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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY COMBS,

Defendant and Appellant.

B287786

(Los Angeles County
Super. Ct. No. ZM015949)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terrence Lewis, Temporary Judge. (Pursuant to Cal. Const., art. VI, §21.) Affirmed.

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, Assistant Attorney General, David E. Madeo and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and Appellant Gary Combs challenges his commitment for an indeterminate term to the custody of the Department of State Hospitals pursuant to the Sexually Violent Predators Act (SVPA). (Welf. & Inst. Code, § 6600 et seq.)¹ Combs argues there was insufficient evidence presented at trial showing he is likely to engage in future sexually violent predatory criminal behavior. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Combs's Childhood

As a child, Combs frequently engaged in anti-social behavior. He was suspended from school three times, attempted to assault a schoolmate with a bat, threw a brick through a car window, frequently ran away from home, and committed theft.

When Combs was around 13 or 14 years old, he started using marijuana and methamphetamine, which he used on a daily basis until he was incarcerated at age 21. Combs had difficulty maintaining steady employment due to his drug use, and he relied on his grandparents to support him financially.

Combs had a high sex drive as a child and frequently masturbated to cope with bad feelings. He had sexual fantasies about his biological mother and stepmother, and would listen to his parents having sex. From the ages of 12 until 21, Combs engaged in sexual activity with his grandparents' dog and cat.

¹ All statutory references are to the Welfare and Institutions Code except as otherwise stated.

When Combs was 12 or 13 years old, he began sexually molesting his half-sister, A., who was two or three years old. Among other things, Combs rubbed A.'s body with his hands and penis, bit and kissed her vaginal area, bit her buttocks, and attempted to have her perform oral sex on him. Combs continued to molest A. until he was 19 or 20 years old.

When Combs was around 19 years old, his half-sister, D., came to stay with him and his wife. Combs had just met D., who was 14 or 15 years old. Combs and his wife had sex in front of D., and Combs grabbed D.'s leg. This angered Combs's wife, who left the room to call Combs's father. Combs proceeded to have sex with D. About three months later, Combs took D. to Las Vegas, where they had sex multiple times.

Predicate Offense

In October 2004, Combs was 21 years old and homeless. He called his stepmother and asked to stay with her. The stepmother agreed and told Combs his father would pick him up from a house belonging to the father's friend. Combs drank a fifth of whiskey and went to the house.

The friend's six-year-old son, Daniel R., was playing video games in his room. Combs walked into the room, unzipped Daniel's pants, and began licking and sucking his penis. Daniel tried to walk away, but Combs grabbed him. Daniel's sister, who was nine years old, walked into the room and turned on the lights. She saw Combs's head between Daniel's legs, and Combs yelled at her to turn off the lights. The sister left the room, but returned sometime later to find Combs in the same position. Combs then followed Daniel into the bathroom, lifted him up, and again licked and sucked his penis. Daniel repeatedly told Combs to let him down, but Combs refused.

The record is conflicted as to Combs's relationship with Daniel and his family. Combs reported he had never met Daniel before the incident. Daniel's father similarly told police that, prior to the incident, he was not aware that Combs's father had a son. Daniel's sister, however, told police it was not unusual for Combs to visit and she was not surprised he was at the house.

For his offense against Daniel, Combs was convicted of committing a lewd act upon a child under the age of 14 years (Pen. Code, § 288, subd. (a)), and sentenced to six years in prison. In April 2010, as Combs's parole date approached, the People filed a petition to commit him as a sexually violent predator (SVP). The trial court found probable cause to believe Combs was likely to engage in sexually violent predatory criminal behavior upon his release. Accordingly, the court ordered him remanded to the custody of the Department of Mental Health and transported to Coalinga State Hospital pending trial.

Combs's Behavior While in Custody

While in custody, Combs reported he suffered from delusions, paranoia, and auditory and visual hallucinations. He would occasionally use alcohol, marijuana, and methamphetamine. Combs's peers would provide him drugs because it increased the chance that he would engage with them sexually.

Combs reported his sexual drive continued to be high while he was hospitalized. He engaged in unprotected sexual intercourse with at least 20 patients, some of whom were H.I.V. positive. Combs also compulsively masturbated—often multiple times per day—as a way of coping with bad feelings, like being angry, upset, or anxious. Combs sometimes fantasized about minor females while masturbating.

In 2013, Combs reported he and his dorm mates had watched child pornography involving animals. Combs left when adults began engaging in sexual intercourse with the children. In 2015, Combs again reported watching child pornography, some of which he enjoyed. He stated the pornography triggered thoughts of his prior sexual abuse of A., and he did not feel bad about having such thoughts.

