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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.

BILL JOE BURTON,

Defendant and Appellant.

2d Crim. No. B283290  
(Super. Ct. No. 17PT-00254)  
(San Luis Obispo County)

Bill Joe Burton appeals an order recommitting him for treatment as a mentally disordered offender (MDO). (Pen. Code, § 2962.)<sup>1</sup> We conclude, among other things, that substantial evidence supports the order. We affirm.

**FACTS**

On April 5, 2017, Burton filed a petition and order for appointment of counsel and hearing after the Board of Parole Hearings issued a March 14, 2017, decision to recommit him for

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

treatment as an MDO. The trial court appointed counsel. Burton waived his right to a jury trial.

At the court trial Brandi Mathews, Ph.D., testified that Burton has schizophrenia, a severe mental disorder. Burton has had “three prior state hospitalizations.” His mental illness was in remission on “the date of the Board of Parole hearing” on March 14, 2017. He has not “exhibited overt signs and symptoms of his severe mental disorder” for almost two years.

Mathews testified Burton’s mental disorder “could not be kept in remission without treatment.” Burton has “not voluntarily followed his treatment plan.” She said that “[h]e was on an involuntary medication order” starting in March 2015. That order expired on May 15, 2016. He has been “compliant with his medication since May 15 of last year.” He has attended 77 percent of his “psychosocial treatment” group sessions. That is a “reasonable” and “good effort.” The hospital standard is 80 percent. He represents a “substantial danger of physical harm to others due to his severe mental disorder.” He has a history of “becoming violent when he is symptomatic.”

Mathews said Burton lacks insight into his mental disorder and has a history of “refusing medication.” Burton was placed on involuntary medication orders at the “Department of Corrections” and “during his current treatment at the hospital.” He continues “to deny the need for medication.” Mathews said, “So while he is compliant now, . . . if released in the community without any structure, he would likely stop taking his medication, his symptoms would return at that time and he would pose a danger.” Patients who deny the need for medications have “a greater difficulty staying in compliance with” their medication plan. Patients who do not believe they have a mental illness have “an increased risk” of not complying with their treatment.

On cross-examination, Mathews testified that, since March 14, 2016, Burton did not commit any acts of violence, did not threaten anyone, or damage “any state property.” She said that “[Burton] was reasonable in his psychological group attendance.” She said that he “‘can’t be kept in remission’ status, only because he was on a *Qawi*” involuntary medication order. Burton was in compliance with his medication plan “since the expiration of the *Qawi*.” On redirect, Mathews said “the *Qawi* was initiated because he was refusing medications and he had engaged in violent behavior.” Burton had been violent on January 15 and February 15, 2015.

The trial court ruled Burton met the “requisite criteria” for recommitment for treatment as an MDO. It found he lacks “insight into the fact that he has a mental illness.” It said, “[W]hen Mr. Burton does not take his medication, he does become violent.” The “experts” believe he has “a mental illness that requires medication.”

## DISCUSSION

### *Substantial Evidence*

Burton contends there is insufficient evidence to support a finding that he “could not be kept in remission without treatment, as required under the MDO statute.” He claims the trial court consequently erred by recommitting him for MDO treatment.

“In considering the sufficiency of the evidence to support MDO findings,” we “must determine whether . . . a rational trier of fact could have found that defendant is an MDO beyond a reasonable doubt, considering all the evidence in the light which is most favorable to the People, and drawing all inferences the trier could reasonably have made to support the finding.” (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.) We do not weigh the

evidence. The trier of fact alone decides the credibility of the witnesses. (*Id.* at pp. 1082-1083.)

“[T]he three criteria that must be satisfied for continued treatment relate, not to the past, but to the defendant’s current condition.” (*People v. Cobb* (2010) 48 Cal.4th 243, 252.) “At an extension proceeding, the questions are: Does the defendant continue to have a severe mental disorder? Is the disorder in remission? Does the defendant continue to represent a substantial danger of physical harm to others?” (*Ibid.*)

Remission means a person’s “overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.” (§ 2962, subd. (a)(3).) “A person ‘cannot be kept in remission without treatment’ if during the year prior to the question being before the Board of Parole Hearings . . . [1] he or she has been in remission and . . . has been physically violent, except in self-defense, or [2] he or she has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for his or her safety . . . , or [3] he or she has intentionally caused property damage, or [4] he or she has not voluntarily followed the treatment plan.” (*Ibid.*) In deciding compliance with the treatment plan, “the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.” (*Ibid.*)

Burton contends some of Mathews’s testimony on cross-examination conflicts with her testimony on direct and supports his position on appeal. But the issue is not whether some evidence supports appellant, it is only whether substantial evidence supports the order. The trier of fact exclusively decides credibility and resolves conflicts in the evidence. “The trier of fact may believe and accept a portion of the testimony of a

witness and disbelieve the remainder. On appeal that portion which supports the judgment must be accepted, not that portion which would defeat, or tend to defeat, the judgment.” (*Daly v. Wallace* (1965) 234 Cal.App.2d 689, 693.)

Burton notes that during the prior year review period, he was not violent, did not threaten anyone, and did not cause damage. But there is a fourth statutory requirement involving his ability to remain in remission. A person “cannot be kept in remission without treatment” if during that one year period he “has not voluntarily followed the treatment plan.” (§ 2962, subd. (a)(3).) Mathews testified Burton had “not voluntarily followed his treatment plan.” Burton was on “an involuntary medication order.” (*In re Qawi* (2004) 32 Cal.4th 1.) Mathews said he becomes violent when he does not take his medication. The *Qawi* order was issued because he “was refusing medications.”

Burton notes that Mathews testified Burton “has been taking his medication” since the expiration of the *Qawi* order in May 2016. But Mathews also testified that for a two-month period within the one-year review period he was under a *Qawi* order. “*Qawi* was initiated because he was refusing medications and he had engaged in violent behavior.” He was also “exhibiting psychiatric symptoms.” This testimony supports a finding that he had not voluntarily complied with his treatment plan within the one-year period as required by section 2962, subdivision (a)(3).

The trial court also found Burton lacks “insight into the fact that he has a mental illness,” and when he “does not take his medication, he does become violent.” Mathews testified Burton lacks insight about his mental disorder and has a history of refusing to take his medications. Such lack of insight is a relevant factor in determining whether a disorder can be kept in

remission without treatment. (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399.) “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at a minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan.” (*Ibid.*)

Evidence about such lack of insight is relevant in determining whether an MDO commitment should be extended. (*People v. Noble* (2002) 100 Cal.App.4th 184, 191 [evidence that a defendant “believes he does not need medication, dislikes its side effects, and will relapse if he stops taking it” supports an “extension of his MDO commitment”].) Mathews testified Burton “continues to deny having a mental illness and continues to deny the need for medication.” She said, “[I]f released in the community without any structure, he would likely stop taking his medication, his symptoms would return at that time and he would pose a danger.” The evidence is sufficient. We have reviewed Burton’s remaining contentions and we conclude he has not shown grounds for reversal.

#### DISPOSITION

The order is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Richard M. Curtis, 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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\* (Retired Judge of the Monterey Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)