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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,
Plaintiff and Respondent,
v.
VLADISLAV BOGODIST,
Defendant and Appellant.

A134978
(Alameda County
Super. Ct. No. RG12611071)

Vladislav Bogodist appeals from an order denying his request for relief from a firearms prohibition under Welfare & Institutions Code section 8103 subdivision (f)(5).¹ He contends that the trial court deprived him of due process because it improperly placed the burden of proof on him and communicated ex parte with the deputy district attorney. He also argues that the trial court's decision was based on insufficient evidence. We affirm.

I. FACTUAL BACKGROUND

On August 27, 2010, Bogodist was transferred from San Francisco General Hospital and involuntarily admitted to John Muir Behavioral Health Center (John Muir) pursuant to section 5150 with severe paranoid ideation. At the time of his admission he was very psychotic and paranoid. Bogodist's family reported to the police that Bogodist

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

thought he was being followed by the FBI, he slept with a gun, and he slept only two to three hours per night.

At the time of the initial psychiatric evaluation, Dr. Jerry Gelbart found that Bogodist “was very delusional in terms of his beliefs that he was being surveyed by the FBI . . . was describing very paranoid delusion and was also paranoid on the unit.” According to Bogodist’s family, his mental health had been deteriorating and they had encouraged him to seek treatment.

Prior to his admission, Bogodist was suspended from his job as an official on the New York Stock Exchange due to an altercation with a coworker. In November 2010, he was allowed to return to work after he passed a psychiatric evaluation. In January 2012, Bogodist filed a request for relief from the firearms prohibition under section 8103. During the hearing on the request, Bogodist presented a letter from a psychiatrist dated August 30, 2010 and a psychiatric evaluation dated October 25, 2010. In his testimony at the hearing, Bogodist admitted bringing three of his guns from his home in Walnut Creek to his home in San Francisco, but denied having slept with them. He also denied telling his family that he was being followed by the FBI. The trial court denied his request to be relieved of the firearms prohibition. This timely appeal followed.

II. DISCUSSION

A. The Trial Court Did Not Deprive Bogodist of Due Process

Bogodist contends the trial court denied him due process by impermissibly placing the burden of persuasion and proof on him and by communicating ex parte with the deputy district attorney.

Under section 5150, a person who, upon probable cause, is a danger to himself or others as a result of a mental disorder may be detained in a mental health facility for 72 hours. (*People v. Keil* (2008) 161 Cal.App.4th 34, 38 (*Keil*)). “A person who has so been detained may not own, possess, control, receive or purchase any firearm for a period of five years after the detention [citation], unless the person requests a hearing and the

trial court finds that the People have not met their burden to show ‘by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.’ ” (*Keil, supra*, 161 Cal.App.4th at p. 38; § 8103, subd. (f)(1),(6).) In its minute order denying Bogodist’s request for relief from the firearms prohibition, the trial court stated, “[i]n that the People have met their burden, the Court does not find that the Petitioner has proved that he can operate firearms in a safe and lawful manner” Bogodist argues that the court’s order reflects that it erroneously placed the burden of proof on him. The record refutes his argument.

At the hearing on Bogodist’s request, the court’s remarks in denying the request indicate that it placed the burden of proof on the People: “[T]he People have carried their burden by a preponderance of the evidence that Petitioner would not be likely to use firearms in a safe and lawful manner.” This oral pronouncement of the court’s order controls over the clerk’s minutes. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Moreover, the record demonstrates that the court commenced the hearing noting that the People bore the burden of proof on the issue of whether Bogodist’s weapons could be safely returned, and again, stated at the end of the hearing that the People had carried their burden by a preponderance of the evidence. Despite the ambiguous minute order, it is clear from the record that the court applied the correct standard.

Bogodist next contends that he was denied due process because the court considered his medical records from John Muir which were never disclosed to him. Again, the record reveals otherwise.

As the Attorney General points out, section 5150 requires the mental health treatment facility providing the 72-hour detention to immediately submit a report to the Department of Justice containing the identity of the person detained and the legal grounds for the admission. (§ 8103, subd. (f)(2).) Upon a request for relief from the firearms prohibition, the Department of Justice is required to file a copy of its report on the detained person with the superior court. (§ 8103, subd. (f)(5).) “The reports shall be disclosed upon request to the person and to the district attorney.” (*Ibid.*)

While the record does not show whether Bogodist submitted a request for his medical records, it does demonstrate that he had them. Indeed, at the hearing on his request to lift the firearms prohibition, Bogodist testified, “I have a report from John Muir. There is nothing done that was out of ordinary.” His testimony also referenced the report in connection with medication that was prescribed. The record contains the following colloquy: “[MS. JONES-DICKSON (deputy district attorney)]: Did they [John Muir] give you a prescription when [you] left? [¶] [BOGODIST]: Yeah, but they said you don’t have to take it. We’re just giving it to you, and I have that in the report.” Hence, our reading of the record fails to support Bogodist’s claim that his medical records from John Muir were not disclosed to him.

