

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
ALLYN HOPKINS,  
Defendant and Appellant.

A133355  
(Del Norte County  
Super. Ct. No. 92-187-X)

Defendant challenges an order authorizing involuntary administration of psychotropic medication to him. We conclude that the prosecution adequately proved defendant is a danger to others without medication, and affirm the judgment.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

Defendant has a lengthy, essentially unrelenting history of violent criminal conduct, substance abuse, mental disorders, and psychiatric hospitalizations. He was first committed to juvenile hall at age 15 for three counts of battery and making false bomb threats. He was convicted in 1991 of attempted murder and assault with a deadly weapon on a California Youth Authority correctional officer (Pen. Code, §§ 664/187, 245, subd. (c)). Subsequently, while under the influence of auditory hallucinations, he assaulted a cell mate with a weapon, smashed his head to the floor, and attempted to strangle him with a rope. In 1994, he was found not guilty by reason of insanity of two counts of possession of a weapon by a prisoner and one count of assault with a deadly weapon by a

<sup>1</sup> Part of our recitation of the pertinent facts is taken from our prior opinion in *People v. Hopkins* ((Aug. 23, 2011, A130130) [nonpub. opn.]), which is included in the record on appeal.

prisoner (Pen. Code, §§ 4502, subd. (a), 4501). His insanity plea was vacated in 2004, and he plead guilty to the charges.

Defendant was subsequently found to be a mentally disordered offender (MDO) pursuant to Penal Code section 2970, and committed to Coalinga State Hospital in December of 2009.<sup>2</sup> Thereafter, he was repeatedly found to meet the criteria for involuntary treatment as an MDO through November of 2011. Most recently, defendant was found to suffer from a severe mental disorder that renders him a substantial danger of physical harm to others, and was ordered recommitted to Coalinga State Hospital until November of 2011. An order was also granted to administer involuntary psychotropic medication to defendant.

On July 20, 2011, a petition for an order to further extend defendant's commitment as an MDO was filed, along with a subsequent request to extend the order to administer involuntary psychotropic medication to defendant. Defendant waived a jury trial on the MDO extension petition and submitted the matter on the extension evaluation report submitted by the Coalinga State Hospital forensic psychologist. The trial court found that defendant meets the criteria specified in section 2962, subdivision (a), for continued commitment as an MDO, and granted the petition. Defendant's commitment was extended until November 26, 2012.<sup>3</sup>

A contested hearing was thereafter held on the request to extend the order to administer psychotropic medication to defendant, on the basis that he is a continued danger to others. The prosecution offered expert testimony from Dr. Joseph Cook, defendant's current treating psychiatrist at Coalinga State Hospital. Dr. Cook reviewed defendant's recent psychiatric records and forensic evaluations.

Dr. Cook testified that the reports indicate recent assaultive behavior by defendant.<sup>4</sup> Defendant revealed to staff that he punched and kicked a peer, and "stuck

---

<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>3</sup> The order extending defendant's commitment as an MDO is not at issue in this appeal.

<sup>4</sup> The reports were admitted for the limited purpose of providing the basis for the doctor's opinion.

him with a sharp object,” that was recovered by staff. After defendant was transferred to Dr. Cook’s unit, on June 4, 2011, he began “slamming doors” in the hallway, and when confronted by a peer “began hitting him.”

On June 27th, in the dining room defendant hit someone several times in the head and neck. On July 11th, during an argument with a peer “regarding television,” defendant assumed a “fighting stance” until staff intervened. On July 18th, he advised staff that “someone was ‘mad-dogging him’ and . . . he would have to do something about it.” On one occasion defendant became angry that his medication was changed to crushed or liquid form – to prevent him from placing it in his cheek, and subsequently spitting it out – and “kicked the door to the psychologist’s office.”

