

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY SCOTT BARRETT,

Defendant and Appellant.

2d Crim. No. B288176
(Super. Ct. No. 17PT-01054)
(San Luis Obispo County)

Gregory Scott Barrett appeals an order determining him to be a mentally disordered offender (MDO) and committing him to the State Department of State Hospitals for involuntary treatment. (Pen. Code, § 2962 et seq.)¹ We conclude that sufficient evidence supports the trial court's determination that Barrett is an MDO, and affirm. (*People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [substantial evidence of dangerousness may rest upon a single psychiatric opinion].)

¹ All statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL HISTORY

On April 2, 2010, Barrett pleaded guilty to two counts of arson. The criminal offenses involved fires that Barrett set to a storage shed and later to a church. (§ 451, subds. (b) & (c).) In each case, witnesses observed Barrett present at the scene or setting the fire. Following his plea, the Los Angeles County trial court sentenced him to a nine year four month prison term. On May 9, 2017, prior to his parole release, the Board of Parole Hearings (Board) determined that Barrett was an MDO pursuant to the criteria of section 2962. As a condition of parole, the Board required him to accept treatment from the State Department of State Hospitals.

Barrett then filed a petition pursuant to section 2966, subdivision (b) to contest this decision. After Barrett waived his right to a jury trial, a court trial followed. Without objection, the court received into evidence four written MDO psychological evaluations and a copy of the abstract of judgment filed in the underlying criminal case. The parties also stipulated that Barrett received 90 days or more of treatment during the year prior to his parole date. (§ 2962, subd. (c).)

Written Expert Witness Evaluations

Doctor Alexis Vosburg interviewed Barrett to determine if he satisfied the MDO criteria. She opined that he suffers from the severe mental disorder of schizophrenia, but that his mental disorder was not a cause of or an aggravating factor in the commission of the underlying offenses. Vosburg also concluded that Barrett did not represent a substantial danger of physical harm to others because of his severe mental disorder. She based her opinion upon Barrett's cooperative attitude and his hope "to work with animals" upon release. Vosburg also relied upon the

absence of any violent criminal history, substance abuse, or recent rule-violation incidents.

Doctor J. Kelly Moreno interviewed Barrett and opined that he suffers from a major depressive disorder characterized by depression and suicide ideation. Moreno opined that Barrett's severe mental disorder was a cause of or an aggravating factor in the commission of the underlying offenses because Barrett admitted being angry and frustrated at the time. Barrett informed Moreno that the arsons were "a cry for help" and that if he had been in treatment, he may not have committed the crimes. Moreno concluded that Barrett satisfied the MDO criteria with the exception of presenting a substantial danger of physical harm to others by reason of his severe mental disorder. In deciding this point, Moreno relied upon the absence of violent behavior or rule-violation incidents during Barrett's confinement.

Doctor Kimberly Spitz-Mares interviewed Barrett and concluded that he suffers from the severe mental disorders of schizophrenia and bipolar disorder. She opined that the underlying arson offenses are "better explained by an unprovoked response to mania, likely prompted by psychosis." Spitz-Mares opined that Barrett satisfied each of the MDO criteria, including presenting a substantial physical danger to others. She relied upon his history of violent criminal offenses (carrying a concealed weapon, making criminal threats, battery, and elder abuse), his refusal to consume psychotropic medication, his lack of insight into his mental disorder and denial that he suffers from one, his existing auditory hallucinations and delusions, and his history of impulsive behavior. Spitz-Mares's review included Barrett's prison files and health records.

Doctor Alette Coble-Temple conducted the fourth MDO evaluation of Barrett, including an interview with him and a review of his prison, legal, and mental health records. She diagnosed Barrett as suffering from organic brain syndrome, characterized by his religious preoccupation, lack of executive function, disorganized thoughts, auditory hallucinations, and possible Parkinson's disease. Coble-Temple opined that Barrett met the MDO criteria, including presenting a substantial physical danger to others. She relied upon his religious preoccupation, inability to engage in executive functions, lack of insight into his illness, impulsivity, and argumentative nature. Coble-Temple's written evaluation noted the dates of Barrett's arrests and convictions for various crimes, including carrying a concealed weapon, elder abuse with great bodily injury, and making criminal threats.

