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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.

JAMES TORFASON,

Defendant and Appellant.

2d Crim. No. B286335
(Super. Ct. No. 17PT-00732)
(San Luis Obispo County)

James Torfason appeals an order committing him to the California Department of Mental Health for treatment as a mentally disordered offender (MDO). (Pen. Code, § 2962.)¹ He contends the evidence was insufficient to support a finding that his mental disorder caused or was an aggravating factor in the commission of the offense. Because substantial evidence supports the court's order, we affirm.

¹ Further unspecified statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

Torfason has a history of committing sex offenses and was a registered sex offender on parole when he was arrested for exposing his penis in front of a minor. When the police asked about the incident, Torfason began crying. He said that “it was the person in his head that makes him do that.” When the police asked about his history of sexual offenses or if he had “bad thoughts” about young boys, he refused to answer questions and “began to tear.” He said that whenever he has “bad thoughts” he sniffs a small bottle of ammonia that he carries around and that he snaps a rubber band he wears around his wrists.

The Board of Prison Terms (BPT) determined that Torfason met the criteria for an MDO commitment under section 2962. Torfason filed a petition requesting a hearing for review of BPT’s determination. (§ 2966, subd. (b).)

At the court trial, clinical psychologist Dr. Jenny Silva testified that she interviewed Torfason and reviewed his treatment and evaluation records. She also reviewed the police report. She opined that Torfason suffered from two severe mental disorders: “bipolar 1 disorder depression type” and pedophilia.

Dr. Silva reached her conclusion regarding Torfason’s bipolar disorder based on his discussion with her about his history of mental illness. He described his “history of irritability, racing thoughts, difficulty sleeping[,] . . . difficulties with impulsivity, poor judgment, [and] poor insight.” She also noted he was “very tearful and agitated” when she met with him. He admitted that he heard voices that told him to do things that he did not want to do. All of these characteristics were “indicative of a bipolar disorder.”

Dr. Silva opined that Torfason's bipolar disorder was an aggravating factor at the time he committed the offense. She also opined that Torfason's bipolar disorder was not in remission and that he received at least 90 days of treatment for his bipolar disorder. She concluded that he posed a substantial danger of physical harm to others because of his bipolar disorder.

Dr. Silva also opined that pedophilia was an aggravating factor at the time he committed the offense. She concluded he was not in remission for pedophilia, and because of the disorder, he posed a substantial danger of physical harm. However, she said he did not receive at least 90 days of treatment for it.

Dr. Dia Gunnarsson testified that she interviewed Torfason five months after Dr. Silva's interview, reviewed his treatment record, consulted his treating psychiatrist, psychologist, and social worker, and reviewed Dr. Silva's report. She opined that Torfason suffered from bipolar disorder and pedophilia.

Dr. Gunnarsson opined that pedophilia was an aggravating factor in committing the offense. She said his pedophilia was not in remission and it could not be kept in remission without treatment. Like Dr. Silva, she said Torfason did not receive at least 90 days of treatment for his pedophilia.

Dr. Gunnarsson opined that bipolar disorder was "not a factor in the commission of the crime." She described a bipolar disorder as "primarily a mood disorder" in which there are "alternating episodes of mania . . . as well as depression." She explained that there was nothing in the records "to indicate that he was experiencing any depressive symptoms at the time." When asked about the interrelationship between a bipolar

disorder and pedophilia, she stated that they could be interrelated—an attraction to children “might affect” his bipolar disorder by starting or worsening a depressive episode, and conversely, his bipolar disorder may influence his pedophilic urges.

She concluded that Torfason represented a substantial risk of physical harm because of both mental disorders. She based this opinion on his history of “mental illness-related violence, his history of treatment compliance in the past, . . . and his level of insight in his discharge plans.”

Following the trial, the court found beyond a reasonable doubt that Torfason met the criteria for treatment as an MDO and denied his petition.