Bogodist also argues that the trial court denied him due process by failing to mark and lodge the exhibits he presented, and by communicating with the district attorney after the conclusion of the hearing. We disagree.

Bogodist introduced two letters from psychiatrists, a 13-page letter by Dr. Raffle summarizing a psychiatric evaluation, and a letter by Dr. Miyamoto consisting of a single three line paragraph certifying Bogodist’s fitness to return to work. The court accepted the documents and stated that it would review them. The court remarked, “Well, I need to review the documents that you have submitted to me. Also, I need to review the medical records before I make a decision in this matter”

Bogodist faults the court for not marking the letters as exhibits and lodging them. He, however, concedes that due process does not require that exhibits be handled in any particular manner. While the better practice would have been for Bogodist to request that the documents be marked as exhibits and admitted into evidence, the failure to do so was not fatal as the court indicated that it would consider the letters in making its determination.² (See *Walsh v. Walsh* (1952) 108 Cal.App.2d 575 [appellate court held document was in evidence despite not having been offered in evidence or marked as an exhibit because the parties and trial court treated it as if it were].)

² We note that Bogodist appeared in propria persona in the trial court.

Bogodist also suggests that the court did not review the documents because the reporter's transcript indicates that the court rendered its decision "the moment [Bogodist] left the courtroom and shut the door behind him." The record, however, does not state how much time elapsed between the time that Bogodist left the courtroom and the court made its ruling. The court stated that it would review Bogodist's evidence as well as his medical records before rendering its decision. We must presume that it did so. (Evid. Code, § 664.) That the decision was rendered in the presence of the deputy district attorney did not violate Bogodist's rights. There was no communication between the deputy district attorney and the court; the court simply stated its decision. No error appears.

B. The Trial Court Based Its Decision on Substantial Evidence

Finally, Bogodist asserts that the evidence is insufficient to support the court's decision. "In determining whether a court's ruling is supported by substantial evidence [the appellate court should] view the whole record in a light most favorable to the ruling, resolving all evidentiary conflicts and drawing all reasonable inferences supporting the court's decision." (*People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1553.) "We affirm if 'substantial evidence supports the court's determination that return of the firearms to appellant would be likely to result in endangering appellant or other persons.'" (*Keil, supra*, 161 Cal.App.4th at p. 38; see *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 427–428 (*Rupf*).

The trial court "may properly consider whether the circumstances leading to the section 5150 detention might occur again and whether possession or control of those confiscated weapons in such circumstance would pose a risk of danger to appellant or to others." (*Rupf, supra*, 85 Cal.App.4th at p. 424.) Here, Bogodist's records from John Muir indicate that Dr. Gelbart diagnosed Bogodist with psychosis, held him for two and a half days, and treated him with the antipsychotic Risperdal. According to his family, Bogodist thought he was being followed by the FBI, slept with a gun, and slept only two to three hours per night. His family reported that his mental health had been deteriorating during the month prior to his section 5150 hold and they had encouraged him to seek

treatment. His mother also reported to the staff at John Muir that Bogodist had been in five car accidents in the last year and that he only slept two to three hours per night. During Bogodist's psychiatric hold, Dr. Gelbart repeatedly urged him to stay on for treatment at John Muir, but he refused and instead agreed to stay on the prescribed medication and see a professional for follow-up treatment. Bogodist was also suspended from his job due to an altercation with a coworker, and was not allowed to return to work until he passed a psychiatric evaluation. In sum, there was substantial evidence to support the trial court's finding that return of firearms to Bogodist under these circumstances would pose a danger to him or others.

A single incident leading to a section 5150 commitment is sufficient to support a section 8103 finding that an individual would not be likely to use firearms in a safe manner. (*People v. Jason K.*, *supra*, 188 Cal.App.4th at p.1554.) Here, numerous factors supported the trial court's decision. Not only had Bogodist's mental health been deteriorating for some time prior to his detention, he declined to seek treatment and when offered extended treatment at John Muir, he refused it. Moreover, although he had returned to work by the time of the hearing, the court could infer based on the evidence that he might again experience the stress there that led to his section 5150 hold. (See *Rupf*, *supra*, 85 Cal.App.4th at p. 424.) On this record, the trial court properly declined Bogodist's request for relief from the section 8103 firearms prohibition.

III. DISPOSITION

The order is affirmed.

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.