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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.

SCOTT S. MORRISON,

Defendant and Appellant.

2d Crim. No. B240932  
(Super. Ct. No. F468931)  
(San Luis Obispo County)

Scott S. Morrison appeals from an order committing him to the Department of Mental Health (DMH) for treatment as a mentally disordered offender (MDO). (Pen. Code, §§ 2962, 2966, subd. (c).)<sup>1</sup> He contends the evidence does not support the finding that he represents a substantial danger of physical harm to others. We affirm.

FACTS AND PROCEDURAL BACKGROUND

In 2008, appellant was convicted of battery on a peace officer and sentenced to three years in state prison. (§ 243, subd. (b).) On December 2, 2011, the Board of Prison Terms (BPT) certified appellant as an MDO and committed him for treatment. Appellant filed a petition challenging the BPT determination and waived jury trial. (§ 2966, subs. (b) & (c).)

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<sup>1</sup> All statutory references are to the Penal Code.

Dr. Phylissa Kwartner, a forensic psychologist at Donovan State Prison, testified on behalf of the prosecution. Dr. Kwartner interviewed appellant personally, reviewed his medical and mental health files and spoke with his treatment team. Based on this information, Dr. Kwartner concluded that appellant met all of the criteria for treatment as an MDO.

Appellant suffers from schizoaffective disorder, bipolar type, which is a combination of schizophrenia and the manic aspect of bipolar disorder. Over the years, appellant has experienced psychotic and mood symptoms, including auditory hallucinations, which he claimed "attempt to manipulate him sexually." He has delusions of a grandiose and persecutory nature. His grandiose delusions include the belief that he is British royalty, that he was cloned by the government and that he is involved in several federal and international lawsuits. His persecutory delusions include the belief that he has an implanted chip in his neck that causes his hallucinations and that the FBI is interfering with his ability to work in the United States and is auditing his family for financial reasons. He also displays symptoms of mania, such as increased energy, euphoria, grandiosity, agitation, hyper-sexuality, and impulsivity.

Appellant's qualifying offense for battery on a peace officer occurred in November 2008 while he was at Atascadero State Hospital (ASH) on a prior MDO commitment. Appellant asked to speak with an officer regarding transfer to a new unit, stating he could not remain in the unit because of hazardous "black mold" and because he was suing a treating physician in that unit. When the officer explained he lacked authority to move appellant, appellant became agitated and threatened to "punch a psych tech." Appellant then head-butted the officer and, after resisting containment, he was placed in full bed restraints.

In Dr. Kwartner's opinion, appellant's severe mental disorder caused or was an aggravating factor in that offense. The officer's incident report described appellant as "talkative, unkempt, uncooperative and violent." The psychiatrist who interviewed appellant immediately after the incident described symptoms of mania, including rapid speech and grandiosity. The psychiatrist's notes from the days preceding the incident

described appellant as "paranoid and isolative," providing evidence of both mania and psychosis at the time of the offense.

Dr. Kwartner testified that as of the date of the BPT hearing, appellant's severe mental disorder was not in remission. An interdisciplinary note, dated November 27, 2011, reported that appellant was acting on his black mold delusion by pouring copious amounts of toothpaste and hand soap down the toilet and sinks. A monthly psychiatric progress note for November 2011 referenced his grandiose delusions of royal heritage.

Even if appellant was in remission, Dr. Kwartner testified he cannot remain in remission without treatment. In the year preceding the BPT hearing, appellant failed to reasonably follow his treatment plan. He attended only four percent of his required treatment groups. Since appellant's admission to ASH, he has refused all psychotropic medications, which also are part of his treatment plan.

In Dr. Kwartner's opinion, appellant represents a substantial danger of physical harm to others by reason of his severe mental disorder. She emphasized his history of acting in a violent manner during periods of psychiatric instability, as evidenced by the two MDO qualifying offenses. The most recent offense was the 2008 battery on the peace officer at ASH. The other offense was a 2002 false imprisonment conviction in which appellant lured an eight-year-old boy into a school bathroom stall and prevented him from leaving. Appellant later told the police he wanted to engage in sexual acts with the boy. At that time, appellant was noncompliant with his medication and was experiencing symptoms of mania.