Dr. Cook also provided a description of defendant’s reported symptoms: both manic and depressive disorders, manifested by extremely hostile and aggressive behavior; auditory hallucinations; and, both paranoid and delusional thinking. Dr. Cook diagnosed defendant as suffering from “severe psychotic disorder along with a mood disorder,” “schizoaffective disorder, bipolar type,” along with antisocial personality disorder. Defendant is on numerous medications to treat both the psychotic and mood disorders: the anti-psychotic medication Haldol to treat his auditory hallucinations and paranoid/delusional thinking; lithium and Depakote act as mood stabilizers; anti-depressant medication; Cogentin to treat side effects from the anti-psychotic medications; Klonopin to reduce anxiety and frustration; and, “intramuscular back-up agents.”

Dr. Cook testified that the medication regimen has been effective in reducing defendant’s paranoia, his delusional thinking, and auditory hallucinations, diminishing his aggressiveness, keeping his mood stable to moderate his manic and depressive episodes, and “reducing dangerousness” due to “schizoaffective disorder.” If defendant stopped taking the medication he “would become extremely paranoid,” irritable and angry, with a loss of impulse control. His degree of aggression and violence would immensely increase. Dr. Cook offered the opinion that without the prescribed medication defendant would become “extremely dangerous” to others within a day or two. He also

testified that defendant vacillates between agreeing to “take these medications,” and becoming oppositional to the extent that he has “cheeked” and expelled the medications.

Defendant testified that he suffers side effects from the medication: blurred vision, poor concentration, dry throat and mouth, and fatigue. He has voluntarily taken his prescribed medication, despite the side effects, except when he was previously “involved with Christian Science” while at Vacaville Hospital. Defendant recognizes that he suffers from a mental illness, and has made a conscious decision to continue to take the medications, which he agreed are “helpful” to him.

At the conclusion of the hearing the trial court found that defendant represents a “substantial danger” to the “life or physical safety of others” if he is not ordered to take his medications. The court granted the request to continue the involuntary administration of psychotropic medication to defendant until September 9, 2012, and this appeal followed.

### **DISCUSSION**

Defendant argues that the “order for involuntary medication” is “not supported by substantial evidence and must be reversed.” He points out that Dr. Cook’s expert opinion testimony was based on “hearsay statements” of “hospital records and other information” gained from looking at reports or discussions with staff, rather than personal knowledge. He submits that while the psychiatrist was justified in considering the hearsay information as “the basis of his opinion,” the admission of the “details contained in the hospital materials” was inadmissible for the truth of the matter to prove the element of “recent incidents of violence” necessary to sustain the continuation of involuntary administration of medication. Defendant claims there is no hearsay exception on which to base admission of the facts of the “incidents of violence” articulated in the medical records, and without the hearsay evidence the order for continuation of involuntary medication does not have adequate support in the record. He adds two additional contentions: first, that his voluntary compliance with treatment obviates the need for the order; and second, that “less intrusive alternatives” were not considered.

We preface our analysis by observing that defendant’s commitment as an MDO does not mean that he is incompetent to participate in his own medical decisions. (*In re Qawi* (2004) 32 Cal.4th 1, 24 (*Qawi*)). “[T]he coercive administration of [antipsychotic] medication, with its potentially serious side effects, imposes a significant additional burden on the MDO’s liberty interest.” (*In re Calhoun* (2004) 121 Cal.App.4th 1315, 1353.) “The right to refuse necessary medical treatment, including antipsychotic drugs, is a liberty interest that is protected by the due process clause of the Fifth Amendment of the United States Constitution. [Citation.] The right of a competent adult to refuse antipsychotic drugs is also protected by the common law and article I, section 1 of the California Constitution.” (*People v. Fisher* (2009) 172 Cal.App.4th 1006, 1012–1013.) “The right of privacy guaranteed by the California Constitution, article I, section 1,” which “ ‘guarantees to the individual the freedom to choose to reject, or refuse to consent to, intrusions of his bodily integrity[.]’ [citation]” “clearly extends to the right to refuse antipsychotic drugs.” (*Qawi, supra*, at p. 14; see also *In re Luis F.* (2009) 177 Cal.App.4th 176, 183; *People v. McDuffie* (2006) 144 Cal.App.4th 880, 886–887.)

