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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL A. SANCHEZ,

Defendant and Appellant.

2d Crim. No. B281455  
(Super. Ct. No. 16PT-00867)  
(San Luis Obispo County)

Paul A. Sanchez appeals an order determining him to be an mentally disordered offender (MDO) and committing him to the State Department of State Hospitals for involuntary treatment. (Pen. Code, § 2962 et seq.)<sup>1</sup> We conclude that Sanchez's underlying offense, indecent exposure following unlawful entry into a residence, is a qualifying MDO offense and affirm. (§§ 314, subd. 1, 2962, subds. (e)(2)(P) & (Q), (f).)

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<sup>1</sup> All statutory references are to the Penal Code.

### *FACTUAL AND PROCEDURAL HISTORY*

On January 29, 2016, Sanchez pleaded guilty to one count of indecent exposure. Following his plea, the Fresno County trial court sentenced him to a three-year prison term. On August 4, 2016, prior to his parole release, the Board of Parole Hearings (Board) determined that Sanchez was an MDO pursuant to the criteria of section 2962. As a condition of parole, the Board required him to accept treatment from the State Department of State Hospitals.

Sanchez then filed a petition pursuant to section 2966, subdivision (b) to contest this decision. After Sanchez waived his right to a jury trial, a court trial followed. Among other stipulations, the parties agreed that Sanchez received 90 days or more of treatment during the year prior to his parole date. (§ 2962, subd. (c).) The court also received into evidence, without objection, certified copies of the abstract of judgment and the police reports regarding the underlying offense.

#### *Expert Witness Testimony*

Doctor Brandi Mathews, a forensic psychologist at Atascadero State Hospital, testified that she interviewed Sanchez regarding the MDO criteria and consulted with his treating psychiatrist. She also reviewed reports written by his treating physicians as well as two written MDO evaluations. Mathews concluded that Sanchez satisfied the MDO requirements of section 2962.

Specifically, Mathews opined that Sanchez suffers from schizophrenia, a severe mental disorder. She also concluded that his severe mental disorder was a cause of, or an aggravating factor in, the commission of the underlying offense.

Mathews concluded that Sanchez's severe mental disorder was not in remission as of the date of the Board hearing. She opined that Sanchez represents a substantial danger of physical harm to others due to his severe mental disorder because he has limited insight into his severe mental disorder, has a history of substance abuse, has not completed substance abuse treatment, and has not performed well on supervised release.

*Fresno Police Department Reports*

On December 31, 2014, Mr. and Mrs. C. lived with their minor daughter in an apartment building in Fresno. That evening, the family visited an adult son who also lived in the apartment building. When the C. family members returned to their apartment, they noticed that the front door was locked from the inside. Although they thought this was unusual, they entered the apartment and did not inspect for an intruder.

The family watched television for a time and then sent the minor daughter upstairs to bed. She soon called to her parents that there was an odor in her bedroom. A few minutes later, she screamed. Mr. C. ran to the bedroom and saw Sanchez standing nude "with one knee" on the child's bed. Mr. C. rushed Sanchez who had a "crazy" look on his face and swung at Mr. C. The two men began to wrestle; the adult son soon joined the fight to subdue Sanchez. By the time police officers arrived, Mr. C. and his son had Sanchez in a "headlock" and had wrestled him downstairs. After Sanchez was arrested, he informed police officers that he had been diagnosed with paranoid schizophrenia but had not followed his medication regime for several months. Sanchez also had a white powder residue on his face and admitted to recently consuming crystal methamphetamine.

### *Findings, Order, and Appeal*

Following the evidentiary hearing and arguments by counsel, the trial court determined that Sanchez met the requirements of section 2962 beyond a reasonable doubt. The court then committed him to the State Department of State Hospitals for involuntary treatment.

Sanchez appeals and contends that his underlying criminal offense is not a qualifying offense pursuant to section 2962, subdivision (e).

