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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.

DARRELL LOPEZ,

Defendant and Appellant.

2d Crim. No. B279636
(Super. Ct. No. 16PT-00682)
(San Luis Obispo County)

Darrell Lopez appeals a judgment committing him to the California Department of Mental Health for treatment as a mentally disordered offender (MDO) (Pen. Code, § 2962)¹ following his conviction of one count of assault by means likely to cause great bodily injury (former § 245, subd. (a)(1), now § 245, subd. (a)(4)) and two counts of resisting an executive officer (§ 69). We conclude that substantial evidence supports the finding that appellant's severe mental disorder was a cause or an

¹ All further statutory references are to the Penal Code.

aggravating factor in the commission of his commitment offenses. (§ 2962, subd. (d)(1).) We affirm.

FACTS AND PROCEDURAL BACKGROUND

In 2010, the Los Angeles District Attorney filed an amended information charging appellant with two counts of knowingly resisting “by the use of force and violence” an executive officer in the performance of his duty (§ 69) and one count of assault by means likely to produce great bodily injury (former § 245, subd. (a)(1), now § 245, subd. (a)(4).) A jury convicted appellant of all three counts as charged in the information. Appellant was sentenced to eight years four months in prison.

On September 23, 2016, the Board of Parole Hearings (BPH) determined that appellant met the MDO criteria and required treatment. Appellant filed a petition for hearing (§2966, subd. (b)) and waived his right to a jury trial.

At trial, Dr. Angie Shenouda, a forensic psychologist at Atascadero State Hospital, testified that she evaluated appellant and reviewed his medical records, previous MDO evaluations, probation officers’ reports and treatment plan. Based on this information, Dr. Shenouda concluded that appellant met the MDO criteria. She testified that appellant suffers from the severe mental disorder of schizophrenia. Dr. Shenouda noted appellant had a history of prominent psychotic symptoms beginning in at least 1999. These symptoms included delusions, such as delusions that police officers were sexually assaulting him, paranoia, disorganized speech and auditory hallucinations.

Dr. Shenouda determined that appellant’s severe mental disorder was at least an aggravating factor in the

commission of his qualifying commitment offenses. Appellant engaged in unprovoked and excessive violence when he entered a bar and assaulted multiple individuals. He bit someone, causing profuse bleeding. He also resisted arrest. Appellant later explained he resisted arrest because he believed the police officers were trying to assault him sexually and had their fingers “up my ass.” This belief was consistent with appellant’s “long-standing and well-documented history of delusions related to officers sexually assaulting him.”

Appellant further admitted that he was not taking his prescribed medication at the time, and his records showed that when he was not medicated, he engaged in more threatening and violent behaviors. These behaviors resulted in involuntary medication orders. Dr. Shenouda testified that once appellant was medicated, his threatening behaviors remitted. She concluded that because he was “medication noncompliant at the time [of the offenses], it is likely that his severe mental disorder was at least an aggravating factor in the commission of his crime.”

Dr. Shenouda further testified that appellant’s severe mental disorder was not in remission as of the date of the BPH hearing, that the disorder could not be kept in remission without treatment, and that appellant represented a substantial risk of physical harm to others by reason of his severe mental disorder.

Dr. Eva McKenzie, an evaluator with the California Department of Corrections and Rehabilitation, also assessed appellant to determine if he met the MDO criteria, but she was unable to reach a conclusion. In particular, she found it difficult to determine whether appellant’s severe mental disorder was a cause or aggravating factor in his commitment offenses. She

believed she lacked sufficient information about the circumstances surrounding the offenses to reach a conclusion. Nonetheless, Dr. McKenzie could not definitively rule out that appellant's substance abuse was the cause or aggravating factor in the offenses. She also admitted that if the information showed appellant resisted the police officers because he thought they were trying to assault him sexually, she would conclude that appellant's severe mental disorder was a contributing factor.

