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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SIOSAIA VUNGAKOTO MOTUMANU,

Defendant and Appellant.

H052285
(Santa Clara County
Super. Ct. No. C2304448)

Defendant Siosaia Vungakoto Motumanu¹ pleaded no contest to one count of second degree robbery and was placed on probation after his motion for mental health diversion was denied. (Pen. Code, § 1001.36.) Defendant argues on appeal that the evidence is insufficient to support the trial court's finding that his undisputed mental health disorders were not a motivating, causal, or contributing factor in his involvement in the robbery. We will reverse the probation order due to insufficient evidence supporting the trial court's finding of ineligibility for mental health diversion under Penal Code section 1001.36, subdivision (b)(2). We will remand the matter for the trial court to exercise its discretion under Penal Code section 1001.36, subdivision (c) regarding defendant's suitability for mental health diversion.

¹ Defendant's surname is sometimes spelled "Motunananu" in the record; we adopt the spelling used in the complaint, information, and medical records for consistency throughout our opinion.

I. TRIAL COURT PROCEEDINGS

Defendant was charged by information with one count of second degree robbery (Pen. Code, § 211), with an allegation that he knew an accomplice was armed with a firearm (Pen. Code, § 12022, subd. (d)).

A. PRELIMINARY HEARING TESTIMONY

An officer testified that he was dispatched to a Milpitas jewelry store during afternoon business hours in January 2023. The proprietor was in the store at the time and told the officer that several men broke the glass display cases with hammers and stole jewelry. The woman believed most of the suspects were Hispanic male adults. The robbery occurred on the day the store's alarm system was turned off and being replaced. The officer later determined that eight men were involved in the robbery. The men all wore masks, and one suspect fired a gun into the ceiling above the woman's head. The suspects ran out of the store and fled in cars waiting outside. The value of the stolen jewelry was estimated at \$450,000.

Another officer collected a DNA swab from a glass shard that appeared to have blood on it. Defendant was identified from a database as a possible source of the DNA. A detective compared surveillance video to defendant's driver's license photo and information. The detective identified a suspect on the surveillance video who appeared to be defendant, based on his "body size, height, assumed weight, and then the facial topography" that the detective "was able to see around the eyes and the nose." The suspect wore a black hooded sweatshirt, a black ski mask, black jeans, black shoes, and dark gloves. Shoes similar to those on the suspect in the surveillance video were recovered in a search of defendant's residence. A DNA sample taken from defendant after his arrest matched the sample from the glass shard.

B. MOTION FOR MENTAL HEALTH DIVERSION

Defendant moved for mental health diversion after he was held to answer the felony charge. Attached to the motion were a September 2023 level of care assessment

from county behavioral health services and a December 2023 psychosocial history report prepared under the supervision of a social worker employed by the public defender's office.

The level of care assessment diagnosed defendant, then age 25, with Unspecified Psychotic Disorder, Substance Induced Psychosis, and Mood Disorder, with secondary diagnoses of Alcohol Use Disorder and Cocaine Use Disorder. Defendant had described his mental health symptoms as follows: "Auditory hallucinations ('the voices ask me what I'm doing all the time or ask me if I'm still in jail'), visual hallucinations ('I see faces and shadows here and there'), paranoia ('I feel like my mind is playing tricks on me'), depression (low motivation, no energy, resorts to self medicating, states he prefers to sleep all day), anxiety ('I feel weird when I'm around others and it makes me isolate'), mood swings ('everything I experience gets to me and my mood changes out of nowhere')." Defendant reported growing up around gang violence and witnessing traumatic events. He reported daily use of cocaine, alcohol, and "Tranquilizer/Benzo[s]." He had never received mental health treatment before his arrest. He was prescribed Zyprexa, was taking it as prescribed, and indicated a willingness to continue mental health treatment.

The psychosocial history report was based on both an interview with defendant and the earlier level of care assessment. Defendant is the son of Tongan immigrants, who were loving and emotionally present parents. He grew up in East Palo Alto as the middle child of five children. His parents were strict and used corporal punishment on defendant when he was growing up. Defendant described witnessing frequent violence in his neighborhood, including multiple drive-by shootings.

Defendant reported that his mental health symptoms began in high school. He felt depressed from witnessing community violence and from receiving "‘whoopings.’" (Italics omitted.) He described having anxiety and symptoms of post traumatic stress disorder, including flashbacks of seeing dead bodies in the street. He started drinking

alcohol at 13 years old, and started using cocaine and Xanax at 14 years old. He told the social worker he used those substances to cope with his environment. Defendant started using methamphetamine after graduating from high school. He also began to experience auditory and visual hallucinations. He “often saw multiple shadows standing near him.” He also described hearing “multiple whispers at one time,” which caused him to feel confused and overwhelmed. The hallucinations made him feel anxious, leading him to self-isolate.

