

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D18-3959

R.L.S., A CHILD,

Appellee.

_____ /

Opinion filed December 6, 2019

Appeal from the Circuit Court
for Orange County,
Robert J. Egan, Judge.

Ashley Moody, Attorney General,
Tallahassee, and Rebecca Rock
McGuigan, Assistant Attorney General,
Daytona Beach, for Appellant.

James S. Purdy, Public Defender, and
George D. E. Burden, Assistant Public
Defender, Daytona Beach, for Appellee.

PER CURIAM.

The State appeals an order that determined the child, R.L.S., to be incompetent. Based upon our review of the written order, we agree with the State that the trial court improperly shifted the burden of proof to the State in light of the fact that the child had not previously been declared incompetent. See King v. State, 387 So. 2d 463, 464 (Fla. 1st

DCA 1980) (holding that the State does not bear the burden to prove competency absent a prior adjudication of incompetency). Accordingly, we reverse and remand for the trial court to make an independent determination of competency and enter an order with findings consistent with the proper burden of proof.

REVERSED and REMANDED.

EVANDER, C.J., and HARRIS and GROSSHANS, JJ., concur.