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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. J.T., Defendant and Appellant.	2d Crim. No. B283078 (Super. Ct. No. 17MH-0039) (San Luis Obispo County)

J.T., a mentally disordered offender (MDO; Pen. Code,[1] § 2962 et seq.), appeals an order authorizing the Department of State Hospitals-Atascadero (the Hospital) to involuntarily administer psychotropic medication to treat appellant's severe mental disorder (*In re Qawi* (2004) 32 Cal.4th 1 (*Qawi*)). Appellant contends the evidence does not support the trial court's finding that he is incompetent to refuse treatment. We affirm.

FACTS AND PROCEDURAL HISTORY

Appellant was initially committed to the Hospital as an MDO in April 2015. His commitment has since been extended on

[1] All statutory references are to the Penal Code unless otherwise stated.

a yearly basis pursuant to section 2972. He suffers from schizophrenia with secondary diagnoses of antisocial personality disorder and amphetamine, cannabis, and alcohol use disorders. His symptoms include delusions, hallucinations, and thought disorganization.

On February 2, 2017, appellant was readmitted to the Hospital after being found incompetent to stand trial (§ 1370) on a new charge based on an allegation he had bitten off part of another patient's nose. On February 27, the Hospital began involuntarily administering anti-psychotic medications to appellant in accordance with title 9, section 4210 of the California Code of Regulations.

On April 6, 2017, the Hospital filed a verified petition to authorize the continued involuntary medication of appellant pursuant to *Qawi*, *supra*, 32 Cal.4th 1. The petition, which was verified by Hospital Staff Psychiatrist Todd Elwyn, M.D., stated that "[appellant's] symptoms have lasted longer than six months and have caused significant adverse effects on his psychosocial functioning."

The verified petition also stated that appellant "continues to demonstrate a lack of insight into his mental illness, insists that he suffers from no mental illness, and is . . . in no need of antipsychotic medications. This is a product of his . . . delusional thought processes. In addition, upon admission to [the Hospital], he demonstrated tangential thought process and looseness of associations. He endorsed the delusional belief that others can see the thoughts in his head and he exhibited generalized paranoia. He endorsed visual hallucinations such as seeing visions and . . . a demon. More recently, he has articulated a fixed delusional belief system about a government-run computer program that targets people for assassination and that has targeted him as well. . . . The delusional beliefs are fixed and

firm and have not been amenable to correction through discussion and debate. He is incompetent to refuse medical treatment." Appellant believes he does not suffer from a mental illness and had refused antipsychotic medication since February 9, 2017. When he was interviewed by the Hospital treatment team on March 2, he reiterated his belief that "he has no mental illness, does not need medication, and will not benefit from it." The petition set forth facts demonstrating that appellant required involuntary antipsychotic medication because he presented a danger to others.

Dr. Mark Daigle, another psychiatrist at the Hospital, testified at the *Qawi* hearing on the Hospital's behalf. Dr. Daigle reviewed appellant's medical records, talked with his treating physician, reviewed "the forensic paperwork regarding [the] hearing," and interviewed appellant on April 19, 2017. The doctor confirmed appellant's diagnoses and symptoms thereof and opined that antipsychotic medication was necessary for his treatment. When appellant was interviewed by Dr. Daigle, he did not know or understand his diagnosis and reiterated that "he's not mentally ill and he doesn't want or doesn't need medication." Dr. Daigle further opined that appellant was not competent to reject drug treatment because he was unable to intelligently and rationally contribute to the making of decisions about his treatment and thus lacked the capacity to effectively weigh the risks and benefits of medication. On cross-examination, the doctor testified that appellant's complaint that his medications caused him to gain weight were unfounded because his current antipsychotic medications (unlike his prior medications) have no such side effect.

Appellant testified on his own behalf at the hearing. He reiterated his belief that he does not have a mental illness and asserted that his hallucinations and delusions were "drug-

induced." He claimed that he last had hallucinations in 2012. He offered that he did not want to take his prescribed antipsychotic medication because it causes him to gain weight, makes him "spacey," and causes him to "have problems with concentration and focus." He also claimed that his doctor had increased his medication "without [him] showing any types of symptoms."

At the conclusion of the hearing, the court determined that appellant had been adjudicated as an MDO and found that the *Qawi* criteria for incompetence had been met and that appellant lacked the capacity to refuse treatment. The court ordered the Hospital to administer psychotropic medications to appellant in the dosage and for the frequency deemed necessary by the Hospital's clinical treatment staff for a period not to exceed one year from the date of the April 21, 2107 order.

