Filed 9/26/17 P. v. Ratan CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>PHILLIP RATAN,<br><br>Defendant and Appellant. | 2d Crim. No. B278712<br>(Super. Ct. No. 16MH-0122)<br>(San Luis Obispo County) |

Phillip Ratan has previously been adjudicated a mentally disordered offender (MDO). (See Pen. Code, § 2960 et seq.) He appeals from a court order authorizing Atascadero State Hospital (ASH) to involuntarily administer psychotropic medication to him. Appellant contends there is no substantial evidence that he lacks capacity to make decisions regarding treatment with psychotropic medication. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Since July 15, 2016, appellant has been committed to ASH as an MDO. His controlling offense of injury to an elder

causing great bodily injury occurred on June 8, 2014, when he hit his father multiple times on the head during an argument. Appellant "is diagnosed with Schizoaffective Disorder, bipolar type, and Alcohol and Cannabis Use Disorders. His symptoms include rapid and pressured speech, mood lability, tense and intimidating demeanor, outbursts of anger, racing thought process, and hallucinations. Past documentation also reports multiple delusional beliefs that include being poisoned, attending Stanford at the age of 16, and being targeted by the criminal justice system through gang-affiliated lawyers and judges [who] unjustly convicted him."

Appellant has a history of noncompliance with taking psychotropic medication. As a result of an in-house panel determination, appellant was involuntarily administered psychotropic medication. The Department of State Hospitals (DSH) subsequently filed a verified petition for an order to compel involuntary treatment with psychotropic medication. DSH alleged that appellant is incompetent to refuse medical treatment because he is unaware of his mental condition, does not understand the benefits and risks of accepting and rejecting treatment and is unable to understand, evaluate and participate in a treatment decision. The trial court held a hearing on the petition.

The parties stipulated to David Fennell, M.D.'s qualifications as a psychiatric expert. To prepare for the hearing, Dr. Fennell reviewed appellant's medical records and interviewed appellant.

Dr. Fennell testified that appellant's current diagnosis is "schizoaffective disorder, bipolar type." He noted that appellant is "doing quite well" on his current medication, but

prior to taking the medication, appellant had a decreased need for sleep, agitation and disorganized thought processes. In one incident, appellant became upset and made racially charged statements. Appellant also said he "felt the country was overrun with doctors and lawyers and that it was causing him . . . lots of problems."

Dr. Fennell testified that appellant "feels that he's been misdiagnosed," and believes that "he has more [of a] problem just with his temper, not really a mental disorder per se." Appellant is "okay with the idea of a mood stabilizer," but he does not want to be on an antipsychotic. Appellant claims the medication makes him depressed and sleepy.

Dr. Fennell opined that appellant is not aware of his psychiatric condition and that he is unable to understand the benefits and risks of accepting and rejecting psychotropic medication. Dr. Fennell explained that appellant does not believe he has a psychotic disorder and that he thinks his aggressive outbursts are merely because he has a temper. According to DSH, appellant "has had several outbursts of anger, which include slamming doors, and becoming severely agitated and very difficult to redirect. He had to be escorted back to the unit by [security] after he had an outburst of anger and hostility at the canteen. [He later] had an even bigger outburst of anger, becoming hostile toward staff. An as-needed medication was offered, but [appellant] refused."

Appellant testified that he has a "mood disorder" and is not schizophrenic because he does not "have any cognitive problems." He complained that the antipsychotic medication "ruins [his] concentration" to the point where he cannot "study

statistics." He has not, however, discussed this side effect with his doctor.

"Based on Dr. Fennell's testimony," the trial court found that appellant lacks capacity to refuse treatment. The court granted DSH's petition to involuntarily medicate appellant, finding that DSH met its evidentiary burden. Appellant challenges this decision.

## DISCUSSION

### *A. Standard of Review*

Individuals in custody may refuse to take psychotropic medication. (*In re Qawi* (2004) 32 Cal.4th 1, 14-15 (*Qawi*).) However, the right of a person committed as an MDO "to refuse antipsychotic drugs is qualified . . . ." (*People v. Fisher* (2009) 172 Cal.App.4th 1006, 1013 (*Fisher*).) The right of refusal may be overcome by a judicial determination that (1) the MDO is incompetent or incapable of making decisions about his or her medical treatment, or (2) the MDO is dangerous within the meaning of Welfare and Institutions Code section 5300. (*Qawi*, at p. 27; *In re Calhoun* (2004) 121 Cal.App.4th 1315, 1354-1355.)

"We review an order authorizing involuntary administration of antipsychotic medication for substantial evidence." (*Fisher*, *supra*, 172 Cal.App.4th at p. 1016.) In examining the record for substantial evidence, "[o]ur sole inquiry is 'whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,' supporting the court's finding." (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) "'We must accept as true all evidence . . . tending to establish the correctness of the trial court's findings . . . , resolving every conflict in favor of the judgment.'" (*Id.* at p. 823.)

