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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.

RONALD TERRY LINDSEY,

Defendant and Appellant.

2d Crim. No. B286356
(Super. Ct. No. F277476001)
(San Luis Obispo County)

Ronald Terry Lindsey was found not guilty by reason of insanity of assault with a deadly weapon and battery causing serious bodily injury. (Pen. Code, §§ 243, subd. (d), 245, subd. (a)(1), 1026.) He was committed to the Department of State Hospitals (DSH) for 14 years. The People petitioned to extend his commitment in 2017.¹ Appellant contested the petition.

¹ On our own motion, we take judicial notice of appellant's prior appeal extending his commitment to May 17, 2015, *People v. Lindsey* (Feb. 10, 2014, B249567 [nonpub. opn.]). (Evid. Code, §§ 452, subd. (d), 459, subd. (a); *People v. Superior Court (Rigby)* (2011) 195 Cal.App.4th 857, 868, fn. 4 [court took notice of its

A jury found that appellant represents a substantial danger of physical harm to others by reason of a mental disease, defect or disorder. (Pen. Code, § 1026.5, subd. (b)(1).) The judgment extends his commitment to May 17, 2019.

We conclude that appellant's state hospital records were properly admitted at trial. (Evid. Code, § 1280.) His treating doctor could cite facts from the records when testifying, without violating appellant's right to confront witnesses. Further, the doctor's face-to-face contacts with appellant, without more, support the judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Appellant's Motion in Limine

Appellant moved to prevent the People's expert, Dr. Alex Sahba, from using nursing reports about appellant's behavior in state hospital as the basis for his opinion. Appellant objected to reports that he had a verbal altercation with a peer; was aggressive with Dr. Sahba; was placed in restraints; exposed himself to a nurse; was verbally aggressive with the nursing staff; and tried to climb a fence and escape.

At a hearing (Evid. Code, § 402), Dr. Sahba testified that he has a duty, as appellant's psychiatrist, to receive staff reports about appellant's behavior. Dr. Sahba documents these reports,

unpublished opinion in a state hospital recommitment case].) As described in our prior opinion, appellant has a long history of assaultive behavior and aggressiveness dating back to 1996 or 1997, when he was charged with four counts of battery on staff in state prison and found not guilty by reason of insanity; he later attacked a psychiatric technician, resulting in his commitment offense of battery and assault with a deadly weapon; between 2009 and 2013, appellant punched or assaulted a peer or staff member on eight occasions.

although in appellant's case there are so many reports—almost daily—that Dr. Sahba cannot document everything himself. Incidents he did not document are reflected in appellant's treatment record, encompassing nursing and social worker reports. The reports are made in the normal course of business at the state hospital.

The court ruled that the reports are admissible because they are contained in a record made by public employees in the scope of their duties and “the sources of information, method of preparation were such as to indicate trustworthiness.” The court noted appellant's objection that his right to confront witnesses was infringed, but did not alter its ruling.

Trial Testimony

Dr. Sahba is a forensic psychiatrist at Metropolitan State Hospital. He specializes in mentally disordered offenders. Appellant was his patient. Dr. Sahba testified that appellant is being treated for schizoaffective disorder, a psychotic illness that causes disorganized speech and thought processes, erratic behavior and delusions.

Though medicated for his illness, appellant is paranoid, thinks that people are after him, and the nursing staff is against him or documents things about him that are not true. He cannot conduct a normal conversation, veering into unrelated tangents. He lacks insight into his illness: he believes he may have had a mental disorder in the past but is no longer ill. He repeatedly told Dr. Sahba that he does not need medication and asked to discontinue it. Dr. Sahba has told appellant many times that he will decompensate without medication, meaning his psychotic symptoms will reappear and he will be more paranoid and delusional.

Patients who follow their treatment plan and obey hospital rules receive privileges, such as a paying job or permission to go out onto the hospital grounds. Appellant has had his privileges revoked many times for behavioral problems.

During their “morning report,” Dr. Sahba and the nurses discuss patient behavior in the past 48 hours or since the doctor was last in the hospital. In appellant’s case, Dr. Sahba stated, there are “behavioral issues with him almost on a daily basis. So there’s no way that all of them made it to the record, but I think most of them were, the more important ones did.” Physician reports, nursing staff notes, and incident reports are kept in appellant’s records at the hospital.

Dr. Sahba recounted a December 2016 incident between himself and appellant in the hospital hallway. Appellant approached and asked to discontinue his medications. Dr. Sahba reminded appellant of their prior discussions about his illness. Appellant then asked why his privileges were revoked. The doctor explained that he was not following the treatment plan and had behavioral problems. Appellant became very angry and clenched his fists in front of his body. Dr. Sahba felt threatened and walked backwards while keeping his eyes on appellant, who followed. When Dr. Sahba reached the nursing station, staff members tried to calm appellant, who rushed at the nurses standing in the doorway. Appellant entered the station and said to Dr. Sahba, “I’m going to fuck you up.” An alarm was pulled. Appellant was dragged away, sedated and placed in restraints, on Dr. Sahba’s orders.

