *Lucero L.* as providing some factors that could be used to determine the reliability of those statements: spontaneity, consistency, lack of prompting, and lack of motive to lie. (*Id.*)

The trial court found I.C.'s statement to Mother that "Daddy put penis on me" completely spontaneous. (3/27/13 RT 4.) The trial court found that I.C.'s subsequent disclosures to the daycare workers were likewise spontaneous. (*Id.*) The trial court specifically noted that I.C. "was not prompted by any adults that she talked to." (*Id.*)

The trial court found that I.C. had "consistently repeated the same core allegations to various people: Her mother, the day care center staff, and the CALICO staff." (*Id.*)

The trial court found that I.C. lacked any motive to lie about the statements that she made. (3/27/13 RT 5.)

The trial court acknowledged that there was some of I.C.'s statements were confusing and difficult to follow, leading to the parent's theory that I.C.'s disclosure were the result of a flashback to the July, 2012 incident with the neighbor. (3/27/13 RT 5-6.) However, it subsequently specifically rejected the flashback theory. (3/27/13 RT 6-7.)

The trial court subsequently sustained the allegations and found that I.C. came within the juvenile court's jurisdiction. (3/27/13 RT 7-8)

The trial court properly followed the *Lucero L.* standard and found that I.C.'s statements had special indicia of reliability sufficient enough to support jurisdictional findings.

Assuming arguendo that the trial court improperly failed to specifically articulate that I.C.'s truthfulness "was so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility," such an omission is harmless error.

First, as stated above, the trial court articulated and applied the *Lucero L.* standard to I.C.'s testimony, finding that "the time, content and circumstances of the statement provide sufficient indicia of reliability.'" (*In re Lucero L.*, supra, 22 Cal. 4th at 1247-48.) This is sufficient to demonstrate that the *Lucero* requirements were applied, and should be upheld.

Even assuming the court was required to expressly state that I.C.'s truthfulness "was so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility," such an omission was harmless.⁸ The failure of a judicial officer to announce the standard of proof on the record is not fatal. It may be presumed the judicial officer, particularly a judicial officer handling a specialized caseload, applied the appropriate standard, and no specific articulation is required. (*In re Bernadette C.*

⁸ Notably, this Court did not expressly state these words when it applied the substantial evidence standard in *Lucero L.* (*In re Lucero L.*, supra, 22 Cal. 4th at 1249-1250.)

(1982) 127 Cal.App.3d 618, 625 (“where the issue is well settled, it is presumed that the trial judge applied the appropriate standard and no articulation is required.”)

The *Lucero L.* standard for determining reliability was 13 years old at the time of the Jurisdiction hearing. This, and the fact that the parties thoroughly discussed *Lucero L.* in their closing arguments, demonstrates that the standard was well established. The trial court’s thorough discussion of the factors demonstrating reliability in its decision demonstrates that it was aware of, and applied the standard. The trial court properly received substantial evidence, including four Agency reports, two police reports, hospital records, a S.A.R.T. examination, two CALICO interviews, and multiple days of testimony from three witnesses. The court did not come to its decision without much thought and assessment regarding the reliability of I.C.’s statements. It follows that any failure of the trial court judge to specifically articulate that it “was so clear from the surrounding circumstances that the test of cross-examination would be of marginal utility,” is harmless error. (See *Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal. 3d 550, 568: “The decision of the juvenile court, if correct, will be upheld even if the stated reasons for the decision are erroneous or incomplete”.)

D. THE COURT OF APPEAL PROPERLY AFFIRMED THE TRIAL COURT’S JURISDICTIONAL FINDING BY APPLYING A SUBSTANTIAL EVIDENCE STANDARD OF REVIEW.

Although Appellant claims to promote a substantial evidence standard, in reality, Appellant argues that *Lucero L.* requires that the appellate court review the evidence de novo to determine if there is sufficient indicia of reliability. (OB, pg. 60-61.) The OB

argues that the appellate court was required to independently examine whether I.C.'s statements bore the necessary indicia of reliability to establish her clear truthfulness.

(OB, pg. 61-62.)

Appellant misinterprets *Lucero L. Lucero L.* requires only that the appellate court apply a substantial evidence review, not independently reassess the entirety of the evidence. As the *I.C.* majority stated, "The issue here is not whether we think I.C.'s statements bear sufficient indicia of reliability to satisfy *Lucero*, but whether substantial evidence supports the juvenile court's finding that they did." (*In re I.C., supra*, 239 Cal.App.4th at 324.)