Combs engaged in genital self-mutilation on two occasions while hospitalized. The first time, Combs inserted several stones into three incisions he made in his penis. Combs subsequently inserted beads into additional incisions in his penis. Combs reported he did so because he felt his penis was too small and he wanted to make it more exotic.

Combs suffered from suicidal ideations and frequently thought about killing himself. He also fantasized about harming others. He reported having thoughts about binding people and harming them in front of their family members. He also stated he wanted to cut off people's heads and bury them in the desert.

Combs did not consistently take his medication while hospitalized, and his participation in treatment was uneven. He would often enroll in appropriate treatment programs, but would eventually become overwhelmed and drop out. Combs failed to complete the sex offender treatment program, which is an official program designed to prevent sexual offenders from reoffending. He indicated he did not find the treatment useful and being in treatment increased his own desires and fantasies. Combs stated his triggers for committing sexual offenses are being around children and using alcohol and drugs.

Trial

Combs waived his right to a jury trial, and the court conducted a bench trial beginning in September 2017. The People presented evidence establishing the facts summarized above. In addition, they introduced expert testimony from Drs. William Damon and Laljit Sidhu, who are clinical psychologists and SVP evaluators for the Department of State Hospitals. Each doctor interviewed and evaluated Combs in 2010, 2013, 2015, and 2017.

Dr. Damon diagnosed Combs with the following conditions: pedophilic disorder, which is recurrent intense sexually arousing fantasies, urges, or behaviors involving sexual activity with a prepubescent child; paraphilic disorder, zoophilia, which is a persistent sexual interest in animals; schizoaffective disorder depressed type, which is a period of illness in which there are symptoms of schizophrenia concurrent with a major depressive episode; anti-social personality disorder, which involves a pattern of disregard and violation of the rights of others; and methamphetamine and cannabis use disorders.

Dr. Damon opined that Combs's diagnosed conditions cause him to be volitionally impaired and predispose him to commit sexually violent criminal acts. He explained that Combs's pedophilic disorder is a chronic condition that presents an enduring and entrenched arousal pattern. Further, when Combs is suffering from psychotic symptoms, he seeks to escape the resulting anxiety and isolation through substance abuse and sex. Combs's substance use disorders further erode his ability to control his behavior, and his anti-social personality disorder makes him less likely to respond appropriately to other people's fear and distress. Further, Combs's sex drive is sufficiently

strong to overcome obvious barriers such as victim age, victim distress, legal ramifications, and the presence of other adults and/or siblings.

To help assess Combs's likelihood of reoffending, Dr. Damon utilized the Static-99R, which is a widely-used actuarial risk measure for sexual offense recidivism. Dr. Damon rated Combs as having a "well above average" risk for reoffending. He explained that individuals with the same score and level of external risk factors as Combs recidivate at a rate of 31 percent within five years and 43 percent within 10 years.

Dr. Damon concluded there was a serious risk that Combs would commit violent sexual offenses if released into the community. He further opined that, because Combs previously victimized a stranger (Daniel) and a casual acquaintance (D.), should Combs reoffend, it would likely be predatory in nature.

Dr. Sidhu diagnosed Combs with the following conditions: pedophilic disorder; other specific paraphilic disorder, hypersexuality; unspecified schizophrenic spectrum disorder; anti-social personality disorder; and substance abuse disorders related to cannabis and amphetamines. Like Dr. Damon, Dr. Sidhu utilized the Static-99R and rated Combs as presenting a "well-above average" risk for reoffending.

Dr. Sidhu opined that Combs's diagnosed disorders predispose him to engage in sexually violent criminal behavior. He explained that Combs's pedophilic disorder and hypersexuality cannot be treated through medication and will persist throughout his life. Dr. Sidhu also believed Combs would not be amenable to treatment in the community, in part because he had difficulty completing treatment while hospitalized. He further opined that Combs was likely to reoffend in a

predatory manner given he victimized Daniel, with whom he lacked a substantial relationship.

On November 7, 2017, the trial court found beyond a reasonable doubt that Combs is an SVP and ordered him committed for an indeterminate term to the custody of the Department of State Hospitals. Combs timely appealed.

DISCUSSION

Combs contends there was insufficient evidence to support the trial court’s finding that he is an SVP. We disagree.

A. Standard of Review

When reviewing the sufficiency of the evidence to support an SVP commitment, we apply the substantial evidence standard of review. (*People v. Poulsom* (2013) 213 Cal.App.4th 501, 518; *People v. Mercer* (1999) 70 Cal.App.4th 463, 466.) “‘[W]e review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the [essential elements] beyond a reasonable doubt.’ [Citation.] We determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements . . . beyond a reasonable doubt.’ [Citation.] In so doing, a reviewing court ‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’” (*People v. Maciel* (2013) 57 Cal.4th 482, 514–515.) We will not reverse a judgment for insufficient evidence unless “‘it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the judgment].” [Citation.]’” (*People v. Hughes* (2002) 27 Cal.4th 287, 370.)

