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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.

C.B.,

Defendant and Appellant.

2d Crim. No. B299191
(Super. Ct. No. 19PT-00227)
(San Luis Obispo County)

C.B. suffers from schizophrenia, a severe mental disorder, and appeals the trial court's order committing him to the Department of Mental Health for treatment as a mentally disordered offender. (MDO; Pen. Code, § 2962 et seq.)¹ We affirm.

Procedural History

In 2010, appellant grabbed a Rite-Aid store manager, and dragged her to the employee breakroom, punching her head

¹ All statutory references are to the Penal Code.

and fondling her breasts. A fellow employee grabbed appellant and held him to the ground until the police arrived.

Appellant was sentenced to state prison for assault to commit a sex offense (§ 220, subd. (a)(1)) and kidnapping (§ 207, subd. (a)). In 2019, the Board of Prison Terms (BPT) certified appellant as an MDO and committed him to the State Department of Mental Health for treatment. Appellant filed a petition challenging the BPT decision (§ 2966, subd. (b)), was appointed counsel, and waived jury trial.

It is uncontroverted that appellant suffered from a severe mental disorder (schizophrenia) manifested by auditory and visual hallucinations, delusional thinking, and impulsive behavior. Doctor Matthew Milburn, testified that the severe mental disorder was not in remission and that appellant met all the MDO criterion. (§ 2962, subds. (b)-(f).) Even with medication, appellant was delusional and believed he could communicate with others outside the building by “foot reading.”

The doctor opined that appellant posed a substantial risk of harm to others due to appellant’s severe mental disorder, his substance abuse (alcohol, heroin, and methamphetamine), his history of violence, the lack of insight about his mental disorder and medication needs, and his discharge plans. It was a concern because appellant could regress and engage in violence, and had prior arrests for battery, assault with a deadly weapon, and battery on a police officer.

Doctor Michelle Vorwerk, a psychologist, agreed that appellant met all the MDO criteria except factor six: that he posed a substantial risk of harm to others because of the mental disorder. (§ 2962, subd. (f).) Appellant declined to be interviewed by the doctor, exhibited a thought disorder symptomatic of

schizophrenia, and refused to take his medication while at CDC. Dr. Vorwerk agreed that appellant's lack of insight, his refusal to take medication while at CDC, and his substance abuse increased the risk for violence if released into the community. Appellant lacked a viable relapse plan or housing, and was not willing to see a psychiatrist if released. Dr. Vorwerk agreed with Dr. Milburn that appellant's release plan was "delusional."

Discussion

Appellant argues that the evidence is insufficient to support the finding that he posed a substantial risk of physical harm to others as a result of his severe mental disorder. As in any substantial evidence case, we draw all reasonable inferences and resolve all conflicts in favor of the judgment. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) It is not our function to reweigh the evidence or redetermine witness credibility. (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.) The single opinion of a mental health expert that appellant is currently dangerous due to a severe mental disorder is substantial evidence to support the MDO commitment. (*People v. Bowers* (2006) 145 Cal.App.4th 870, 879.)

Here the long-term mental disorder is not in remission, appellant lacks insight about his mental disorder or need for treatment, appellant has a history of substance abuse and violence, and has no discharge or relapse plan. Appellant has engaged in acts of violence when symptomatic and had an incident in 2017 with a female nurse. Appellant asserts that he did not assault anyone in a strictly controlled hospital environment but that "does not prove he no longer suffers from a mental disorder that poses a [substantial risk of harm] to others." (*People v. Sumahit* (2005) 128 Cal.App.4th 347, 3653.) "Penal

Code section 2962, subdivision [(g)] states that “substantial danger of physical harm” does not require proof of a recent overt act’ [of violence].” (*In re Qawi* (2004) 32 Cal.4th 1, 24.)

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

We concur:

GILBERT, P. J.

PERREN, J.

Timothy S. Covello, Judge

Superior Court County of San Luis Obispo

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

Xavier Becerra, Attorney General, Lance E. Winters,
Chief Assistant Attorney General, Paul M. Roadarmel, Jr.,
Supervising Deputy Attorney General, Eric J. Kohm, Deputy
Attorney General, for Plaintiff and Respondent.