*B. Competency to Refuse Treatment*

A judicial determination of competency to refuse treatment involves consideration of three factors: (1) whether the patient is aware of, and acknowledges his or her condition, (2) whether the patient "is able to understand the benefits and the risks of, as well as the alternatives to, the proposed intervention," and (3) whether the patient "is able to understand and to knowingly and intelligently evaluate the information" regarding informed consent and "otherwise participate in the treatment decision by means of rational thought processes." (*Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1322-1323 (*Riese*).)

Appellant contends substantial evidence does not support the trial court's involuntary medication order because (1) Dr. Fennell did not diagnose appellant with a current mental disorder justifying involuntary treatment with psychotropic medication, and (2) appellant's opposition to psychotropic medication did not establish appellant lacked overall capacity to make treatment decisions. We reject both contentions.

*1. Current Mental Disorder Diagnosis*

Dr. Fennell testified that appellant's current diagnosis is "schizoaffective disorder, bipolar type." Appellant challenges this testimony on the ground that Dr. Fennell "append[ed] the opinion of a non-testifying doctor." The People respond that appellant waived any objection to this testimony. We agree.

At the outset of the hearing, the parties "[s]tipulated that Dr. Fennell is an expert and a well-qualified doctor to testify." At no point did appellant object to any portion of Dr. Fennell's testimony. It is widely recognized that the "failure to

object to the admission of expert testimony . . . at trial forfeits an appellate claim that such evidence was improperly admitted. (Evid. Code, § 353, subd. (a); *People v. Eubanks* (2011) 53 Cal.4th 110, 142 [failure to object to hearsay in expert's testimony forfeits claim on appeal].)" (*People v. Stevens* (2015) 62 Cal.4th 325, 333; see *People v. Fuiava* (2012) 53 Cal.4th 622, 655 [noting 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"].) We therefore conclude the issue regarding appellant's current mental disorder diagnosis was not preserved for review.

Even if the issue had been preserved, appellant still would not prevail. As we stated in *People v. Campos* (1995) 32 Cal.App.4th 304, "[p]sychiatrists, like other expert witnesses, are entitled to rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient's mental state. . . . On direct examination, the expert witness may state the reasons for his or her opinion, and testify that reports prepared by other experts were a basis for that opinion." (*Id.* at pp. 307-308; see *People v. Nelson* (2012) 209 Cal.App.4th 698, 707 ["[M]ental health experts routinely rely on interview reports and observations of nontestifying experts"].)

Here, Dr. Fennell permissibly based his opinion on his personal interview with appellant, his review of appellant's medical records, which included a recitation of appellant's symptoms, and his discussions with appellant's treating psychiatrist, Dr. Prestoza. Nothing in the record indicates that Dr. Fennell merely substituted his own opinion regarding

appellant's current mental disorder diagnosis with that of the treating psychiatrist.

*2. Capacity to Make Treatment Decisions*

Appellant is 58 years old and has been "in and out of mental health treatment" since he was 17. Notwithstanding his "long history of mental health symptoms," appellant does not accept that he has a psychotic mental disorder and attributes his behavioral problems to his mood and temper. Among other things, he denies having delusional beliefs and hallucinations.

Dr. Fennell testified that, prior to involuntary treatment, appellant exhibited several schizoaffective bipolar symptoms. He had a decreased need for sleep, was agitated, paced the floor, had disorganized thought processes and was "concerned about the motives of the treatment staff." Although appellant was willing to consider treatment for a "mood disorder," he did not accept the schizoaffective bipolar diagnosis or his need for psychotropic medication to treat that illness. Indeed, appellant told Dr. Fennell that "he feels that he's been misdiagnosed," and that "he has more [of a] problem just with his temper."

Dr. Fennell's testimony constitutes substantial evidence that appellant lacks capacity to make treatment decisions. Dr. Fennell testified that appellant is unable to understand the benefits and risks of antipsychotics because appellant feels such treatment is "inappropriate" given that he does not have a psychotic mental disorder. Appellant also lacks competency to make decisions regarding antipsychotics because, again, he does not believe he has a psychotic mental disorder. We conclude the evidence satisfies the *Riese* criteria for

determining that appellant is incompetent to refuse medical treatment. (See *Riese*, *supra*, 209 Cal.App.3d at pp. 1322-1323.)

DISPOSITION

The order allowing involuntary administration of psychotropic medication is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michael L. Duffy, Judge
Superior Court County of San Luis Obispo

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Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Supervising Deputy Attorney General, Jennifer M. Kim, Supervising Deputy Attorney General, and Jacquelyn Y. Young, Deputy Attorney General, for Plaintiff and Respondent.