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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ROBERT MARKMAN, Defendant and Appellant.	B280903 (Los Angeles County Super. Ct. No. ZM029464)

APPEAL from an order of the Superior Court of Los Angeles County, James N. Bianco, Judge. Affirmed.

Robert Markman, in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, William H. Shin, Deputy Attorney General, for Plaintiff and Respondent.

After a hospital released him from an involuntary 72-hour psychiatric hold, Robert Markman petitioned for legal restoration of the gun rights he lost as a result of the hold. Markman appeals after the trial court denied his petition. We affirm.

I

Markman is an anesthesiologist who quit working sometime in 2000. He is on what he called a "prolonged sabbatical" from his occupation. He lives with his adult daughter, to whom he administered the drug propofol for many years. Police went to investigate a report of this conduct and asked to speak to his daughter. Some sort of altercation between Markman and police ensued. Markman claimed the police attacked and injured him. A further consequence of this encounter was that a jury convicted Markman on August 31, 2012 of violating Penal Code section 148, subdivision (a)(1) (willfully resisting or obstructing an officer in the discharge of duty).

In September 2012, psychiatrist Manuel Saint Martin examined Markman and concluded Markman could not safely practice medicine due to Markman's "personal pathology." Saint Martin wrote that Markman "lacks objectivity because he has no insight into his own psychological behavior. . . . [Markman's] personality characteristic of risk taking behavior and his use of rationalization affect his ability to safely practice medicine."

On December 13, 2013, the California Medical Board placed Markman's medical license status on probation for seven years. The Board required Markman to be available for interviews at the probation unit's office. On March 25, 2014, Markman went to the Board's office for his quarterly interview. An interaction

between Markman and the security person at the door resulted in Markman claiming the security person injured him.

Markman's next quarterly interview was set for May 29, 2014. On May 12, 2014, Markman e-mailed Board personnel requesting the interview be by phone. Markman wrote:

"I haven't recovered at all from the physical assault I suffered at the hands of your sadistic security guard. . . . If you still insist that I have my interview in your Cerritos office I will not allow myself to be touched by your security guard again. If necessary I will strip naked and allow the guard to search my clothes and belongings so he can be satisfied that I am not carrying any weapons. Please advise."

The day before this hearing, Markman telephoned the Board personnel and told Rachel LaSota he was concerned security guards would injure him again. Markman proposed that he would strip naked so that security could search him or look at him without touching him. LaSota said she would have to discuss this with management. Markman concluded by saying he would come to the Board's office with no clothes on and they could decide what to do with him.

On May 29, 2014, there were several events of significance to this appeal.

That day, Markman appeared at the California Medical Board interview wearing only his underwear. The staff telephoned police. Officer Toland of the California Highway Patrol took Markman to College Hospital for a 72-hour psychiatric hold under section 5150 of the Welfare and Institutions Code. (All statutory references are to the Welfare and Institutions Code.)

The hospital staff conducted a pre-admission assessment. The assessment including asking Markman, "Is there a family history of mental illness?" The response was these words: "Some on both my M + F side." On May 29, 2014, the hospital admitted Markman on the basis of the staff opinion that, as a result of a mental disorder, Markman was likely to harm others and was gravely disabled.

On May 31, 2014, a doctor's progress note stated, "Patient is not doing very well today." The doctor noted Markman was very argumentative and agitated and threatened to sue "you, your friends, the hospital and everybody that you know." The doctor noted Markman was "still trying to justify why he presented to the medical board only wearing his underwear." The doctor's assessment was psychosis, not otherwise specified, acute danger to others, and gravely disabled.

Another hospital record stated the following:

"During the intake, Dr. Salo saw the patient and felt that the patient was behaving very bizarrely. The patient was very delusional. The patient had paranoid thoughts believing that people are after him, stating that the medical board is trying to make [him] sound crazy because of the psychiatric evaluation. . . . [T]he patient minimized the fact that he showed up at the medical board meeting wearing only his underwear. The patient was very angry. The patient was not sleeping and the patient refused all medication. . . . The patient was very confrontational and very disorganized."

The 72-hour hold began on May 29, 2014 and ended on June 1, 2014. The hospital discharged Markman on June 1, 2014.

A legal consequence attending 72-hour holds is that the law removes these patients' right to possess guns for five years. (See § 8103, subd. (f)(1).) In response to this gun ban and as authorized by statute, Markman requested a hearing to restore his gun rights. (See § 8103, subd. (f)(5).)