The right of a person committed as an MDO “to refuse antipsychotic drugs is qualified[,] and may be overcome in nonemergency situations by a judicial determination either that the person is incompetent or that he or she is dangerous within the meaning of [Welfare and Institutions Code] section 5300: ‘[A]n MDO can be compelled to be treated with antipsychotic medication under the following nonemergency circumstances: (1) he is determined *by a court* to be incompetent to refuse medical treatment; (2) the MDO is determined *by a court* to be a danger to others within the meaning of Welfare and Institutions Code section 5300.’ ” (*People v. Fisher, supra*, 172 Cal.App.4th 1006, 1013, quoting from *Qawi, supra*, 32 Cal.4th 1, 27; see also *People v. Dunkle* (2005) 36 Cal.4th 861, 892.)

“We review an order authorizing involuntary administration of antipsychotic medication for substantial evidence. [Citation.] In the case of the MDO, the order must be supported by evidence that either the MDO is incompetent to refuse medical treatment or that the MDO is a danger to others within the meaning of [Welfare and Institutions

Code] section 5300. [Citation.] [Welfare and Institutions Code s]ection 5300 requires a particularized showing that the person is a demonstrated danger and that he or she was recently dangerous. [Citation.] In the case of an MDO, the commitment offense may establish demonstrated dangerousness and recent dangerousness consists of ‘violent or threatening acts specified in section 5300 within the year prior to the commitment or recommitment.’ [Citation.]” (*People v. Fisher, supra*, 172 Cal.App.4th 1006, 1016.) In our review we draw all reasonable inferences and resolve all conflicts in favor of the judgment. (*People v. Martin* (2005) 127 Cal.App.4th 970, 975; *People v. Valdez* (2001) 89 Cal.App.4th 1013, 1016; *People v. Poe* (1999) 74 Cal.App.4th 826, 830.)

***I. The Admissibility of the Evidence Offered in Support of the Involuntary Medication Order.***

The focus of defendant’s challenge to the involuntary medication order is upon the testimony of his treating psychiatrist at Coalinga State Hospital, Dr. Cook, who relied on hearsay references in reports to numerous incidents of recent assaultive behavior by defendant. “The law governing this issue is well settled. ‘Expert testimony may . . . be premised on material that is not admitted into evidence so long as it is material of a type that is reasonably relied upon by experts in the particular field in forming their opinions. (Evid. Code, § 801, subd. (b); [citations].) . . . [¶] . . . And because Evidence Code section 802 allows an expert witness to “state on direct examination the reasons for his opinion and the matter . . . upon which it is based,” an expert witness whose opinion is based on such inadmissible matter can, when testifying, describe the material that forms the basis of the opinion. [Citations.]” (*People v. Bell* (2007) 40 Cal.4th 582, 608.) “An expert may generally base his opinion on any ‘matter’ known to him, including hearsay not otherwise admissible, which may ‘reasonably . . . be relied upon’ for that purpose.” (*People v. Montiel* (1993) 5 Cal.4th 877, 918.) “So long as this threshold requirement of reliability is satisfied, even matter that is ordinarily *inadmissible* can form the proper basis for an expert’s opinion testimony.” (*People v. Gardeley* (1996) 14 Cal.4th 605, 618; see also *People v. Eubanks* (2011) 53 Cal.4th 110, 142; *In re Fields* (1990) 51 Cal.3d 1063, 1070.)

