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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.

DOUGLAS WALSH,

Defendant and Appellant.

2d Crim. No. B272265
(Super. Ct. No. 16PT-00190)
(San Luis Obispo County)

Douglas Walsh appeals an order recommitting him for treatment to the State Department of State Hospitals as a mentally disordered offender (MDO). (Pen. Code, §§ 2962, 2966, subd. (c).)¹ We conclude, among other things, that substantial evidence supports the finding that Walsh represents a substantial danger of physical harm to others. We affirm.

FACTS

In 2012, Walsh was convicted of stalking a stranger (§ 646.9) and sentenced to state prison. In 2015, the Board of Parole Hearings (BPH) determined that he met the requirements

¹ All statutory references are to the Penal Code.

to be classified as an MDO and committed for treatment. On March 8, 2016, the BPH determined that his severe mental disorder was not in remission. Walsh filed a petition for a court hearing. (§ 2966, subd. (c).) The court appointed counsel for him, and he waived his right to a jury trial.

At trial, Brandi Mathews, a psychologist, testified that Walsh has a severe mental disorder. Walsh suffers from schizophrenia and has “psychotic symptoms” including “auditory hallucinations” and delusions. He currently has the delusions that “the victim in his qualified offense is truly his daughter” and that he is communicating with her through “telepathy.”

Mathews said Walsh’s disorder is not in remission. Walsh was delusional as of March 8, 2016, the date of the BPH determination. Mathews said, “Walsh does represent a substantial danger of physical harm to others due to his severe mental disorder.” Walsh violated a no contact court order in committing his 2012 stalking offense and his stalking conduct continued over the course of “several years.” He attempted to remove the girl victim from school by claiming that he was her father.

Mathews said Walsh “continues to express the same delusions that he did at the time of the qualifying offense.” He is “psychotic” and “lacks insight into his mental illness.” He believes he did nothing wrong in committing his stalking offense. He has 81 tattoos of the victim’s name on his body. If he were released, there would be “an increased risk” that he would stop taking his medications and “his symptoms would likely increase in severity.” Mathews said his symptoms combined with his past behavior “does pose a risk.” His antipsychotic medications had to be increased within the last six months because his symptoms were “becoming more noticeable.” On cross-examination,

Mathews said Walsh takes his medication and attends group meetings at the hospital. Walsh does not “start fights” or make threats. He “has been behaviorally stable during his treatment at the hospital.”

Walsh testified that he is 67 years old and has not had “any contact with” the victim “in the last two years.” The victim is now 21 years old. He said, “I don’t care to contact her. I don’t need to.” If released, he said, “I would move out of the country so this can’t keep going on. It happened six or seven times.”

The trial court found Walsh met the criteria for MDO treatment. It said Mathews’s testimony was “credible and persuasive as to the issue of [Walsh] representing a substantial danger of physical harm to others.”

DISCUSSION

Substantial Evidence

Walsh contends there is insufficient evidence to support the finding that he represents a substantial danger of physical harm to others. He claims the trial court erred by recommitting him for treatment as an MDO. We disagree.

“In reviewing the record to determine the sufficiency of the evidence this court may not redetermine the credibility of witnesses, nor reweigh any of the evidence, and must draw all reasonable inferences, and resolve all conflicts, in favor of the judgment.” (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.)

Walsh filed a section 2966, subdivision (c) petition to challenge his ongoing MDO commitment. In such proceedings, the court determines whether he has a severe mental disorder that is not in remission “and whether by reason of his . . . severe mental disorder, [he] represents a substantial danger of physical harm to others.” (§ 2966, subd. (c).) The evidence is sufficient

where it shows he places “at least one other person at substantial risk of physical harm.” (*People v. Baker* (2012) 204 Cal.App.4th 1234, 1247.)

Mathews testified that Walsh “does represent a substantial danger of physical harm to others” because 1) he “continues to express the same delusions” that he had when he committed his stalking offense; 2) he is “psychotic”; 3) he lacks insight into his mental illness; 4) he believes he did nothing wrong in committing the offense; 5) his antipsychotic medications had to be increased in the last six months because his symptoms were “becoming more noticeable”; 6) his disorder is not in remission; and 7) if released, there would be “an increased risk” he would not take his medications and “his symptoms would likely increase in severity.”

Walsh claims there are conflicts in Mathews’s testimony. He argues she made some statements that tend to undermine the credibility of her testimony about his current dangerousness. But the trier of fact alone resolves evidentiary conflicts, weighs that evidence, and decides the credibility of the witnesses. (*People v. Poe, supra*, 74 Cal.App.4th at p. 830.) Here the trial court found Mathews’s testimony “to be credible and persuasive as to the issue of [Walsh] representing a substantial danger of physical harm to others.”

Walsh suggests that his criminal history reflects that he did not make any threats. But his commitment offense was for stalking. “[P]roof that the defendant made ‘a credible threat’ is a required element for a conviction of stalking.” (*People v. Itehua* (2014) 227 Cal.App.4th 356, 360.) “An implied credible threat may be inferred from a pattern of stalking conduct.” (*Ibid.*) He claims stalking is not “an enumerated” offense “under the MDO statute.” But his stalking crime is both an MDO

commitment offense and it “*necessarily meets* the definition of force.” (*Ibid.*) Mathews testified Walsh committed his stalking conduct over the course of “several years” and in violation of a no contact court order.

Walsh testified that he does not “care to contact” the victim and he does not “need to” contact her. But the credibility of that testimony was a matter for the trial court. Mathews said Walsh attends group meetings, takes his medication, has not started fights or made threats while in the hospital. She said, “[Walsh] has been behaviorally stable during his treatment at the hospital.” But she noted that “[i]t’s a very structured environment.” “The fact that defendant has not misbehaved in a strictly controlled hospital environment does not prove he no longer suffers from a mental disorder that poses a danger to others.” (*People v. Sumahit* (2005) 128 Cal.App.4th 347, 353.) The absence of evidence about recent threats or acts of violence does not change the result. “[A] finding of recent dangerousness is not required.” (*In re Qawi* (2004) 32 Cal.4th 1, 24.) “Penal Code section 2962, subdivision (f) states that ““substantial danger of physical harm” does not require proof of a recent overt act.” (*Ibid.*)

We have reviewed Walsh’s remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.