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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.
B.L.M.,
Defendant and Appellant.

2d Crim. No. B284922
(Super. Ct. No. 17PT-00289)
(San Luis Obispo County)

B.L.M. appeals an order finding him to be a mentally disordered offender (MDO) and committing him for treatment at Atascadero State Hospital. (Pen. Code, § 2960 et seq.)¹ Appellant contends that the trial court erred in receiving expert opinion testimony in violation of *People v. Sanchez* (2016) 63 Cal.4th 665 (*Sanchez*). We affirm.

¹ All statutory references are to the Penal Code.

Factual and Procedural History

In 2009, appellant was convicted of sexually assaulting his teenage daughter and the daughter's boyfriend, and sentenced to state prison. On March 24, 2017 the Board of Parole Hearings (BPH) determined that appellant was an MDO and committed him to Atascadero State Hospital (ASH) for treatment. (§ 2962, subs. (a)-(d).) Appellant petitioned the superior court for trial and waived jury. (§ 2966, subd. (b).)

At trial, certified copies of appellant's cognitive behavioral health treatment records, a California Law Enforcement Telecommunication System (CLETS) printout of appellant's criminal history, and the police report were received into evidence pursuant to section 2962, subdivision (f).²

Doctor Brandi Mathews, a forensic psychologist at ASH, stated that she interviewed appellant, consulted with appellant's treating psychiatrist and cognitive behavior intervention group provider, and reviewed appellant's medical records, the probation and police reports, and the ASH interdisciplinary notes and physician progress notes. The doctor

² Section 2962, subdivision (f) provides: "For purposes of meeting the criteria set forth in this section, the existence or nature of the crime, as defined in paragraph (2) of subdivision (e), for which the prisoner has been convicted may be shown with documentary evidence. *The details underlying the commission of the offense that led to the conviction*, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, *including, but not limited to*, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals." (Italics added.)

opined that appellant suffered from unspecified paraphilic disorder, a severe mental disorder in which appellant engaged in sexual behaviors with pubescent and post-pubescent individuals. Dr. Mathews opined that the severe mental disorder was a contributing factor in the commission of the underlying offenses, that appellant was not in remission, and that appellant posed a substantial risk of harm to others. The trial court found that appellant met all the MDO criteria. (See *People v. Clark* (2000) 82 Cal.App.4th 1072, 1075-1076.)

Sanchez

Appellant argues that the trial court erred in permitting Dr. Mathews to testify about his 1989 conviction for lewd acts on appellant's nephew. In *Sanchez, supra*, 63 Cal.4th 665 our Supreme Court held that an expert cannot "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (Id. at p. 686.) The *Sanchez* court noted: "Any expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so. . . . [¶] What an expert *cannot* do is relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (Id. at pp. 685-686.)

Dr. Mathews testified that appellant had a history of engaging in sexual behavior with pubescent and post-pubescent minors. "He was convicted in 1989 of a lewd and lascivious act with a child under the age of 14. It was indicated that his 12-year-old nephew resided with him." The testimony was offered not for the truth of the matter stated but to explain what information Dr. Mathews relied on in opining that appellant

suffered from severe mental disorder. Appellant objected on hearsay, foundation, and *Sanchez* grounds. Before the trial court ruled on the matter, the prosecution said, “That’s fine. We will come back to that.”

Dr. Mathews opined that appellant’s mental disorder played a role in the commitment offense “[b]ased on [appellant’s] repeated sexual behaviors involving his 17-year-old daughter as well as her 16-year-old boyfriend.” Appellant objected, arguing that “it’s case-specific hearsay. And under Sanchez she’s not allowed just to recite it.” The trial court asked: “How did [Dr. Mathews] come by this information?” Dr. Mathews stated that she reviewed the “probation officer’s report,” i.e., the police report previously received into evidence. The prosecution acknowledged the *Sanchez* restriction and admonished Dr. Mathews not to get into “case specifics” in explaining the mental health aspects of the commitment offense.

Dr. Mathews was next asked: “What in particular, without getting into . . . case specifics, about the crime or the events surrounding it are you looking at in terms of finding the connection?” Dr. Mathew responded: “The fact that [appellant] manipulated as well as coerced the victims in his multiple offenses and used sort of a medical guise to have these individuals or victims interact with him in a sexual manner.”

