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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.

MICHAEL HOPPER,

Defendant and Appellant.

2d Crim. No. B288230
(Super. Ct. No. 17PT-01057)
(San Luis Obispo County)

Michael Hopper appeals from an order committing him to the California Department of Mental Health for treatment as a mentally disordered offender (MDO). (Pen. Code,¹ §§ 2962, 2966, subd. (b).) He contends he did not meet the statutory criteria for commitment as an MDO because he did not receive at least 90 days of treatment within the year before his scheduled parole date. (*Id.* at subd. (c).) We affirm.

¹ Further unspecified statutory references are to the Penal Code.

FACTS AND PROCEDURAL HISTORY

Hopper was convicted of assault with force likely to produce bodily injury (§ 245, subd. (a)(4)) and criminal threats (§ 422) after he attacked his sister. The trial court sentenced him to two years in state prison.

In December 2017, the Board of Parole Hearings (the Board) determined Hopper met the criteria for commitment as an MDO. Hopper filed a petition to challenge the Board's determination. At the hearing on the petition, psychologist Dr. Caroline Goldsmith opined that Hopper met all the criteria for commitment as an MDO. She based her opinion on a personal interview and review of his medical records from the state hospital, monthly psychiatric progress notes and records from Hopper's treatment team, his legal status summary, and a probation report.

On direct examination, Goldsmith testified without objection that Hopper suffered from schizophrenia and that he received at least 90 days of psychiatric treatment in prison before his parole date. On cross-examination, Goldsmith said that Hopper participated in the "Triple C.M.S." treatment program. On redirect, she said that her opinion regarding the 90-day treatment criteria was based on a review of MDO reports written by two other doctors who had access to Hopper's prison records. She then testified that the two other doctors "reported [Hopper] was in treatment throughout the prison term." The trial court sustained a hearsay objection to her testimony that the two other doctors reported that Hopper received treatment "throughout the prison term."

At the conclusion of the hearing, the trial court found that Hopper received at least 90 days of treatment within the

year before his scheduled parole date. It denied Hopper's petition and ordered him committed for treatment as an MDO.

DISCUSSION

The prosecution must prove that a prisoner meets six statutory criteria in order to commit them for treatment as an MDO. (§ 2962; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076 (*Clark*).) Hopper contends there was insufficient evidence to establish one of the criteria—that he received at least 90 days of treatment for a severe mental disorder within the year before his scheduled parole date. We disagree.

We review the trial court's finding that a prisoner met the criteria for commitment as an MDO for sufficiency of evidence. We review the entire record to determine if reasonable and credible evidence supports the finding. (*Clark, supra*, 82 Cal.App.4th at pp. 1082-1083.) We view the evidence and draw all reasonable inferences in favor of the order. (*Id.* at p. 1082.) We do not reweigh the evidence nor do we substitute our decision for that of the trial court. (*Id.* at p. 1083.)

An expert may render their opinion on a subject matter that is “sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.” (Evid. Code, § 801, subd. (a).) In an MDO proceeding, a mental health expert may render opinions on whether a prisoner met the criteria for commitment as an MDO and may base those opinions on inadmissible hearsay if the information is reliable and of the type reasonably relied upon by experts on the subject. (*People v. Dodd* (2005) 133 Cal.App.4th 1564, 1569.) The testimony of one witness may constitute sufficient evidence to prove any fact. (Evid. Code, § 411; *People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1508.)

Here, Goldsmith's testimony that Hopper received at least 90 days of psychiatric treatment in prison is sufficient to support the finding that the 90-day treatment criteria was met. Goldsmith testified that she relied on information from multiple sources, including her interview with Hopper, his medical records, and reports from other doctors and his treatment team. (Evid. Code, § 801.)

Hopper contends that Goldsmith's testimony was inadmissible because it (1) pertained to a factual matter "not beyond common knowledge" requiring expert testimony (*People v. Stevens* (2015) 62 Cal.4th 325) and (2) was based on inadmissible hearsay (*People v. Sanchez* (2016) 63 Cal.4th 665). We conclude he forfeited these contentions.

The failure to raise a timely and specific objection forfeits a claim on appeal. (Evid. Code, § 353, subd. (a); *People v. Geier* (2007) 41 Cal.4th 555, 609-610; *People v. Eubanks* (2011) 53 Cal.4th 110, 142 [failure to object to the admission of hearsay evidence forfeits the claim].) A specific objection is required to allow the court to make an informed ruling on the objection and to allow the party proffering the evidence to cure any defect. (*People v. Mattson* (1990) 50 Cal.3d 826, 854.)

Hopper did not make a specific or timely objection to the admissibility of Goldsmith's testimony under either *Stevens* or *Sanchez*. He did not object after Goldsmith opined on direct and cross-examination that he received at least 90 days of treatment in prison. Hopper's only objection occurred on redirect after Goldsmith testified that two other doctors "reported [Hopper] was in treatment throughout the prison term." The trial court sustained the objection to that testimony only. Hopper therefore forfeited the *Stevens* and *Sanchez* claims.

Moreover, Hopper's assertion that the entirety of Goldsmith's opinion regarding the 90-day treatment criteria was based on inadmissible hearsay is speculative. Goldsmith testified that she not only relied on the reports of other doctors, but she also interviewed Hopper personally. Goldsmith's opinion could have been based on her interview.

Finally, to the extent that Hopper argues there was an inadequate foundation to support Goldsmith's opinion, he forfeited the claim because he did not raise a foundation objection at trial. (Evid. Code, § 353, subd. (a); *People v. Seaton* (2001) 26 Cal.4th 598, 642-643.)

DISPOSITION

The order 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

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