Although it is true that the substantial evidence rule does not mandate total deference to the trial court, it is well established that it is not the role of the appellate court to re-try the case. "Trial courts decide questions of fact and appellate courts decide questions of law." (*Tupman v. Haberkern* (1929) 208 Cal. 256, 262-263.) It follows that when applying a substantial evidence standard of review, "[i]t is axiomatic that an appellate court defers to the trier of fact on such determinations, and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence." (*In re B.D., supra*, 156 Cal.App.4th at 986.) Accordingly, this Court has held that under a substantial evidence standard:

We determine if substantial evidence, contradicted or uncontradicted, supports them. 'In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. We do not

reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “ [T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence ... such that a reasonable trier of fact could find [that the order is appropriate] (*In re I.J.* (2013) 56 Cal. 4th 766, 773 (citations omitted).)

The Court of Appeal properly applied the substantial evidence standard of review. It cited the above-language in *In re I.J.* It acknowledged that the trial court had issued a very thoughtful decision, which recited much of I.C.’s testimony. (*In re I.C.*, *supra*, 239 Cal.App.4th at 317-319.) The Court of Appeal recognized that its role was not to re-try the evidence, but rather to determine if the trial court’s findings were supported by substantial evidence. (*Id.* at 322.) The Court of Appeal acknowledged that the trial court had based much of its determination on the CALICO videotape. The Court of Appeal acknowledged that certain portions of the CALICO interview favored Father. (*Id.* at 323.) . The Court of Appeal determined that I.C.’s CALICO interview provided substantial evidence in favor of the lower court’s ruling. The issue was whether there was enough evidence, not whether the lower court should have given different weight to the testimony. The evidence before the trial court was sufficient to support juvenile court's determination that I.C.’s statements were reliable. It properly viewed the record most favorably to the juvenile court's order and refused to re-weigh the evidence.

In *Lucero L.*, this Court noted that “the juvenile court found that the minor’s statements possessed sufficient indicia of reliability.” (*Lucero L.*, *supra*, 22 Cal. 4th at 1249.) It then recognized that it was not a finder of fact, remarking that “we must uphold the court's findings if they are supported by substantial evidence.” (*Id.*) Thus, in *Lucero*,

this Court deferred to the trial court's evidentiary findings regarding indicia of reliability. Nowhere in *Lucero* did this Court state that the appellate court was required to conduct a de novo review of the hearsay statements. Rather, this Court held that "we cannot conclude the trial court abused its discretion in finding the statements reliable." (*Id.* at 1250.) It follows that in *Lucero L.*, this court held that although trial courts must review evidence to ensure that it meets a heightened standard of reliability, it did not require appellate courts conduct a de novo review of the evidence for the same. Thus, contrary to Appellant's accusation, the I.C. majority did not misinterpret *Lucero L.*, but rather followed it directly.

Appellant's belief that the trial court gave more credibility to I.C.'s statements than it should have does not demonstrate a lack of substantial evidence. Appellant is once again asking the Court to re-weigh the evidence before the trial court. This is not permitted under a substantial evidence review. (*In re I.J.*, *supra*, 56 Cal. 4th at 766.) If the *Lucero* court had intended to require the appellate court to re-weigh the evidence presented to the trial court, it would have articulated a de novo standard of review.

Appellant argues that *Lucero* mandates that the appellate court independently review the hearsay statements to determine if they contain sufficient indicia of reliability. (OB, pg. 61.) This simply does not comport with the established law on substantial evidence standard of review. (*In re I.J.*, *supra*, 56 Cal. 4th at 766.) It likewise does not comport with the language of *Lucero L.* itself.

The appellate court did not simply "rubber stamp" the trial court's findings. It applied the proper substantial evidence standard of review. It was not the role of the

appellate court to reweigh the evidence presented and substitute its judgment for that of the trial court. (*In re Stephanie M.* (1994) 7 Cal. 4th 295, 319.) “The most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct.” (*Denham v. Superior Court* (1970) 2 Cal. 3d 557, 564; *See also Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1295.) The appellate court applied the proper standard, gave deference to the trial court’s credibility determination, and properly affirmed the trial court’s finding. The appellate court’s holding should be affirmed.