The trial court found that the prosecution presented sufficient evidence to show beyond a reasonable doubt that appellant's severe mental disorder was at least an aggravating factor in the commission of the commitment offenses. In placing greater weight on Dr. Shenouda's testimony, the court stated that it paid particular attention to the statements made by Dr. McKenzie during her testimony. The court observed that Dr. McKenzie "was making movements to show that it was very difficult for her, and she didn't seem very confident in her final statements." The court noted that at best, Dr. McKenzie described "a doubt," but not "a reasonable doubt."

DISCUSSION

"A determination that a defendant requires treatment as an MDO rests on six criteria, set out in section 2962: the defendant (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a disorder which caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission absent treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the

prisoner poses a serious threat of physical harm to other people.” (*People v. Clark* (2000) 82 Cal.App.4th 1072,1075-1076.)

Pointing to the third criterion, appellant contends there is insufficient evidence that his severe mental disorder was a cause or an aggravating factor in the commission of his commitment offenses. We disagree.

In deciding the sufficiency of the evidence, we draw all reasonable inferences from the record to support the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “[I]f the [finding] is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.” (*People v. Jones* (1990) 51 Cal.3d 294, 314; see *People v. Clark*, *supra*, 82 Cal.App.4th at p. 1083.)

The prosecution proved that appellant’s commitment offenses consisted of two counts of resisting an executive officer (§ 69) and one count of assault by means likely to cause great bodily injury (former § 245, subd. (a)(1), now § 245, subd. (a)(4)). Dr. Shenouda testified appellant suffered from schizophrenia, and that he admitted he was not taking his prescribed medication at the time he committed the offenses. According to Dr. Shenouda, appellant engaged in unprovoked and excessive violence, which was consistent with his history of acting out violently when not medicated.

Dr. Shenouda also explained that due to his severe mental disorder, appellant experienced paranoia, “believ[ing] that others are plotting against him.” Appellant’s own testimony about the crime was consistent with his symptoms of paranoia. For example, appellant testified that just before the assault occurred, police officers who participated in a previous attempt to

commit him as an MDO were seated directly outside the bar he was going to enter. And once he entered the bar, he believed all the patrons conspired to remove him by physically assaulting him.

Even assuming, as appellant contends, it is unclear whether his severe mental disorder was an aggravating factor in the assault offense, substantial evidence establishes that, at a minimum, it was an aggravating factor in the other two commitment offenses. Dr. Shenouda testified that at the time of the offenses appellant was delusional about many things, including the police sexually assaulting him. Appellant admitted that he resisted arrest following the assault because he believed the arresting officers were trying to assault him sexually and had their fingers “up my ass.” Appellant concedes in his opening brief that his delusions “could have arguably caused or aggravated the offense of resisting arrest,” but states he was not charged with that offense. Appellant is incorrect. Count 1 of the amended information alleged that appellant violated section 69 when he “did unlawfully attempt by means of threats and violence to deter and prevent WARREN CLUKEY, who was then and there an executive officer, from performing a duty imposed upon such officer by law, and did knowingly resist by the use of force and violence said executive officer in the performance of his/her duty.” Count 2 contains the same allegation involving Shaun Diamond, another executive officer. It is undisputed that a jury convicted appellant of both offenses along with the assault offense.

Moreover, in one aspect, Dr. McKenzie’s testimony corroborates Dr. Shenouda’s conclusion that appellant’s “actions at the time of the crime were at least aggravated by his severe mental disorder.” Dr. McKenzie conceded that if the records

show appellant resisted the police officers because he thought they were trying to assault him sexually, she would agree that his severe mental disorder was a contributing factor.

Even if Dr. McKenzie did not agree, it is the trial court's function to resolve disputes among experts. (See *People v. Clark, supra*, 82 Cal.App.4th at p. 1083.) The court found Dr. McKenzie's testimony less credible than Dr. Shenouda's testimony regarding whether appellant's severe mental disorder was an aggravating factor in the commission of his commitment offenses. On this record, appellant has not demonstrated error.

DISPOSITION

The judgment (order of commitment) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Gayle L. Peron, 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, Steven E. Mercer, Acting Supervising Deputy Attorney General, and Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.