The psychosocial history report noted that defendant had experienced Adverse Childhood Experiences in the form of physical abuse and a history of a household member’s incarceration. (The report gave no information about which household member had that history.) The report stated that those experiences, along with witnessing community violence, can cause “complex trauma”, which it defined as “ ‘the experience of multiple, chronic, and prolonged developmentally adverse traumatic events.’ ” (Italics omitted.) The report noted that effects associated with complex trauma and Adverse Childhood Experiences can include “suicidal and self-harming behavior, depression, multiple health problems, drug use, and offending behavior.” The report opined that defendant’s chronic exposure to trauma “possibly impaired the function of his prefrontal cortex, which is responsible for executive control over social connection, behavior, goal-directed behavior, emotions, and attention.” The report concluded that defendant “would benefit from a dual diagnosis program where he can address his complex trauma and substance use.”

The trial court denied the mental health diversion motion after a hearing. Although the trial court acknowledged that defendant had a qualifying mental health disorder, it found by clear and convincing evidence that the disorder was not a “causal contributing or motivating factor” in the charged crime. The court noted that the robbery involved collaboration, with eight men wearing ski masks smashing glass cases, taking jewelry, and fleeing in cars that were waiting for them.

After diversion was denied, defendant agreed to a negotiated disposition under which he pleaded no contest to second degree robbery (Pen. Code, § 211), and the prosecution moved to dismiss the firearm allegation. The trial court suspended imposition of sentence, placed defendant on formal probation for two years, and dismissed the firearm allegation.

II. DISCUSSION

“Since 2018, [Penal Code] section 1001.36 has afforded trial courts discretion to grant criminal defendants suffering from certain recognized mental disorders pretrial diversion to receive mental health treatment.” (*People v. Brown* (2024) 101 Cal.App.5th 113, 119.) “Diversion allows for the suspension of criminal proceedings and potential dismissal of charges upon successful completion of mental health treatment.” (*Sarmiento v. Superior Court* (2024) 98 Cal.App.5th 882, 890.) The express purpose of the legislation was to increase diversion of eligible individuals, and later “amendments have only confirmed the Legislature’s desire to expand mental health treatment through diversion.” (*Id.* at p. 891.)

As currently enacted, a defendant accused of a qualifying offense is eligible for mental health diversion if the defendant has been diagnosed with a qualifying mental health disorder which was a significant factor in the commission of the charged offense. (Pen. Code, § 1001.36, subd. (b).) A qualifying diagnosis creates a rebuttable presumption that the disorder was a significant factor in the commission of the offense. The presumption can be overcome if “there is clear and convincing evidence that [the disorder] was not a motivating factor, causal factor, or contributing factor to the defendant’s involvement in the alleged offense.” (*Id.*, subd. (b)(2).) In making that determination, a “court may consider any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant’s mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed

symptoms consistent with the relevant mental disorder at or near the time of the offense.” (*Ibid.*) Even if a defendant meets those eligibility criteria, a trial court retains discretion to deny diversion if it finds a defendant does not meet enumerated suitability criteria. (*Id.*, subd. (c).)

We review for substantial evidence a decision that a qualifying mental health disorder (which the trial court found to exist here) was not a motivating factor, causal factor, or contributing factor in the charged conduct—a finding that must be supported by clear and convincing evidence. (*Lacour v. Superior Court* (2025) 110 Cal.App.5th 391, 401 (*Lacour*).) Given that standard, on appeal we must determine “whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995–996.) We also “must view the record in the light most favorable to the prevailing party below and give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence.” (*Id.* at p. 996.)

We begin by noting that although the trial court acknowledged the clear and convincing evidence standard which applied to its analysis of whether defendant’s mental disorders contributed to his involvement in the robbery, the court’s discussion of the evidence was cursory. It found defendant’s mental health was not a “causal[,] contributing or motivating factor,” citing the “detail with which this was done and the collaboration and the swift actions and the planning and all of the activities done -- not just by this client, allegedly, but also by a group of people.” We agree the record supports findings that defendant engaged in some level of preparation and actively participated in the robbery (as evidenced by his blood on glass from a broken display case). But there was no evidence to suggest that defendant planned or played any leadership role in the robbery. Defendant’s mere participation in a crime involving coordination among eight people is insufficient evidence that his mental health disorders

were not a contributing factor in his involvement in the crime. Even considering the record in the light most favorable to the challenged ruling, we conclude it does not contain substantial evidence from which a reasonable trier of fact could have found it highly probable that defendant's mental disorders were not a motivating factor, causal factor, or contributing factor in his involvement in the robbery.