Appellant moved to strike the testimony as hearsay. The prosecution asked the trial court for a “little bit of leeway” and asked the doctor: “What about what you just told us fits in with his severe mental disorder to the point where there’s a connection there?” Dr. Mathews responded, without objection: “In my opinion, [appellant] meets unspecified paraphilic disorder because he has established a history of using his sense of

authority over individuals under the age of 18 in . . . interacting in a sexual manner with multiple individuals.”

Although appellant did object when Dr. Mathews discussed the facts of the commitment offenses, the trial court did not expressly rule on the *Sanchez* objection. Having failed to press for a ruling, appellant waived the alleged *Sanchez* error. (See, e.g., *People v. Perez* (2017) 16 Cal.App.5th 636, 645-646 [*Sanchez* error forfeited]; *People v. Braxton* (2004) 34 Cal.4th 798, 813 [objection waived or abandoned by not obtaining ruling from trial court].) Waiver aside, any error was harmless. (*People v. Roa* (2017) 11 Cal.App.5th 428, 455; *People v. Jeffrey G.* (2017) 13 Cal.App.5th 501, 510.)

Appellant argues that expert witness testimony should not have been admitted to recount the facts of his 1989 lewd conduct conviction. Dr. Mathews, however, was not precluded from testifying to facts that were independently proven by the certified records. (*Sanchez, supra*, 63 Cal.4th at p. 685.) Where a case-specific fact is independently proven by competent evidence, the expert may reiterate that fact in support of his or her expert opinion. (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 403, 407; *People v. Jeffrey G., supra*, 13 Cal.App.5th at p. 510.) Section 2692, subdivision (f) creates a hearsay exception and provides that the details underlying the commission of the offense “may be shown by documentary evidence, including but not limited to . . . probation and sentencing reports, and evaluations by the State Department of State Hospitals.” (*Ante*, fn. 2.)

The trial court received into evidence, without objection, appellant’s cognitive behavioral health treatment records, the CLETS printout of appellant’s criminal history and

the police report setting forth the facts of the commitment offense. The CLETS printout showed that appellant was convicted in 1989 of lewd conduct on a child under the age of 14, and in 2009, was convicted on the commitment offenses. The details of those offenses are set forth in the police report and cognitive behavioral health treatment records which state that, on multiple occasions, appellant had his daughter digitally penetrate and lick his anus and orally copulate him under the pretense that it was medically necessary to treat his prostate cancer. The reports state that appellant repeatedly had oral sex with his daughter and coerced the daughter's 16-year-old boyfriend to have anal sex with appellant to earn appellant's permission to date his daughter. Appellant grabbed the boyfriend's penis, punched the boyfriend in the chest, and held a knife to his own throat. The police report also refers to the 1989 conviction for lewd acts on a child under the age of 14 as do the behavioral health treatment records which state that the 1989 conviction involved appellant's 12-year-old male cousin. Appellant told a mental health evaluator that two of the three underage victims were male and that he tried to "cure himself" by masturbating frequently, multiple times per day. Dr. Mathews was permitted to rely on independently proven facts to opine that appellant suffered from a severe mental disorder that was a contributing factor in the underlying offenses. (*Sanchez, supra*, 63 Cal.4th at p. 686 [expert cannot rely on case-specific hearsay unless it is "independently proven by competent evidence or are covered by a hearsay exception"]; *People v. Burroughs, supra*, 6 Cal.App.5th at p. 407.)

Appellant argues that *Sanchez* prohibits an expert from testifying as to matters on which the expert lacks personal

knowledge. (See *People v. Vega-Robles* (2017) 9 Cal.App.5th 382, 413.) We reject the argument because the testimony was elicited as general background information. (*Sanchez, supra*, 63 Cal.4th at p. 665.) “Where general background hearsay is concerned, the expert may testify about it so long as it is reliable and of a type generally relied upon by experts in the field [Citations.]” (*People v. Stamps* (2016) 3 Cal.App.5th 988, 996.)

Assuming, arguendo, that some of the expert testimony was erroneously admitted, appellant makes no showing that it was prejudicial or resulted in a miscarriage of justice. (*Sanchez, supra*, 63 Cal.4th at p. 698.) The police reports and mental health treatment records, all of which were received into evidence pursuant to section 2962, subdivision (f), in combination with Dr. Mathews’ diagnosis of the severe mental disorder, easily supports the finding that appellant met all the MDO criteria. (*People v. Campos* (1995) 32 Cal.App.4th 304, 308-309.) But for the alleged *Sanchez* error, it is not reasonably probable that appellant would have obtained a more favorable result. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Disposition

The judgment (order extending MDO commitment) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Michael L. Duffy, Judge

Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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