### *DISCUSSION*

Sanchez argues that as a matter of law, his commitment offense did not involve the use of, or threat of, force or violence as required by statute. (§ 2962, subds. (b), (e)(2)(P) & (Q).) He points out that he was neither charged with nor convicted of battery, lewd conduct, or a violent offense and asserts that his behavior was passive. Sanchez contends that due process of law compels reversal of the commitment order because the requirement of a qualifying criminal offense has not been proven beyond a reasonable doubt.

Section 314 provides: “Every person who willfully and lewdly . . . [¶] 1. Exposes his person, or the private parts thereof, in any public place or in any place where there are present other persons to be offended or annoyed thereby[] . . . [¶] . . . is guilty of a misdemeanor. [¶] Every person who violates subdivision 1 of this section after having entered, without consent, an inhabited dwelling house . . . is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.” (*Id.*, subds. 1 & 2

An MDO finding requires that the defendant’s commitment offense be an enumerated offense, or an offense involving the use

of force or violence, or an offense that threatens force or violence likely to produce substantial physical harm. (§ 2962, subd. (e)(2) [setting forth enumerated and catchall offenses]; *People v. Dyer* (2002) 95 Cal.App.4th 448, 452.) Indecent exposure, punishable by section 314, is not an enumerated offense within section 2962, subdivision (e)(2)(A)-(O).

Section 2962, subdivision (f) provides: “For purposes of meeting the criteria set forth in this section, the existence or nature of the crime, as defined in paragraph (2) of subdivision (e), for which the prisoner has been convicted may be shown with documentary evidence. The details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.” Police reports setting forth the details of the underlying offense constitute proper documentary evidence to demonstrate “the nature of the crime.” (*Ibid.*; *People v. Burroughs* (2016) 6 Cal.App.5th 378, 410 [police reports permissible to establish sexually violent predator qualifying offense].)

In reviewing the sufficiency of evidence to support an order made in MDO proceedings, we review the entire record to determine if reasonable and credible evidence supports the decision of the trier of fact. (*People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1096; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) We view the evidence and draw all reasonable inferences therefrom in favor of the order. (*Hannibal*, at p. 1096;

*Clark*, at p. 1082.) We do not reweigh the evidence or substitute our decision for that of the trier of fact. (*Clark*, at p. 1083.)

Sufficient evidence supports the implied determination of the trial court that, under the circumstances, Sanchez's underlying offense involved either force or violence or the threat of force or violence likely to produce substantial physical harm. (§ 2962, subds. (e)(2)(P) & (Q), (f).) Sanchez gained access to the bedroom of a child and hid until she lay in bed to sleep. Thereafter, Sanchez stood nude next to the child's bed with one knee on her bed. After the child screamed, her father entered the bedroom and rushed Sanchez, who resisted and fought back. The struggle continued down the stairs and into the living area. Mr. C.'s adult son joined to subdue Sanchez until police officers arrived. Sanchez's behavior entailed a threat of force or violence to the child as well as the use of force or violence against her father and brother. (*Ibid.*) There is no MDO requirement that the issue of force or implied force be adjudicated at the time of the conviction. (*People v. Kortesmaki* (2007) 156 Cal.App.4th 922, 928 [possession of flammable materials with intent to set fire involved implied threat to use force or violence within section 2962, subdivision (e)(2)(Q)]; *People v. Clark, supra*, 82 Cal.App.4th 1072, 1083-1084 [robbery without deadly weapon where defendant struggled with victim to retain money and escape involved use of force within MDO law].)

Application of Sanchez's underlying offense to support an MDO commitment is consistent with the purpose of the MDO statutory scheme, which is to protect the public by identifying those offenders who exhibit violence in their behavior and present a danger to society. (§ 2960 [declaration of legislative intent to protect the public from prisoners with severe mental

disorders that are not in remission]; *People v. Dyer, supra*, 95 Cal.App.4th 448, 455.)

The commitment order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jacquelyn H. Duffy, Judge  
Superior Court County of San Luis Obispo

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Gerald J. Miller, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant  
Attorney General, Steven E. Mercer, Supervising Deputy  
Attorney General, John Yang, Deputy Attorney General, for  
Plaintiff and Respondent.