With Markman appearing on his own behalf, the trial court heard the matter and appointed Dr. Efrain Beliz, Jr. to evaluate Markman. Beliz dated his evaluation June 27, 2016. The Beliz report stated:

"[Markman] presents with too many risk factors. He is divorced, unemployed, estranged from his two daughters, overwhelmed by his other daughter's medical condition, on probation, and with a history of impulsive and erratic behavior in response to stress. The petitioner refuses mental health services and rejects the need for professional help, which illustrates his lack of insight and psychological mindedness. The petitioner's stubbornness and self-centeredness combined with less than adequate interpersonal skills when stressed or challenged make him a risky candidate for gun ownership. His encounters involving a security guard, police detective, and probation office staff illustrate his ability to push the envelope with persons in authority. There would definitely be an adverse outcome if he believed or rationalized that it would be proper to brandish or take his firearm with him to prove a point at some time in the future."

The report "strongly" recommended barring Markman from possessing firearms.

The trial court held a further hearing on July 29, 2016, at which Markman again represented himself. Markman gave an opening statement and testified under oath. On November 4 and

December 9, 2016, the court held further hearings. The court heard the direct and cross-examination of Beliz. Markman's daughter also testified. After hearing all the evidence and argument, the court denied Markman's petition:

"And in considering all the evidence, I do find [t]he People have met their burden. And where I come out on it is this: it's difficult for me to arrive at a finding on any particular mental illness. There's been testimony that's ranged from narcissistic personality disorder to bipolar disorder to psychosis not otherwise specified. And as I understand the law, the court does not need to decide on a particular diagnosis. All the court needs to decide is whether it would be likely or not that you would use firearms in a safe and lawful manner.

"And regardless of what is driving the behavior, what I see is some aspects of paranoia or at least that there are sort of successive parties that have a vendetta of some sort or something against you. It started with [Rachel] LaSota and then went to [Officer] Toland and it went to the doctor in the hospital and then ultimately [to] Dr. Beliz.

"But I think . . . really the most important factor is that I see in the evidence a real issue with your judgment. Because what I see is each of the parties that I've mentioned seem to have really been taken by the fact that you showed up to the medical board for your interview wearing your underwear and a t-shirt and that you did that to avoid being searched. And I agree with Dr. Beliz on this point, that makes no sense. I'm ruling; I'm not trying to debate. It makes no sense.

"And I . . . know that you don't see it that way, which to me is of even more concern, because I think you lack the insight into why that didn't make sense and why everyone along the way

seems to have reacted the same way to that. And, in fact, in your way of thinking, it appeared to make so much sense to you that you even presented a videotape of that whole incident, which was fairly damaging to your case.

"And I think putting all the evidence together and that I think is the sort of highlight of why I would say I don't think you'd be likely to use firearms in a safe and lawful manner. And so with—and I want to do this respectfully because you seem like a decent man and you certainly—as I said, you've been respectful in court and I certainly appreciate that, but with all due respect, your petition is denied."

II

A complex of statutes govern this case.

When police have probable cause to believe a person is a danger to others, section 5150 permits police to take the person into custody and place that person in a mental health facility for evaluation. Under sections 5151 and 5152, the person must receive an initial assessment before being admitted to the facility, and, if admitted, the person must be evaluated as soon as possible. The hospital may not hold the person for more than 72 hours without further process.

California law restricts the gun rights of people who have been subjected to this sort of 72-hour psychiatric hold. (See § 8103, subd. (f)(1).) People whose gun rights have been restricted in this way may petition to regain full firearm rights. (See § 8103, subd. (f)(5).)

III

Markman argues the trial court committed two reversible errors when it denied his petition to restore his gun rights. We treat these arguments in turn.

A

Markman's first argument is the trial court misinterpreted section 8103, subdivision (f)(1). We review questions of statutory interpretation de novo.

This argument turns on the fact College Hospital gave Markman an outdated form. The form is titled the "INVOLUNTARY PATIENT ADVISEMENT (TO BE READ AND GIVEN TO THE PATIENT AT TIME OF ADMISSION)." College Hospital used an outdated form from 2005. The proper form was updated in January of 2014. The difference between the two forms is that the new and proper form includes language required by a 2013 statutory revision. (See Sen. Bill No. 364 (2013–2014 Reg. Sess.) § 5.) We quote the new language from the updated and proper form, emphasizing the key sentence:

"You will be held for a period up to 72 hours. During the 72 hours you may also be transferred to another facility. You may request to be evaluated or treated at a facility of your choice. *You may request to be evaluated or treated by a mental health professional of your choice.* We cannot guarantee the facility or mental health professional you choose will be available, but we will honor your choice if we can."