Our decision is consistent with the reasoning of *Lacour*, *supra*, 110 Cal.App.5th 391 and, more recently, *People v. Harlow* (2025) 113 Cal.App.5th 485. Lacour moved for mental health diversion after being charged with several burglary counts. Lacour had been diagnosed with “ ‘Bipolar II disorder ... current episode depressed with moderate-severe anxious distress and co-occurrence of Posttraumatic Stress disorder.’ ” (*Id.* at p. 396.) The defense argued at the diversion hearing that Lacour learned before the burglaries that his girlfriend was pregnant. “Feeling hopeless and depressed, and bolstered by the presence of others who had planned the burglaries, petitioner went along because he had little else to live for.” (*Id.* at p. 397.) The lower court found Lacour ineligible for diversion and denied the motion. (*Id.* at p. 398.) The appellate court granted Lacour’s mandate petition, finding the record did not support the implicit finding that Lacour’s mental disorder was not a contributing factor in his involvement in the burglaries. (*Id.* at p. 403.) The court noted there was no evidence Lacour planned the burglaries, and his statements to law enforcement upon his arrest, such as “ ‘I don’t care what happens to me,’ ” could support a finding that he was experiencing depressive symptoms of his mental disorder at the time of the offense. (*Id.* at p. 404.) The *Lacour* court emphasized that the “absence of evidence proving that petitioner’s mental disorder *was* a factor in the commission of the offenses is not substantial evidence supporting a finding by clear and convincing evidence that petitioner’s mental disorder *was not* a factor in the commission of the offenses.” (*Ibid.*) Reaching a similar conclusion, the appellate court in *Harlow* also emphasized that “a qualifying diagnosis creates a presumption that the defendant’s mental condition

contributed to his criminal behavior. And the prosecution can only rebut this presumption by producing clear and convincing evidence that there was no causal connection.” (*Harlow*, 113 Cal.App.5th at p. 490.)

The Attorney General argues here that there was no evidence of defendant experiencing a psychotic episode or acute mental health symptoms during the robbery. But Penal Code section 1001.36 does not require such a showing. A defendant’s diagnosis with a qualifying mental health disorder creates a *presumption* that the disorder was a significant factor in the commission of the charged offense, which must be rebutted by *clear and convincing* evidence that it was not a motivating, causal, or contributing factor. (Pen. Code, § 1001.36, subd. (b)(2).) The statutory presumption is not overcome simply by the absence of evidence that the mental disorder was a motivating factor, or the absence of evidence that the defendant was actively experiencing symptoms while committing the crime. (Accord, *Lacour, supra*, 110 Cal.App.5th at p. 404.) It is important to note, however, that the prosecution is not required to produce affirmative evidence to counter presumed eligibility. The statute allows a trial court to consider “any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant’s mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense.” (Pen. Code, § 1001.36, subd. (b)(2).) Although not required to produce evidence, the prosecution may do so in order to rebut the presumption. (Cf., *People v. Oneal* (2021) 64 Cal.App.5th 581, 592 (*Oneal*) [record included reports by two experts who “opined that [Oneal’s] psychotic or schizoaffective disorder was not responsible for, or a motivating factor in, [his] commission of the offenses”].) We acknowledge that the record here contains no expert opinion about how or whether defendant’s mental health disorders may have contributed to his involvement in the robbery.

The Attorney General relies on *Oneal*, which affirmed a finding that Oneal's mental disorder was not a significant factor in the commission of the charged offenses. But *Oneal* is dissimilar to this case in two ways: First, the record there contained reports from two experts (relating to an insanity plea) who both opined that Oneal's mental disorders did *not* contribute significantly to the charged conduct. (*Oneal, supra*, 64 Cal.App.5th 581 at p. 592.) Second, *Oneal* was decided before the Legislature amended Penal Code section 1001.36 to add the express presumption of eligibility operating here. (Compare *Oneal*, at p. 592 [quoting Pen. Code, former § 1001.36, subd. (b)(1)(B), which conditioned eligibility on the trial court being “ ‘satisfied that the defendant’s mental disorder was a significant factor in the commission of the charged offense’ ”] with Pen. Code, § 1001.36, subd. (b)(2) [“If the defendant has been diagnosed with a mental disorder, the court shall find that the defendant’s mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant’s involvement in the alleged offense.”].)

We conclude the trial court’s finding that defendant is ineligible for mental health diversion must be reversed for lack of substantial evidence in this record to meet the clear and convincing standard established by the Legislature in Penal Code section 1001.36, subdivision (b)(2). We express no opinion, however, as to defendant’s suitability for mental health diversion, which is a determination yet to be made by the trial court under Penal Code section 1001.36, subdivision (c).

III. DISPOSITION

The order denying mental health diversion is reversed. The matter is remanded for the trial court to consider defendant’s suitability for mental health diversion under Penal Code section 1001.36, subdivision (c).

Grover, Acting P. J.

WE CONCUR:

Lie, J.

Rodriguez, J.*

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The People v. Motumanu

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