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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ARMANDO DANIELLE FORD, Defendant and Appellant.	B272493 (Los Angeles County Super. Ct. No. ZM028642)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel Juarez, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

After being found not guilty of kidnapping by reason of insanity, appellant Armando Danielle Ford was committed to a state hospital. In the underlying proceeding, the court ordered appellant's commitment to be extended. Appellant challenges the sufficiency of the evidence to support that order. We affirm.

RELEVANT PROCEDURAL BACKGROUND

In January 2013, appellant was found guilty of the offense of attempted kidnapping (Pen. Code, §§ 207, subd. (a), 667), but not guilty by reason of insanity.[1] Appellant was committed to the California Department of State Hospitals for a term to end no later than April 27, 2016. In November 2015, the Los Angeles County District Attorney filed a petition to extend his confinement (§ 1026.5, subd. (b)). On April 20, 2016, following a bench trial, the court sustained the petition and extended appellant's maximum term of commitment to April 27, 2018. This appeal followed.

DISCUSSION

Appellant contends there is insufficient evidence to support the trial court's ruling. For the reasons set forth below, we disagree.

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[1] All further statutory citations are to the Penal Code.

A. *Governing Principles*

Under section 1026.5, "[a] person found not guilty of a felony by reason of insanity may be committed to a state hospital for a period no longer than the maximum prison sentence for his or her offense or offenses [citation]. . . ." (*Hudec v. Superior Court* (2015) 60 Cal.4th 815, 818.) Subdivision (b)(1) of section 1026.5 provides that the maximum term of confinement may be extended when the committee, "by reason of a mental disease, defect, or disorder[,] represents a substantial danger of physical harm to others." That showing requires a demonstration that the committee has serious difficulty in controlling dangerous behavior. (*People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165; *People v. Bowers* (2006) 145 Cal.App.4th 870 (*Bowers*); *People v. Galindo* (2006) 142 Cal.App.4th 531, 537 (*Galindo*).) Generally, the extension proceeding focuses on the committee's condition at the time of the proceeding. (*People v. McCune* (1995) 37 Cal.App.4th 686, 693 (*McCune*).) In order to obtain an extended commitment, "the People are required to meet the 'beyond a reasonable doubt' standard of proof." (*People v. Superior Court* (*Blakely*) (1997) 60 Cal.App.4th 202, 217.)

"'"Whether a defendant 'by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others' under section 1026.5 is a question of fact to be resolved with the assistance of expert testimony." [Citation.] "In reviewing the sufficiency of evidence to support a section 1026.5 extension, we apply the

test used to review a judgment of conviction; therefore, we review the entire record in the light most favorable to the extension order to determine whether any rational trier of fact could have found the requirements of section 1026.5(b)(1) beyond a reasonable doubt. [Citations.]" [Citation.]' [Citation.]" (*Bowers*, *supra*, 145 Cal.App.4th at pp. 878-879.)

B. *Underlying Proceedings*

The sole witness to testify at the hearing on the commitment extension petition was Dr. Gordon Plotkin, who had examined appellant's medical records and evaluated him at Patton State Hospital in January 2016. According to Plotkin, appellant suffers from schizophrenia. In 2011, when appellant was in his early 20's, he first presented the symptoms of schizophrenia. Friends brought him to a hospital because he was "was w[a]ndering around and acting bizarre and paranoid . . . ." He was twice placed on involuntary holds (Welf. & Inst. Code, § 5150). Early diagnoses identified his disorder as undifferentiated schizophrenia, which includes psychotic symptoms such as delusions, paranoia, and thought disorder. His records reflected visual and auditory hallucinations, paranoia, paranoid delusions, and "disorganized thinking." In 2011, he was prescribed medication for his condition.

The events underlying appellant's kidnapping conviction occurred in 2012, when he stopped taking his medication. On April 28, 2012, he went on a church trip.

After his cousin failed to pick him up, he wandered the streets. Upon seeing and smelling what he believed was a fire in a car containing two children, he tried to pull one of the children out of the car. There were no witness reports of the fire, which was a visual and olefactory hallucination experienced by appellant.

After being committed to a state hospital, appellant was resistant to treatment. His records reflected incidents involving rule-breaking, threats, and violence. The latest such incident occurred in February 2015, when he accused a staff member of not doing her job and then held a pen to protect himself in the belief that she intended to "rush him."[2] Furthermore, appellant refused medication by spitting it out openly or covertly, and participated in only 75 percent of his treatment groups, which was below the minimum standard of 80 percent.[3] In mid-2015, appellant reported auditory hallucinations to hospital staff.