Apparently College Hospital, in 2014, failed to replace the obsolete form with the updated version. The result was Markman got the old form that omitted the statement that,

during the 72-hour hold, "[y]ou may request to be evaluated or treated by a mental health professional of your choice."

Based on this error about the proper form, Markman argues as follows. He is an experienced medical doctor with a lifetime of local contacts. Had he been properly advised with the correct form, he would have learned "you may request to be evaluated or treated by a mental health professional of your choice." With this knowledge, Markman could have swiftly summoned a mental health professional of his choice who would have given him a favorable evaluation, which would have terminated the 72-hour hold immediately. Because the section 5150 hold was performed improperly, it had no valid legal effect. Markman's argument concludes the faulty section 5150 hold could not have triggered section 8103's gun ban in the first place. The gun ban, he argues, is fruit of the poisonous tree.

This argument misinterprets the Welfare and Institutions Code. Correctly construing the statute shows it did indeed subject Markman to a valid gun ban. The decisive provision is section 8103, subdivision (f)(1). We italicize the key words:

> "No person who has been (A) *taken into custody* as provided in Section 5150 because that person is a danger . . . to others, (B) *assessed* within the meaning of Section 5151, and (C) *admitted* to a designated facility . . . because that person is a danger to . . . others, shall . . . possess . . . any firearm for a period of five years . . . ."

These statutory words announce the three specified events that trigger the gun ban: (a) being *taken into custody*, (b) being *assessed*, and (c) being *admitted*. There is no further requirement that the hospital, after admitting the patient, hold the patient for 72 hours or for any other duration for section 8103, subdivision

(f)(1) to apply. (See also § 8103, subd. (f)(2)(A) [hospital required to submit a report to Department of Justice within 24 hours of patient's *admission*].)

The People proved the advent of the three statutory events—custody, assessment, and admission:

(a) Custody. Officer Tolman took Markman into custody and took him to College Hospital;

(b) Assessment. By 12:20 or 12:30 p.m. on May 29, 2014, the hospital staff began its preadmission assessment of Markman. By 1:00 or 1:20 p.m., the staff completed assessing Markman; and

(c) Admission. Dr. Kellogg of College Hospital admitted Markman to the hospital.

Thus, by May 29, 2014 at 1:20 p.m. at the latest, the three necessary events had occurred. The gun ban took effect, in other words, less than two hours after Markman arrived at the hospital.

Proper interpretation of the statute shows Markman's argument is misplaced. He claims a proper advisement would have enabled his release before 72 hours had elapsed, but the possibility of early release is not relevant to the gun ban statute. Markman proposes interpreting the statute to require that patients be kept in the hospital for all 72 hours before the gun ban begins, but nothing in the statute's text or purpose supports this faulty interpretation. The duration of the hospital stay is not connected to the gun ban. The duration could be a tree that has been poisoned, but the gun ban is not its fruit.

Markman also argues no psychiatrist evaluated him until 20 hours after admission. Section 8103, subdivision (f)(1) does not require any evaluation by a psychiatrist. It rather requires

the patient be "assessed within the meaning of Section 5151 . . . ." Section 5151 in turn requires that, "[p]rior to admitting a person to the facility for treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention." The designee of the professional person in charge of College Hospital did assess Markman to determine the appropriateness of involuntary detention. That person determined Markman should be admitted to the hospital. Markman was admitted. This was all the statute required to activate the gun ban.

Furthermore, Markman's claim of prejudice (had he been properly advised, he would have secured a favorable psychiatric evaluation of his own, which would have caused his immediate release) is speculative. Later events belie this speculation. After the hospital released him, Markman petitioned the trial court. Proceedings continued for many months, during which Markman's mental status continued to be at issue, just as it was during the 72-hour hold. Yet during these many months Markman never secured a favorable (or any) psychiatric evaluation. No evidence supports Markman's assertion that, with proper notice, he would or could have obtained a favorable psychiatric evaluation.