Dr. Sahba described other incidents that were the subject of nursing reports. In one, appellant followed a female nurse despite being told not to do so, exposed his penis and

masturbated in front of her. Other nurses had to stop appellant and educate him on appropriate behavior. He was verbally aggressive with the nursing staff, which Dr. Sahba said is “very common behavior for Mr. Lindsey.” Once, when appellant was on a patio, he ran to a fence and tried to scale it. Staff members pulled him down. Appellant later told Dr. Sahba he was trying to “make a run” for freedom.

Hospital records indicate that appellant is at low risk of violence. Dr. Sahba explained that this risk assessment does *not* mean that appellant is not a danger to others or able to control his behavior if released. The hospital is highly structured and supervised. Patients know that they are monitored 24 hours a day by nursing staff and police: if they act violently, someone will respond within seconds, stop them, put them in restraints, medicate them, and revoke their privileges. Patients have no free will. They eat, sleep, take medications and exercise when told to do so. In this environment, most patients are not dangerous.

Based on his review of appellant’s records and his contacts with appellant, Dr. Sahba opined that appellant poses a substantial danger of physical harm to others as a result of schizoaffective disorder. Given appellant’s misbehavior in a highly structured and supervised hospital setting, his behavior would be worse with no supervision or structure. The risk would persist if appellant were released and continued treatment because he is now medicated and still misbehaves. The risk is increased by appellant’s belief that he is not ill. Dr. Sahba opined that appellant will stop treatment if released because he often expresses antipathy to medication.

Dr. Sahba stated that appellant does not qualify for a conditional release program because he denies illness, does not

connect the illness to his arrest for the crimes that led to his commitment, and continuously breaks hospital rules. He would be at high risk of violence outside of a locked institution, receiving only periodic outpatient services.

Appellant's siblings testified that they will ensure his continued treatment if he is released. They have investigated the possibility of having him committed to a locked facility in their home state of Arkansas.

DISCUSSION

1. Standard of Review

Over appellant's objection, his DSH records were admitted into evidence, under an exception to the hearsay rule. The ruling is reviewed for an abuse of discretion. (*People v. Jones* (2013) 57 Cal.4th 899, 956.) The judgment cannot be set aside for the erroneous admission of evidence unless, after an examination of the entire record, the court believes that the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) It must be reasonably probable that a result favorable to the defendant would have been reached in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 835-836.)

2. The Court Did Not Abuse Its Discretion By Applying the Public Employee Record Exception to the Hearsay Rule

Appellant objected to use of reports made by DSH nurses about his conduct in state hospital. A public employee's record of an act is admissible, when offered at trial to prove the act, if the record was made within the scope of the employee's duties at or near the time of the act, and the source of information and method and time of preparation indicate trustworthiness. (Evid. Code, § 1280.)

The court determined that the foundational requirements of the public employee records exception were met. The record supports the court's finding. It shows that Dr. Sahba's duties at DSH require him to receive reports from nurses and document appellant's behavior. Incidents not documented by Dr. Sahba are contained in appellant's treatment record, which is created in the normal course of hospital business.

"Mental health experts routinely rely on interview reports and observations of nontestifying experts" if the information is reliable and not speculative or conjectural. (*People v. Nelson* (2012) 209 Cal.App.4th 698, 707.) Trustworthiness is shown if a written report is based on the observations of public employees who have a *duty* to observe the facts and report and record them correctly. (*People v. Martinez* (2000) 22 Cal.4th 106, 130; *People v. Baeske* (1976) 58 Cal.App.3d 775, 780.) Hospital records are deemed trustworthy because they form the basis for medical treatment. (*Loper v. Morrison* (1944) 23 Cal.2d 600, 608.)

Appellant does not deny that DSH nurses have a duty to observe and report on patient behavior. He does not argue that they fail to perform their duties. Nor does he argue that DSH records are inherently untrustworthy. Instead, he wants each nurse to be cross-examined about entries in his medical records.

The purpose of the official record exception is to eliminate calling each witness involved in preparing records. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 317.) What appellant seeks would cause workplace disruption and needlessly consume court time. A "serious interference with . . . hospital management" would occur if each doctor and nurse had to testify; further, they would have to consult the written record to recall any particular

incident amid the day-to-day details of scores of hospital cases. (*People v. Gorgol* (1953) 122 Cal.App.2d 281, 299-300.)

Appellant contends that Dr. Sahba is unqualified to authenticate the records. Evidence Code section 1280 does not require testimony about record identity or mode of preparation from a custodian, if the record was prepared in a manner that assures its trustworthiness. (*Bhatt v. State Dept. of Health Services* (2005) 133 Cal.App.4th 923, 929; *People v. George* (1994) 30 Cal.App.4th 262, 274.) The court may rely on the presumption that an official duty has been regularly performed. (Evid. Code, § 664; *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1477.) Here, Dr. Sahba recited his duty to document verbal reports and staff's duty to record behavioral problems to enable doctors to assess patient progress during hospitalization. Appellant did not rebut the presumption that these official duties were regularly performed.

