

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT T. CARSON,

Defendant and Appellant.

2d Crim. No. B235085
(Super. Ct. No. 56-2010-00384789-
CU-PT-VTA)
(Ventura County)

Robert T. Carson appeals a judgment preventing him from owning or possessing firearms for five years pursuant to Welfare and Institutions Code section 8103, subdivision (f).¹ We conclude the trial court's finding that Carson is not "likely to use firearms in a safe and lawful manner" is supported by substantial evidence. We affirm.

FACTS

On October 29, 2010, Sheriff's Deputy Mark Correia received a report that Carson was "possibly suicidal" and in possession of a handgun. When he arrived at the scene, he "could smell the odor of an alcoholic beverage emanating from [Carson]." In his incident report, Correia said Carson was "acting strangely," "depressed," "verbally

¹ All statutory references are to the Welfare and Institutions Code.

confrontational," and he "made statements to his family that everyone would be better without him and . . . he would be better without them."

When a paramedic arrived, Carson attempted "to grab a case that contained" a "gun." A fireman and a paramedic had to pull that case from Carson's hand. For safety reasons, a neighbor had to remove the guns from Carson's home.

Carson was placed on a section 5150 psychiatric "hold" because of "his statements and actions." The police called an ambulance to transport him to a hospital psychiatric unit.

When they arrived at the hospital, Carson threatened a paramedic. He told a police officer "shoot me," he lunged toward the officer and had to be physically restrained. Carson told a nurse he could take Correia's gun, and he unsuccessfully tried to take it from Correia.

Carson was held at the hospital for 12 hours and then released. He was advised that he was prohibited from possessing firearms. Carson had "routinely take[n] a handgun with him" on "business trips." He challenged the firearm prohibition.

A person taken into custody for a psychiatric hold because they are a danger to themselves or others (§ 5150) may not own or possess firearms for a five-year period. (§ 8103, subd. (f).) An individual subject to that prohibition may request a hearing and contest this restriction. At the hearing the People "bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner." (§ 8103, subd. (f)(6).)

The trial court held a hearing at Carson's request. It found that if Carson "were relieved from the prohibition set forth in Welfare and Institutions Code section 8103(f) he would not be likely to use firearms in a safe and lawful manner." It ordered that he be "subject to the five year prohibition . . . on the ownership, control, receipt, possession and purchase of firearms."

DISCUSSION

Substantial Evidence

Carson contends the evidence is insufficient to support the judgment. We disagree.

"In reviewing [Carson's] contention, we apply the substantial evidence standard." (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1553.) We do not weigh the evidence. The trial court decides the credibility of the witnesses. (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1647; *Church of Merciful Saviour v. Volunteers of America, Inc.* (1960) 184 Cal.App.2d 851, 856.) We look to the evidence supporting the findings and draw all reasonable inferences to support the judgment. (*Griffith Co. v. San Diego College for Women* (1955) 45 Cal.2d 501, 508.)

"[A] single incident leading to a section 5150 commitment can support a section 8103, subdivision (f) finding." (*People v. Jason K., supra*, 188 Cal.App.4th at p. 1554.)

Carson relies on his own evidence. He notes that his doctor, T.G. Hostetler, submitted a letter opining that the October 29th incident only involved "mental confusion" caused by a "pre-diabetic," "reactive hypoglycemia" and low blood sugar. But the trial court was not required to accept these conclusions. (*Lohman v. Lohman* (1946) 29 Cal.2d 144, 149.) A "glucometer" blood test showed that Carson's blood sugar level was normal. Carson's wife testified that Carson had a history of alcoholism and that his use of alcohol played "a role" in this incident. Moreover, the issue is not whether some evidence supports Carson's position. It is whether substantial evidence supports the judgment.

Carson suggests there is no medical evidence to support the trial court's findings. He claims he had no medical condition that would make it likely that he would unsafely use firearms. But Carson testified, "I have admitted that *I am an alcoholic.*" (Italics added.) He also admitted he had been drinking "Bourbon," "whiskey" on the day of the incident.

Moreover, as the People note, the "Physician Admission and Discharge" medical record from the hospital's psychiatric unit indicated that Carson was "belligerent" when admitted" and was a "danger" to himself, a "danger" to others and "gravely disabled." Another medical record indicated that he was "suicidal," "assaultive" and had "poor impulse control." At the "Psychiatric Unit," Carson was asked, "Do you believe that you are at risk for behaving in a violent or aggressive manner?" He responded, "No. *Not until I get out of here.*" (Italics added.) A hospital discharge note reflects that Carson had an "alcohol induced mood disorder," and "alcohol dependence/ abuse." A sheriff's department report indicated that Carson was "suicidal," "depressed," "confrontational," and "acting bizarre."

Paramedic Eric Arthur testified that Carson's son said Carson remarked that he "intended to hurt himself" and that Carson "becomes aggressive" when he drinks. At the hospital Carson made threats. He "raised a fist" and told Arthur "he wasn't afraid to hurt [him]."

Carson claims: 1) there were conflicts between Arthur's testimony, a report he wrote and Carson's testimony , 2) the testimony of Carson and his wife refutes portions of Correia's report which the People introduced, 3) the People's evidence that Carson tried to grab a case containing a gun is refuted by Carson's testimony that he was only trying to retrieve cash in that case, and 4) Carson's evidence was superior to the People's evidence. But "we must resolve all evidentiary conflicts in favor of the prevailing party" (*Burch v. Premier Homes, LLC* (2011) 199 Cal.App.4th 730, 744.) "We may not insert ourselves as the trier of fact and reweigh the evidence." (*Id.* at p. 745.) The credibility of Carson, his wife, Arthur and Hostetler was a matter exclusively for the trial court to decide. (*Fredrics v. Paige, supra*, 29 Cal.App.4th at p. 1647; *Church of Merciful Saviour v. Volunteers of America, Inc., supra*, 184 Cal.App.2d at p. 856; *Lohman v. Lohman, supra*, 29 Cal.2d at p. 149.)

The People presented additional evidence showing that Carson's conduct was irrational and dangerous. Carson told a police officer at the hospital "shoot me,

shoot me" the then "began charging towards" the officer who had to raise his hands to protect himself. The police had to handcuff Carson to control him. Carson told a nurse that "he could take [Correia's] gun if he wanted to." He then reached toward that gun. Correia had to grab Carson's handcuffs to prevent him "from reaching [Correia's] gun belt." Carson then told the deputy, "[W]hat would you do if I got up and kicked you in the balls right now?"

One of the medical evaluations concluded "substance abuse" was a factor "affecting" Carson's "mental health." The evidence is sufficient. (*People v. Jason K.*, *supra*, 188 Cal.App.4th at pp. 1553-1554.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Ryan J. Wright, Judge
Superior Court County of Ventura

Lowthorp Richards, Jeffrey D. Johnsen for Defendant and Appellant.

Gregory D. Totten, District Attorney, Lisa O. Lyytikainen, Senior Deputy
District Attorney, for Plaintiff and Respondent.