Markman cites *City of San Diego v. Kevin B.* (2004) 118 Cal.App.4th 933, 941. The holding of *Kevin B.* is inapplicable for two reasons. First, the case concerned a firearms forfeiture, not a gun ban. (*Ibid.*) Second, no one evaluated the petitioner in *Kevin B.* or admitted him into a hospital. The *Kevin B.* opinion ruled the forfeiture statute required both actions. (*Id.* at pp. 941–943).

By contrast, hospital professionals performed both actions in this case.

B

Markman's second argument is that the trial court erred by excluding evidence. We review this issue for abuse of discretion.

The challenged rulings were proper. Moreover, the evidence Markman sought to admit was harmful to him, so its exclusion was not prejudicial.

Specifically, Markman contends the trial court abused its discretion under Evidence Code section 352 by excluding recordings of a voicemail message and telephone conversation Markman wanted to play for the trial court. Markman also moves this court to "take evidence on appeal." He appends transcripts of the telephone message and conversation to his opening brief. Further, he has lodged the voice recordings with this court as well. We deny his motion but treat these materials as reiterations of the offers of proof Markman made in the trial court.

Markman's recorded call to the medical board was the day before the hearing. In summary, Markman's call went like this. A person named "Rachel" answers and Markman announces he is recording the call. Markman states he is concerned about being reinjured by security guards when he travels to the medical board hearing. Rachel responds by asking whether Markman is currently on criminal probation. Markman says he is. She asks where Markman's weapons are, and Markman says that he gave them away and that a form proves it but that Markman does not know where the form is at the moment. Rachel expresses concern about visits from any doctor on criminal probation with firearms that are unaccounted for. Markman responds he would have no

problem just stripping naked for the weapons screener. Markman asks why it cannot be that simple. Markman says he can strip naked, and whoever searches him can search him or look at him without touching him. Markman says he does not understand why that would not solve the problem. Rachel responds she will have to discuss this proposal with staff. Markman says he will simply come there with no clothes on and they can decide what to do with him when he arrives.

The trial court properly excluded this voice recording because playing it would have been a waste of time. Without playing the tape, Markman amply described the conversation to the trial court. The gist was Markman's notion that this conversation validly explained why he wore only underwear to the medical board interview. Markman's logic, to be backed up by the recording, was that he did not want security guards physically to search and to injure Markman, as Markman contends they did before. The trial court understood Markman's argument perfectly. The trial court did not allow Markman to play the actual recordings at the hearing as he wished. The trial court was balancing courtesy to litigants with the need for the reasonable efficiency that a crowded docket imposes. The transcript of Markman's various hearings runs to 216 pages. The trial judge noted there had been a "great deal of testimony presented, many times longer than a typical case . . . ." Throughout, the court remained extremely patient with Markman, who was persistent, detailed, and repetitive. It was eminently reasonable for the court to exclude the time-consuming and redundant tape recording that Markman already had thoroughly described.

The same holds for the recording of Markman's voicemail. This voicemail paralleled the telephone conversation. The same analysis applies.

In addition, there was no prejudice. The trial court aptly summarized the issue: "[Y]ou showed up to the medical board for your interview wearing your underwear and a t-shirt and that you did that to avoid being searched. . . . [T]hat makes no sense. . . . [Y]ou lack the insight into why that didn't make sense and why everyone along the way seems to have reacted the same way to that. And, in fact, in your way of thinking, it appeared to make so much sense to you that you even presented a videotape of that whole incident, which was fairly damaging to your case."

The excluded tape recordings are damaging for the same reason. Markman's proffer is that he said to the medical board staff, "[W]hy can't it be that simple? I can have my belongings searched, and I can strip naked, and then whoever searches me can search me or look at me, without touching me. I don't understand why that would . . . not solve the problem."

These statements underline Markman's lack of insight and judgment. Appearing in underwear in a professional setting is bizarre and inappropriate for the circumstances. (Cf. *People v. Triplett* (1983) 144 Cal.App.3d 283, 288 ["An all-encompassing lay definition of mental disorder is difficult if not impossible to formulate. But, generally, mental disorder might be exhibited if a person's thought processes, as evidenced by words or actions or emotional affect, are bizarre or inappropriate for the circumstances."].)

A failure to appreciate that conduct is bizarre and inappropriate is evidence of poor judgment. Further evidence of poor judgment could only have buttressed the trial court's

reasonable conclusion that Markman "would not be likely to use firearms in a safe and lawful manner." (§ 8103, subd. (f)(6).) There was no prejudice.

DISPOSITION

The order is affirmed. The parties shall bear their own costs on appeal.

WILEY, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.