Plotkin noted improvements in appellant's condition. His then-current diagnosis was that he suffered from schizophrenia, rather than the "very paranoid" schizophrenia reflected in his early records. In the two-

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[2] Plotkin also noted a July 2015 incident during which appellant feigned holding a gun to a peer's neck and asked for money. Plotkin regarded that incident as probably "horseplay."

[3] According to Plotkin, 90 percent participation was the hospital's "discharge goal."

month period before the January 2016 evaluation, appellant progressed from refusing to acknowledge his mental illness and its influence over his behavior to showing some insight regarding his illness and medications. Appellant also had been compliant with treatment for several months. Plotkin nonetheless believed that it was "too early for [appellant] to show genuine insight" and "too early to say" that he was "stabilized."

According to Plotkin, notwithstanding the improvement in appellant's condition, he posed a substantial danger to others and lacked control over his impulses because he did not adequately understand his illness and the need for "lifelong medications." Plotkin stated that if appellant were released and failed to take his medication, "[h]e would immediately become psychotic with the same symptoms that he had when he committed the [2012] crime . . . ." Plotkin further stated that during the January 2016 evaluation, appellant "still hadn't . . . been able to completely connect his mental illness with his behavior. He was able to superficially discuss it[,] but it wasn't a complex idea." Appellant denied suffering from auditory hallucinations, although he had reported such hallucinations as recently as mid-2015. Appellant also had inadequate post-discharge plans. He rejected participation in CON-REP, a program designed to assist committees upon leaving hospitalization, and intended instead to live with friends or relatives and obtain medication through local

community outpatient treatment.[4] Plotkin stated that moving directly from inpatient hospitalization -- with supervised medication -- to such outpatient treatment crossed "a huge gap."

C. *Analysis*

In our view, Dr. Plotkin's testimony constitutes substantial evidence that appellant, by reason of his schizophrenia, has serious difficulty in controlling his dangerous conduct, and "represents a substantial danger of physical harm to others." (§ 1026.5, subd. (b)(1).) "A single psychiatric opinion that an individual is dangerous because of a mental disorder constitutes substantial evidence to support an extension of the defendant's commitment under section 1026.5. [Citation.]" (*Bowers*, *supra*, 145 Cal.App.4th at p. 879.) However, "expert testimony does not constitute substantial evidence when based on conclusions or assumptions not supported by evidence in the record [citation], or upon matters not reasonably relied upon by other experts [citation]. Further, an expert's opinion testimony does not achieve the dignity of substantial evidence where the expert bases his or her conclusion on

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[4] CON-REP is "[t]he Forensic Conditional Release Program, part of the Department of Mental Health's statewide system of community-based services for specified forensic patients." (*Galindo*, *supra*, 142 Cal.App.4th at p. 540, fn. 2.)

speculative, remote or conjectural factors. [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

No such deficiencies are found in Plotkin's testimony, which showed at the time of the hearing on the extension petition that appellant suffered from schizophrenia, for which he needed lifelong medication. According to Plotkin, in the absence of such medication, appellant would "immediately" manifest the same symptoms that resulted in his 2012 offense. Following appellant's commitment, he resisted medication, engaged in incidents involving threats and violence at least until February 2015, and still reported auditory hallucinations in mid-2015. Despite the improvement in appellant's condition, he displayed only an inadequate understanding of his illness and need for long-term medication. Appellant denied documented symptoms of his illness, he lacked "genuine insight" into his condition, and his preferred post-commitment plans were inadequate to ensure that he took his medication. In view of these facts, Plotkin opined that appellant remained a danger to others and continued to lack control over his impulses. We conclude that his testimony was sufficient to support the trial court's ruling.

Appellant contends his commitment was erroneously extended, pointing to the improvement in his condition noted by Plotkin. However, "even though a [committee] may be helped through treatment over the years, he or she may still represent a substantial danger of physical harm to

others because of a mental disease . . . ." (*McCune*, *supra*, 37 Cal.App.4th at p. 692.) In light of Plotkin's testimony, the trial court could properly find that was the case here.

Appellant also contends Plotkin offered no factual basis for his testimony that it was "'too early' for [appellant] to show genuine insight" and "'too early to say'" that he was "stabilized." We disagree. To support that testimony, Plotkin relied on his observations of appellant during the January 2016 evaluation. According to Plotkin, appellant's discussion of the relationship between his disorder and behavior was "superficial," and his discussion of his "need for followup and medications for a lifelong disorder [was] not completely convincing." Plotkin otherwise noted that during the evaluation, appellant denied that he ever suffered auditory hallucinations, even though his records reflected such hallucinations as recently as mid-2015. In sum, there is sufficient evidence to support the trial court's order extending the maximum term of appellant's commitment.

DISPOSITION

The order of the trial court is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.