But “ “[w]hile an expert may state on direct examination the matters on which he relied in forming his opinion, he may not testify as to the details of such matters if they are otherwise inadmissible. . . .” [Citation.]” (*People v. Coleman* (1985) 38 Cal.3d 69, 92.) The expert’s ability to relate hearsay statements in explaining the basis of his or her opinions has always been limited by Evidence Code section 352. (*People v. Gonzales* (2011) 51 Cal.4th 894, 923.) Though experts are “given considerable leeway as to the material on which they may rely, the rules governing actual communication to the jury of any hearsay matter reasonably relied on by an expert are more restrictive.” (*Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1524.) The basis of this restriction is Evidence Code section 352, which limits the general admissibility of hearsay basis evidence under Evidence Code section 802. (*People v. Gardeley, supra*, 14 Cal.4th 605, 618–619.) “[P]rejudice may arise if, “ “under the guise of reasons,” ’ the expert’s detailed explanation “ “[brings] before the jury incompetent hearsay evidence.” ’ [Citations.]” (*People v. Montiel, supra*, 5 Cal.4th 877, 918–919.) “Nor may a court rely on hearsay as related by an expert as the basis for his or her opinion as independent proof of the facts asserted in the hearsay statement: “[A] witness’s on-the-record recitation of sources relied on for an expert opinion does not transform inadmissible matter into “independent proof” of any fact. [Citations.]’ [Citations.]” (*People v. Baker* (2012) 204 Cal.App.4th 1234, 1246.)

“ “[D]isputes in this area must generally be left to the trial court’s sound judgment.” [Citation.]” (*People v. Catlin* (2001) 26 Cal.4th 81, 137.) A trial court “ “has considerable discretion to control the form in which the expert is questioned” ’ ” to prevent the admission of incompetent hearsay and the associated risk of improper consideration of the evidence “ “as independent proof of the facts recited therein.” [Citation.]’ [Citation.]” (*People v. Bell, supra*, 40 Cal.4th 582, 608.) The trial court’s ruling “will not be upset unless there is a clear showing of abuse of discretion.” (*People v. Dean* (2009) 174 Cal.App.4th 186, 199.)

Upon defendant’s objection the trial court limited the consideration of the reports of recent violence to providing the basis for the treating psychiatrist’s opinion. The

reports were reliable, derived as they were from hospital records and staff observations. (See *People v. Dean, supra*, 174 Cal.App.4th 186, 196; *Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 743.) “Psychiatrists, like other expert witnesses, are entitled to rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient’s mental state. [Citations.] On direct examination, the expert witness may state the reasons for his or her opinion, and testify that reports prepared by other experts were a basis for that opinion.” (*People v. Campos* (1995) 32 Cal.App.4th 304, 307–308 (*Campos*)). “Hearsay relied upon by experts in formulating their opinions is not testimonial because it is not offered for the truth of the facts stated but merely as the basis for the expert’s opinion.” (*People v. Cooper* (2007) 148 Cal.App.4th 731, 747.)

Nor did the court abuse its discretion by admitting the hearsay information as a basis for the psychiatrist’s opinion. (Cf., *Campos, supra*, 32 Cal.App.4th 304, 308.) Defendant was tried by the court, rather than a jury. We must assume the trial court considered the testimony solely for the proper purpose of assessing the expert’s credibility, and not as independent proof of the facts contained therein. (*People v. Martin, supra*, 127 Cal.App.4th 970, 977.) In rendering its decision the court noted the “hearsay nature” of some of the testimony, but found it “reliable hearsay.” We agree, and find that admission of the evidence relied on by Dr. Cook to support his opinion was not error.

As for proof of recent acts of violence as required to justify an involuntary medication order, the court was presented with additional supporting admissible evidence. In addition to defendant’s lengthy history of violence that demonstrated his dangerousness, evidence of violent or threatening acts within the year prior to the recommitment was presented, even without consideration of the hearsay information. Some of the incidents of violent behavior were personally reported by defendant to Dr. Cook or staff, and thus were properly considered as admissions by the trial court to establish dangerousness. (See *People v. Townsend* (2010) 182 Cal.App.4th 1151, 1156; *People v. Whitney* (2005) 129 Cal.App.4th 1287, 1299.) Dr. Cook also personally

observed defendant yell and kick the door of the psychologist's office when he became angry due to the change in form of his medications to prevent disposal through expulsion.