Expert Witness Testimony

Doctor Brandi Mathews, a forensic psychologist at Atascadero State Hospital, testified that she interviewed Barrett regarding the MDO criteria, reviewed his hospital treatment records, and consulted his treating psychiatrist. She concluded that Barrett did not satisfy two of the MDO requirements of section 2962.

Mathews opined that Barrett suffers from schizophrenia, a severe mental disorder, characterized by his auditory hallucinations and disorganized thoughts. She concluded, however, that his severe mental disorder was not a cause of or an aggravating factor in the commission of the underlying offense.

Mathews also opined that Barrett does not represent a substantial danger of physical harm to others due to his severe mental disorder. She based her opinion upon the absence of

violent behavior since 2008, and Barrett’s diagnosis of Huntington’s chorea.²

Findings, Order, and Appeal

Following the evidentiary hearing and arguments by counsel, the trial court determined that Barrett met the requirements of section 2962 beyond a reasonable doubt. In ruling, the trial judge commented that “[t]here’s obviously expert opinions going both ways” The court then committed Barrett to the State Department of State Hospitals for involuntary treatment.

Barrett appeals and contends that insufficient evidence supports the finding of his substantial dangerousness. (§ 2962, subd. (d)(1).)

DISCUSSION

Barrett argues that the evaluating psychologists relied upon improper factors to conclude that he represents a substantial physical danger to others by reason of his severe mental disorder. He relies upon the evaluations of Doctors Mathews, Vosburg, and Moreno concluding that he has no violent criminal history, has been cooperative, and now suffers from a disabling neurological disease. In particular, Barrett asserts that the other experts’ recitation of his criminal history was improper pursuant to *People v. Sanchez* (2016) 63 Cal.4th 665, 676 [expert witness may not recite case-specific facts of which he lacks personal knowledge].)

² “Huntington’s chorea is a genetic disorder characterized by uncontrolled movements, progressive dementia, psychiatric problems, and psychoses caused by the degeneration of nerve cells in the brain. In general, there is loss of cognitive and mental functions.” (*Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, 85.)

In reviewing the sufficiency of evidence to support an order made in MDO proceedings, we review the entire record to determine if reasonable and credible evidence supports the decision of the trier of fact beyond a reasonable doubt. (*People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1096; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) We view the evidence and draw all reasonable inferences therefrom in favor of the order. (*Hannibal*, at p. 1096; *Clark*, at p. 1082.) Our review includes all the evidence admitted at trial, including evidence that was improperly admitted or evidence to which no objection was made. (*People v. Story* (2009) 45 Cal.4th 1282, 1296; *Bermudez v. Ciolek* (2015) 237 Cal.App.4th 1311, 1340.) We do not reweigh the evidence nor do we substitute our decision for that of the trier of fact. (*Clark*, at p. 1083.)

Sufficient evidence supports the finding beyond a reasonable doubt that Barrett represents a substantial physical danger to others by reason of his severe mental disorder. During Barrett's interview with Spitz-Mares, he admitted that he has auditory hallucinations that sometimes increase in volume. He also exhibited distraction by internal stimuli. When discussing his arson crimes, Barrett stated that they were "a cry for help," and had he been in treatment then, the crimes may not have occurred. He also denied having a mental illness and refused to consume psychotropic medication. Spitz-Mares opined that Barrett's poor coping skills and impulsive behavior placed others at risk of harm. The restrictive environment of the state hospital, she concluded, curtailed any recent violent or arson-related behavior.

During Barrett's interview with Coble-Temple, he admitted that he committed the arsons to cope with his frustration.

Barrett did not acknowledge that the acts were unacceptable coping strategies.

In addition, Spitz-Mares and Coble-Temple recited Barrett's criminal history, obtained from their review of his legal records. Barrett did not object on grounds of hearsay evidence or lack of foundation. He has forfeited any *Sanchez* claim on appeal. (*People v. Powell* (2018) 6 Cal.5th 136, 179-180 [defendant's failure to object at trial forfeits *Sanchez* argument on appeal].) Moreover, Barrett may have had a tactical reason for not objecting, i.e., requiring the prosecutor to present Barrett's criminal records may have damaged his defense. In any event, the trial court properly considered Spitz-Mares's and Coble-Temple's opinions which rested upon their review of Barrett's legal and prison records, among other records.

Accordingly, the commitment order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Matthew G. Guerrero, 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, Michael C. Keller, Erik J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.