B. Analysis

Under the SVPA, if the trier of fact determines beyond a reasonable doubt that a person is an SVP, the person shall be committed for an indeterminate term to the custody of the State Department of State Hospitals for treatment and confinement. (§ 6604.) The act defines an SVP to mean “a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” (§ 6600, subd. (a)(1).)

In addition, there is an “implied requirement that a trier of fact must find beyond a reasonable doubt that the defendant is likely to commit sexually violent *predatory* criminal acts before the defendant can be committed as a sexually violent predator.” (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1186.) An act is predatory if “directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.” (§ 6600, subd. (e).) The California Supreme Court has explained that “[b]ecause predatory offenders could strike at any time and victimize anyone, they pose a much greater threat to the public at large. In contrast, a defendant likely to commit crimes only against family members or close acquaintances is less likely to reoffend because potential victims will be aware of the defendant’s status as a sex offender. The public at large, however, is inevitably more defenseless against acts committed by strangers.” (*People v. Hurtado*, at pp. 1187–1188.)

Combs does not contest the sufficiency of the evidence showing he was convicted of a sexually violent offense² and diagnosed with mental disorders that make him a danger to the health and safety of others such that it is likely he will engage in sexually violent criminal behavior. Nonetheless, he insists that the evidence was insufficient to show that such future sexually violent criminal behavior would be predatory in nature. Combs acknowledges that Drs. Damon and Sidhu opined that he is likely to engage in future predatory behavior. He argues, however, that their opinions are flawed because they are based entirely on his prior offenses, which he contends were committed exclusively against his half-siblings. He asserts there is no other evidence to suggest he is likely to target a stranger, a casual acquaintance, or a person cultivated for victimization.

Contrary to these claims, there was ample evidence presented at trial that Combs has engaged in predatory behavior in the past and is likely to do so again in the future. Although Combs insists Daniel is his half-brother, there is no evidence in the record to support his contention. In contrast, there was considerable evidence presented at trial that Daniel was, at most, an unrelated casual acquaintance. According to Dr. Damon, Combs reported he had never met Daniel prior to the incident. Further, Daniel's father told police he was not previously aware that Combs's father had a son, suggesting Combs had no prior relationship with Daniel or his family. Although Daniel's sister apparently told police it was not unusual for Combs to visit her

² Committing a lewd act upon a child under the age of 14 years constitutes a sexually violent offense for purposes of the SVPA. (§§ 6600, subd. (b), 6600.1.)

house—which suggests some sort of prior relationship—on appeal we do not resolve conflicts in or reweigh the evidence. (*People v. Brown* (2014) 59 Cal.4th 86, 106.)

Further, there was evidence suggesting Combs’s sexual abuse of D. was predatory in nature. Although D. was his half-sister, Combs told Dr. Damon they had “just met” prior to engaging in sex for the first time. This suggests that, despite the familial connection, D. was essentially a casual acquaintance with whom Combs had no substantial relationship. Even if D. would not qualify as a casual acquaintance for purposes of the SVPA, in deciding whether the defendant is likely to commit sexually violent predatory acts upon release, the trier of fact may take into account past acts of sexual misconduct, even if the victims were not strangers, casual acquaintances, or persons cultivated for victimization. (*People v. Torres* (2001) 25 Cal.4th 680, 686.) Here, the trier of fact could reasonably determine that Combs’s sexual abuse of D. shortly after meeting her and before they had an established relationship indicates he is likely to commit future criminal sexual acts against strangers and casual acquaintances.

Evidence of Combs’s diagnosed mental disorders and behavior while hospitalized provided further support for the conclusion that he is likely to engage in future predatory behavior. Drs. Damon and Sidhu opined that Combs’s diagnosed mental disorders cause him to be volitionally impaired and predispose him to engage in sexually violent criminal behavior. Specifically, they explained that his pedophilic disorder is well-entrenched, his sex drive is sufficiently strong to overcome obvious barriers, his substance abuse lowers his inhibitions, and his anti-social personality disorder makes him less likely to

respond appropriately to other people's distress. Consistent with such testimony, Combs reported that while hospitalized he viewed child pornography on multiple occasions, had a high sex drive, fantasized about minor females, and engaged in high-risk sexual behavior. He also reported one of his triggers for reoffending is being around children. This evidence, coupled with the circumstances of Combs's prior offenses, was more than sufficient to support a finding that he is likely to commit future sexually violent criminal acts against a stranger or casual acquaintance.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

DUNNING, J.*

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