DISCUSSION

Appellant contends the trial court's *Qawi* order must be reversed because the evidence is insufficient to prove he was incompetent to refuse treatment. We disagree.

Psychotropic medication may be involuntarily administered to an MDO who is found incompetent to refuse such treatment. (*Qawi*, *supra*, 32 Cal.4th at pp. 14–15; *People v. Fisher* (2009) 172 Cal.App.4th 1006, 1013 (*Fisher*).) A judicial determination of an MDO's competency in this regard 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." (*Qawi*, *supra*, 32 Cal.4th at pp. 17–18;

Riese v. St. Mary's Hospital & Medical Center (1987) 209 Cal.App.3d 1303, 1322–1323.)

"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, italics omitted.) "'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.)

Substantial evidence supports the challenged order. In arguing to the contrary, appellant asserts that Dr. Daigle merely "stated in a conclusory fashion that appellant had a diagnosis of schizophrenia" and "failed to substantiate his conclusion by presenting any concrete evidence of what constitutes the diagnosis of schizophrenia and how the diagnosis currently applied to appellant." Appellant stipulated, however, that Dr. Daigle was qualified to testify as an expert on the matters at issue and never went on to object to any portion of the doctor's testimony. Accordingly, any claim that the testimony was without foundation is forfeited. (Evid. Code, § 353, subd. (a); see also *People v. Fuiava* (2012) 53 Cal.4th 622, 655 [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"].)

Forfeiture aside, Dr. Daigle also testified that his opinions were based upon his review of appellant's medical records, his discussions with appellant and his treating physician and "the forensic paperwork regarding [the] hearing." Our Supreme Court

has recently reiterated that experts may rely on hearsay in forming opinions and may tell the trier of fact in general terms that they have done so. (*People v. Sanchez* (2016) 63 Cal.4th 665, 685.) An expert may also "generally [state] the kind and source of the 'matter' upon which his opinion rests" to assist the finder of fact in evaluating the probative value of the testimony. (*Id.* at p. 686.)

Dr. Daigle's expert testimony, and appellant's own testimony, amply support the court's finding that appellant is incompetent to refuse treatment.[2] As to the first *Qawi* factor, the evidence unequivocally shows that appellant is unaware of his mental illness. He suffers from schizophrenia, yet has repeatedly stated his belief—when interviewed by his doctors and when testifying at the hearing—that he does not currently suffer from any mental illness.[3]

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[2] After the People filed their respondent's brief, appellant moved to strike and/or limit our consideration of the brief to the extent it refers to evidence contained in the verified petition. He asserts that these references are improper because the petition "was never admitted into evidence." He further claims that "the doctor who verified the contents of the petition, Dr. Elwyn, did not testify and therefore, appellant was deprived of the right of cross-examination." We deny appellant's motion. The facts alleged in the verified petition are relevant historical facts. To the extent the People offer those facts as support for the finding that appellant was incompetent to refuse medical treatment, Dr. Daigle's testimony and appellant's own testimony are each independently sufficient to sustain that finding.

[3] Appellant's citation to *Conservatorship of Waltz* (1986) 180 Cal.App.3d 722, on this point is unavailing. Among other things, the patient in that case was able to understand that he suffered from a mental illness. (*Id.* at p. 732.)

The evidence also demonstrates that appellant does not understand the benefits and risks of treatment. In addition to denying that he suffers from schizophrenia, he lacks the ability to recognize that the prescribed medications are necessary to treat the disorder. Although appellant testified that he did not currently suffer from hallucinations or delusions, ample evidence supports a contrary conclusion. Appellant's outright denial of his condition also supports a finding that he lacks the capacity to understand and to knowingly, intelligently and rationally evaluate and participate in the treatment decision by means of rational thought processes. The court thus did not err in finding that appellant was incompetent to refuse the prescribed treatment. (*Qawi*, *supra*, 32 Cal.4th at p. 18; *Riese v. St. Mary's Hospital & Medical Center*, *supra*, 209 Cal.App.3d at pp. 1322–1323.)

DISPOSITION

The judgment (*Qawi* order allowing involuntary administration of psychotropic medication) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Richard M. Curtis, Judge
Superior Court County of San Luis Obispo

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

Xavier Becerra, Attorney General, Julie Weng–Gutierrez, Supervising Assistant Attorney General, Richard T. Waldow, Supervising Deputy Attorney General and Kristen T. Dalessio, Deputy Attorney General, for Plaintiff and Respondent.