IV. CONCLUSION

Here, we have a three year-old girl who was sexually abused by her father while he cared for her while they were alone in the home. She spontaneously disclosed that abuse to multiple people, on multiple occasions. An investigation was conducted, and as a result, the Agency acted to protect the minor, filing a petition under Section 300. Ms. Cooper, a social worker with over 30 years of experience, believed that I.C. was credible, knew the difference between a truth and a lie, and was telling the truth when she stated she had been molested by Father.

Because of her age, I.C. was incompetent to testify in person at the Jurisdiction hearing. However, the court received substantial evidence, in the form of several Agency reports, I.C. and J.C.’s videotaped CALICO interviews, and testimony from Mother, Ms. Cooper, and A.C. After reviewing all of the evidence, the trial court determined that for several reasons, I.C.’s statements contained special indicia of reliability, as required by *Lucero L.* The trial court found the petition true and took jurisdiction over I.C.

The Court of Appeal reviewed the case. It declined to independently review the evidence and determine the credibility of the witnesses. Rather, it exercised restraint and performed its duty to assess and determine only whether there was substantial evidence to support the trial court's findings. It found that there was substantial evidence to support the trial court's findings that I.C.'s statements were reliable, and affirmed the lower court's ruling.

Father attempts to portray himself as the victim in this story, claiming he was denied due process. However, he was provided the due process protections created by the Legislature through Section 355 and stated by this court in *Lucero L.* "Although the parent has an interest in avoiding an erroneous finding of jurisdiction, the child-and, accordingly, the court-has at least as important an interest in avoiding erroneous findings of no jurisdiction....Children must be protected, too; they have rights, too."

(*Lucero L.*, *supra*, 22 Cal. 4th at 1257, Chin, J., conc.)

The lower courts thoughtfully assessed the evidence to protect Father's rights, while still fulfilling the purpose of dependency proceedings, which is to protect the well-being of the child. The courts should not, as Appellant suggests, decline to receive hearsay evidence from vulnerable young victims simply because of the child's age or lack of corroborating evidence. Dependency courts "...should not restrict or prevent testimony on formalistic grounds. On the contrary, the court should avail itself of all evidence which might bear on the child's best interest." (*In re B.D.*, *supra*, 156 Cal.App.4th at 983.) Likewise, it is important to note that juvenile courts are not criminal courts. "In a criminal case the issue is the guilt of the defendant, whereas in a

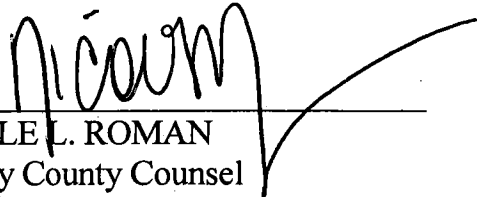
dependency case the subject is the well-being of the victim.... [W]hile it may be true that ‘it is better that ten guilty persons escape, than that one innocent suffer’ ... few, if any, would agree it is better that 10 pedophiles be permitted to continue molesting children than that 1 innocent parent be required to attend therapy sessions in order to discover why his infant daughter was falsely making such appalling accusations against him.’ ” (*In re Carmen O.* (1994) 28 Cal.App.4th 908, 922, fn. 7, quoting *In re Kailee B.* (1993) 18 Cal.App.4th 719, 727.)

For the above reasons, the Agency requests that this Court find that the trial court properly applied *Lucero L.* in making its jurisdictional findings and that the Court of Appeal properly applied the substantial evidence standard of review to the trial court’s findings.

Dated: January 11, 2016

Respectfully submitted,


County Counsel, in and for the
County of Alameda, State of California

By: 
NICOLE L. ROMAN
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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.360, subdivision (b)(1), I hereby certify that respondent's answering brief dated January 11, 2016, has 11,772 words as counted by the Microsoft Word Program.

Dated: January 11, 2016



NICOLE L. ROMAN
Attorneys for Respondent

PROOF OF SERVICE BY MAIL

In re I.C., et al. California Supreme Court Case No. S229276

I, Rakia Grant-Smith, declare:

I am employed in the County of Alameda, State of California, over the age of 18 years and not a party to the within case. My business address is 1221 Oak Street, Suite 450, Oakland, CA 94612-4296.

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge. Executed at Oakland, California, on January 11, 2016.



Rakia Grant-Smith