3. *The Testimony Did Not Violate Appellant's Rights*

Appellant contends that Dr. Sahba's testimony was not based solely on incidents he personally witnessed and could not be based on "case-specific" facts in DSH reports. Appellant argues that use of the reports violated his right to confront witnesses. The constitutional guarantees afforded to criminal defendants apply here. (Pen. Code, § 1026.5, subd. (b)(7).)

Appellant relies upon *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*) and *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Neither *Sanchez* nor *Crawford* assists him.

Sanchez clarifies the foundation necessary for the admissibility of expert testimony based on hearsay. (*People v. Bona* (2017) 15 Cal.App.5th 511, 520.) It holds that an expert cannot testify to "case-specific facts" that are outside the expert's

personal knowledge, “unless they are independently proven by competent evidence or are covered by a hearsay exception.” (*Sanchez, supra*, 63 Cal.4th at p. 686.)

As explained in section 2, *ante*, appellant’s DSH records are competent evidence admitted under the official records hearsay exception. (Evid. Code, § 1280.) When hospital records are admitted, an expert is not “precluded from reiterating the same facts” during direct examination. (*People v. Nelson, supra*, 209 Cal.App.4th at p. 708 [state hospital interdisciplinary notes are admissible and experts could discuss them in detail].) *Sanchez* does not bar Dr. Sahba’s testimony.

Crawford holds that the Sixth Amendment prohibits the use of “*testimonial* statements against the accused in a *criminal* case.” (*Crawford, supra*, 541 U.S. at p. 56.) However, the Supreme Court expressly noted that business records are not testimonial. (*Ibid.*) It acknowledged states’ flexibility to develop hearsay exceptions for nontestimonial evidence. (*Id.* at p. 68.)

Hospital records are business records. (*People v. Diaz* (1992) 3 Cal.4th 495, 535.) They are not testimonial because they are created for patient discipline and treatment and for the safety of staff and other patients, not for trial. (*People v. Nelson, supra*, 209 Cal.App.4th at p. 713; *Loper v. Morrison, supra*, 23 Cal.2d at p. 608. Compare *Sanchez, supra*, 63 Cal.4th at p. 694-697 [police reports are testimonial because they preserve facts for use at trial].)

When offering an expert opinion, a doctor may rely on DSH records showing a patient’s amenability to treatment and how he “interacted with women staff members and other[s]” during his commitment. (*People v. Dean* (2009) 174 Cal.App.4th 186, 200.) Appellant’s rights were not violated when Dr. Sahba relied on

properly admitted DSH records showing appellant's interactions with staff members. This case is distinguishable from those in which the medical expert was barred from reciting facts from hospital records because "[n]o hospital records were introduced or admitted at trial." (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 407, fn. 7; *People v. Roa* (2017) 11 Cal.App.5th 428, 452.)

4. Any Error Was Harmless

Even if we assume that Dr. Sahba should not have testified about instances of misconduct that he did not personally witness, any arguable error is harmless under the state "reasonable probability" standard and the federal "beyond a reasonable doubt" standard. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Watson, supra*, 46 Cal.2d at pp. 831-832.)

The centerpiece of the People's case was Dr. Sahba's testimony about his hallway encounter with appellant, who was angry because his privileges were revoked. He clenched his fists in a hostile gesture, followed the retreating doctor, then forced his way into the nursing station and threatened to harm Dr. Sahba. This episode was Dr. Sahba's personal experience with appellant. (*Sanchez, supra*, 63 Cal.4th at p. 675 [experts may testify "to matters within their own personal knowledge"].)

When Dr. Sahba questioned appellant about climbing the hospital fence, appellant admitted that it was a bid to escape. Dr. Sahba could recount appellant's admission to the jury. (Evid. Code, § 1220 [party admission exception to the hearsay rule].) Appellant repeatedly told Dr. Sahba that he has no psychosis and does not want medication. Dr. Sahba opined that appellant is at high risk of violence if released based on his denial of illness, desire to stop medication, difficulty in controlling his behavior while in a locked medical facility, and inability to connect his

illness with his violent crimes. These matters are within Dr. Sahba's personal knowledge and sufficient to sustain the judgment. (*People v. Williams* (2015) 242 Cal.App.4th 861, 872 [a single psychiatric opinion that a person is dangerous due to a mental disorder justifies the extension of a commitment].)

There is overwhelming admissible evidence of appellant's dangerousness, including his escape attempt, his thwarted effort to harm Dr. Sahba, his denial of mental illness, his desire to stop medication, and his inability to link his illness with his crimes. No expert opined that appellant has no illness and no need for continued treatment. Testimony about relatively minor transgressions--appellant's penchant for verbal aggression and an incident of indecent exposure--did not affect the outcome.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Gerald F. Sevier, Judge*

Superior Court County of San Luis Obispo

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