## ***II. The Evidence to Support the Involuntary Medication Order.***

The admissible evidence, considered in its entirety, convincingly supports the order to continue the involuntary administration of psychotropic medication to defendant. Defendant's extensive, protracted violent history and continuing assaultive or threatening acts adequately establish that he is dangerous within the meaning of Welfare and Institutions Code section 5300. Dr. Cook's opinion that defendant is dangerous is supported not only by the myriad of reported instances of anger and violence, but his personal observations and treatment of defendant. He diagnosed defendant as suffering from severe schizoaffective disorder, bipolar type, and antisocial personality disorder, with symptoms that include paranoid and delusional thinking, auditory hallucinations, racing thoughts, very loud and pressured speech, extremely hostile and aggressive behavior, anxiety and frustration. Dr. Cook testified that the prescribed medications have been effective in decreasing defendant's distress, aggression, hallucinations, and lack of impulse control. He added that without the medications defendant would become extremely paranoid, irritable, angry, and aggressive, and his level of "violence would go extremely high."

Defendant maintains that the "involuntary treatment" was not established as a "medical necessity," given his voluntary "compliance" with his medication regime. His argument suffers from two flaws. First, the standards articulated by the California Supreme Court in *Qawi* do not demand proof that the MDO has refused to take medication. Instead, the determinative and essential finding is defendant is a demonstrated danger and that he or she was recently dangerous. (*Qawi, supra*, 32 Cal.4th 1, 27–28; *In re Calhoun, supra*, 121 Cal.App.4th 1315, 1354.) Second, the record does not establish that defendant is consistently compliant with his prescribed course of therapy. Dr. Cook testified that defendant "has a great deal of ambivalence about his medications." According to Dr. Cook, defendant will cooperate on some occasions, but the "following day" may state, "I don't want to take medications." Dr. Cook further

testified that defendant “cheeked” medication, meaning that instead “of swallowing it,” he “would keep it alongside his cheeks or gums,” then walk away and “spit it out.” The record proves that defendant cannot be consistently relied on to take his medication voluntarily, and is dangerous unless required to do so.

Finally, defendant claims the prosecution failed to establish that “less intrusive alternatives” to antipsychotic medication were considered. In *Sell v. United States* (2003) 539 U.S. 166, 180–181, the United States Supreme Court held antipsychotic drugs may be involuntarily administered to a mentally ill criminal defendant in order to render him competent to stand trial only if four factors were present: (1) “*important* governmental interests are at stake”; (2) taking account of less intrusive alternatives, involuntary medication will “*significantly further*” the concomitant state interests of timely prosecution and a fair trial; (3) “involuntary medication is *necessary* to further those interests”; and (4) “administration of the drugs is *medically appropriate*.” (See also *id.* at p. 186; *Carter v. Superior Court* (2006) 141 Cal.App.4th 992, 1000; *People v. O’Dell* (2005) 126 Cal.App.4th 562, 569.) The court in *Sell* “acknowledged that the question of involuntary medication to restore an accused’s ability to stand trial is different from involuntarily medicating an inmate who is dangerous to himself or others when the refusal to take the medication puts his health gravely at risk.” (*Carter, supra*, at p. 1000.) The consideration of less intrusive alternatives has not been found to be a requirement when determining the propriety of involuntary administration of medication to an inmate who is dangerous to others. (See *People v. Christiana* (2010) 190 Cal.App.4th 1040, 1049, fn. 4.) In any event, as we read the record less intrusive alternatives were taken into account in defendant’s case. Dr. Cook confirmed that without the current “psychiatric medications” defendant would be “extremely dangerous.” He also testified that defendant’s medication was adjusted to address his complaints of “restlessness” as an adverse side effect.

We conclude that the requisite finding of dangerousness is supported by admissible, substantial evidence. Accordingly, the judgment is affirmed.

---

Dondero, J.

We concur:

---

Marchiano, P. J.

---

Margulies, J.

*People v. Hopkins, A133355*