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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.

RICHARD A. CLEMENTS,  
Defendant and Appellant.

2d Crim. No. B279083  
(Super. Ct. No. 16PT-00728)  
(San Luis Obispo County)

Richard A. Clements appeals an order committing him to the California Department of Mental Health (now State Department of State Hospitals) for treatment as a mentally disordered offender (MDO). (Pen. Code, § 2962 et seq.)<sup>1</sup> Appellant contends that the evidence is insufficient to prove he meets the fourth MDO criterion, i.e., that his severe mental disorder (a neurocognitive disorder) was not in remission or

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

cannot be kept in remission without treatment.<sup>2</sup> (§ 2962, subd. (a)(1).) We affirm.

*Factual and Procedural History*

In 2010, appellant pled guilty to two counts of voluntary manslaughter (§ 192, subd. (a)) with personal use of a deadly weapon (§ 12022, subd. (b)(1)), and assault with a deadly weapon with force likely to cause great bodily injury (§ 245, subd. (a)(1)) after he struck and killed two children in a school zone while fleeing an officer. Appellant was sentenced to 19 years state prison.

On September 15, 2016, the Board of Prison Terms (BPT) determined that appellant was an MDO and committed him to Atascadero State Hospital (ASH) for treatment. (§ 2962, subds. (a)-(d).) Appellant petitioned the superior court for trial and waived jury. (§ 2966, subd. (b).)

Doctor Angie Shenouda, a forensic psychologist, testified that appellant suffered from two severe mental disorders: a delusional disorder and a neurocognitive disorder.

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<sup>2</sup>“A determination that a defendant requires treatment as an MDO rests on six criteria, set out in section 2962: the defendant (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a disorder which caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission absent treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the prisoner poses a serious threat of physical harm to other people.” (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.) It was stipulated that criteria 5 (prisoner was treated for the disorder for at least 90 days in the year before being paroled) was satisfied.

The delusional disorder was manifested by grandiose delusions that appellant was the owner of the San Diego Chargers and the King of Ireland, that he was related to actors Brad Pitt and Matt Damon, and that he had a romantic relationship with Kim Kardashian. Appellant suffered from paranoid delusions that others around him were pedophiles and that his role was to “cleanse” the world of pedophiles.

The neurocognitive disorder was the result of a car accident at age 15 in which appellant suffered traumatic brain injury and was in a coma for six weeks. Because of the brain injury, appellant suffered a drastic change in personality and a reduction in executive brain functioning. Doctor Shenouda opined that the neurocognitive disorder caused behavioral and impulsivity problems, that it qualified as a severe mental disorder and was treatable, and that it caused or was an aggravating factor in the commitment offense. Doctor Shenouda believed that the delusional disorder (the second mental disorder) was not a MDO factor because appellant was not delusional at the time of the commitment offense.

Doctor Shenouda opined that appellant met all the MDO criteria and could not be kept in remission without treatment based on a number of factors. Appellant engaged in intentional property damage during his treatment, did not follow his treatment plan, and was subject to an involuntary medication order (see *Keyhea v. Rushen* (1986) 178 Cal.App.3d 526, 542; *In re Qawi* (2004) 32 Cal.4th 1, 27). It was a concern because appellant had a history of severe mental disorder-related violence (assault and battery on a peace officer and threats towards others) and poor impulse control. Appellant claimed that the children he killed were pedophiles, that he gave one of the

victims the “kiss of death,” and that he “stomped” the other victim to death. Appellant also had a long history of substance abuse (since age 10) that included marijuana, LSD and alcohol, which elevated the risk factor violence. Appellant told the doctor that once he is discharged, he plans to replace his medication with marijuana and live alone.

### *Substantial Evidence*

Appellant argues that the evidence does not support the trial court’s finding that the neurological disorder was not in remission and could not be kept in remission without treatment. As in any sufficiency-of-the-evidence appeal, we view the entire record in the light most favorable to the judgment, drawing all reasonable inferences, and resolving all conflicts in favor of the judgment. (*People v. Clark, supra*, 82 Cal.App.4th at p. 1082.) We do not reweigh the evidence or substitute our decision for that of the trier of fact. (*Id.* at pp. 1082-1083.)

Appellant complains that Doctor Shenouda testified about the treatment regimen for the delusional disorder but not the neurocognitive disorder. The argument is based on the theory that the prosecution may not rely on the delusional disorder to “bootstrap” its claim that the neurocognitive disorder was not in remission. (See *People v. Garcia* (2005) 127 Cal.App.4th 558, 567 [treatment must be for the same mental disorder that qualifies defendant for an MDO commitment]; *People v. Sheek* (2004) 122 Cal.App.4th 1606, 1611 [same; evidence insufficient to show defendant received 90 days of treatment for pedophilia].)

On direct, Doctor Shenouda did not specifically say the neurocognitive disorder was not in remission. But on cross, the doctor was asked how the neurocognitive disorder was being

treated. Doctor Shenouda said that “the actual physical chemistry of the brain isn’t necessarily being treated. What is being treated is [appellant’s] impulsivity such that when he is medication compliant, he is less impulsive and is able to give himself some time to think about how he acts.”

Doctor Shenouda was next asked: “Do you anticipate that the treatment [appellant] is receiving is going to bring that neurocognitive disorder into remission?” The doctor answered that the treatment “will help him learn ways to cope -- or learn ways to think before he acts, and they will train him on developing skills on how to do so. *So it could help lead him to remission.*” (Italics added.) The trial court reasonably drew the inference that the neurocognitive disorder was not in remission.

Section 2962, subdivision (a)(3) lists four circumstances that conclusively establish that the prisoner cannot be kept in remission without treatment: (1) engaging in unexcused physical violence; (2) making a serious threat of substantial physical harm to another; (3) intentionally causing property damage; or (4) not voluntarily following the treatment plan. (*People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1405.) If the state proves any one of these four criteria, the prisoner cannot be kept in remission without treatment. (*Id.* at p. 1407.)

Doctor Shenouda testified that appellant intentionally destroyed property at ASH, that he had not followed the treatment plan, and that he was placed on an involuntary medication order, all of which supports the finding that he cannot be kept in remission without treatment. (See, e.g., *People v. Burroughs, supra*, 131 Cal.App.4th at p. 1407.) “Under section 2962, not voluntarily following the treatment plan is essentially

an exception to the finding that the illness is in remission.”  
(*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1400.)

Substantial evidence supports the finding that appellant suffers from a severe mental disorder that cannot be kept in remission without treatment and poses a substantial danger to others by reason of the severe mental disorder. (*People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].)

*Disposition*

The judgment (MDO commitment order) is affirmed.  
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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Michael L. 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.

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\* Assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.