DISCUSSION

A person cannot be committed for MDO treatment unless the prosecution proves beyond a reasonable doubt that (1) they suffer from a severe mental disorder that is not in remission or cannot be kept in remission without treatment, that (2) they were treated for the disorder for at least 90 days, and (3) the disorder was a cause or aggravating factor in the commission of the offense upon which the commitment is based. (§ 2962; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.)

Because Torfason did not receive at least 90 days of treatment for pedophilia, he cannot be committed as an MDO based on that disorder. (§ 2962.) At issue here is whether his commitment was properly based on his bipolar disorder.

We review the court’s findings at an MDO proceeding for substantial evidence. We resolve conflicts in the evidence in the light most favorable to the prevailing party. (*People v. Labelle* (2010) 190 Cal.App.4th 149, 151.) If the court’s finding is

supported by substantial evidence, we affirm the ruling, even if there is other evidence that may support the contrary conclusion. (*People v. Earp* (1999) 20 Cal.4th 826, 887-888 (*Earp*).)

Torfason contends there is insufficient evidence to prove the third factor—that his bipolar disorder was an aggravating factor in committing his offense. He claims that Dr. Silva’s “bare, unsupported opinion” that his mental disorder “caused or contributed to the subject offense was insufficient, as a matter of law.” We are not persuaded.

Torfason forfeited his claim by failing to object when Dr. Silva offered her opinion. “[T]he failure to object to the admission of expert testimony . . . at trial forfeits an appellate claim that such evidence was improperly admitted. [Citations.]” (*People v. Stevens* (2015) 62 Cal.4th 325, 333 (*Stevens*).) Although Torfason frames his claim as one of insufficient evidence, he essentially contends that no foundation was laid for Dr. Silva’s opinion as required under Evidence Code section 801. (See *Stevens*, at p. 335.) Because Torfason did not raise a foundational objection below, he forfeited any claim that no foundation was laid for the doctor’s opinion. (See *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311, 1339-1340 [defendant could not claim on appeal that plaintiff’s experts’ opinions were “too terse and conclusory to amount to substantial evidence” because his “real complaint” was that the experts’ opinions lacked foundation and he made no such objection below]; see also *People v. Fuiava* (2012) 53 Cal.4th 622, 655 [a defendant “ordinarily cannot obtain appellate relief based upon grounds that the trial court might have addressed had the defendant availed himself or herself of the opportunity to bring them to that court’s attention”].)

In any event, Torfason's claim lacks merit. "[A]n MDO hearing contemplates expert opinion testimony on . . . factors[] including whether the defendant's severe mental disorder was one of the causes of or an aggravating factor in the commission of the crime. (§ 2962, subd. (b).) As to those factors, the expert may rely on hearsay documents that are 'of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates.' (Evid. Code, § 801, subd. (b).)" (*Stevens, supra*, 62 Cal.4th at p. 336.)

Here, Dr. Silva's opinion was based on her interview with Torfason, her review of his treatment records and evaluations, and her review of the police report. Torfason did not object to her reliance on any of this information.

Moreover, other evidence in the record supports a finding that Torfason's bipolar disorder was an aggravating factor. Torfason stated that he heard voices that made him commit the crime. Dr. Gunnarsson testified that hearing voices was a possible symptom of a bipolar disorder. Torfason's actions also reflected "impulsivity, poor judgment, poor insight," and he became tearful during the police interview. According to Dr. Silva, these were symptoms "indicative of a bipolar disorder." Additionally, Dr. Gunnarsson stated that a bipolar disorder and pedophilia were interrelated and one could worsen the other; both experts here found that Torfason suffered both disorders.

Torfason relies on Dr. Gunnarsson's opinion that the bipolar disorder was not an aggravating factor and highlights the lack of evidence that he suffered "mania or depression" during the commission of the offense. However, the substantial evidence standard requires us to construe evidence in the light most favorable to the court's ruling, even if other evidence supports the

contrary conclusion. (*Earp, supra*, 20 Cal.4th at pp. 887-888.) Here, substantial evidence supports the finding that the commission of Torfason's offense was aggravated by his bipolar disorder.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Hugh F. Mullin III, 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, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez, Acting Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.