Dr. Jack Pascoe, a psychologist with DMH's MDO forensic unit, testified for appellant. He acknowledged appellant has a severe mental disorder, as defined by section 2962, and agreed with Dr. Kwartner that it caused or aggravated appellant's qualifying battery offense. During his interview with Dr. Pascoe, appellant gave a delusional presentation, emphasizing his family's rather intricate involvement with the FBI and other government agencies.

Dr. Pascoe agreed that appellant was not in remission, but concluded that appellant does not represent a substantial danger of physical harm to others. Given the lack of evidence of violent behavior in the 33 months prior to the evaluation, Dr. Pascoe "was constrained to find [appellant] negative on [this criterion]."

Dr. Kwartner disagreed with Dr. Pascoe's opinion, stressing that appellant's lack of insight into the importance of continued treatment increases his risk of violence. She highlighted appellant's prior placement on involuntary medication orders following threats made toward staff during periods of non-adherence to medication. She also emphasized his failure to remain free of violence at ASH, where staff members are trained specifically to calm persons in stressful situations to avoid escalation and violence.

Appellant testified he does not currently have a mental disorder, stating he previously had "slight attention deficit hyperactive disorder stemming from childhood." He stated he is not required to take any medication and that ASH has offered medication only as a "matter of administrative directive policy." Appellant acknowledged that he has taken no medication for three and a half years, and that his parole was revoked for failure to attend parolee outpatient clinic meetings.

The trial court determined appellant qualified as an MDO. With respect to current dangerousness, the trial court observed this is "the difficult area because he hasn't been violent in the past three and a half years when he's been in the hospital." The court acknowledged appellant's 2002 false imprisonment of an eight-year-old boy and observed that he "has not been compliant with medication and still suffers symptoms of his mental illness. He's been violated on parole several times. He's been unable to remain free of violence even while in the state hospital." The court concluded: "[Appellant] doesn't believe he's got a mental illness . . . . He's not getting any treatment. He's not taking any medication. And I think the dangerousness that he poses is to the public. He's shown that in the past when he's having symptoms he acts out violently. I don't think it requires a recent overt act, and I'll find that he meets all criteria beyond a reasonable doubt."

## DISCUSSION

Appellant contends his commitment order must be reversed because the evidence is insufficient to support the finding that he represents a substantial danger of physical harm to others by reason of his mental disorder, as contemplated under subdivision (d)(1) of section 2962. We disagree.

In deciding the sufficiency of the evidence, we draw all reasonable inferences from the record to support the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence or decide the credibility of the witnesses. (*Ibid.*)

An MDO commitment is authorized for a prisoner where "by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others." (§ 2962, subd. (d)(1); *In re Qawi* (2004) 32 Cal.4th 1, 23 (*Qawi*)). Whether the defendant meets this standard necessarily involves "a prediction of future dangerousness by mental health professionals." (*Qawi*, at p. 24.) In assessing future dangerousness, a mental health professional "should take into account the prisoner's entire history . . . . This includes prior violent offenses as well as the prisoner's mental health history." (*People v. Pace* (1994) 27 Cal.App.4th 795, 799.)

Here, both mental health experts considered appellant's previous violent offenses, mental illness history and behavior during personal interviews. They agreed appellant has a severe mental disorder that was not in remission. Dr. Pascoe concluded appellant was not dangerous because his last violent act was in 2008. Dr. Kwartner determined appellant was dangerous given his lack of insight into his mental illness, his refusal to take medication to treat that illness, his history of violence when not taking medication and his inability to remain violence-free in ASH's controlled setting.

In accepting Dr. Kwartner's opinion, the trial court acknowledged that a finding of substantial danger of physical harm does not require proof of a recent overt act. (§ 2962, subd. (f); *Qawi, supra*, 32 Cal.4th at p. 24.) Moreover, appellant's lack of recent violence in a controlled institutional setting does not prove he no longer represents a substantial danger to others when placed outside that controlled setting. (*People v.*

*Sumahit* (2005) 128 Cal.App.4th 347, 353.) As the trier of fact, the court had discretion to assess the experts' credibility and to weigh their conflicting opinions. (*People v. Ward* (1999) 71 Cal.App.4th 368, 374 [trier of fact can decide what weight to give expert prediction of future dangerousness].) Dr. Kwartner's expert opinion on appellant's future dangerousness constitutes substantial evidence sufficient to support the trial court's finding. (*Qawi*, at p. 24; see *People v. Miller* (1994) 25 Cal.App.4th 913, 917.)

This case is distinguishable from *People v. Gibson* (1988) 204 Cal.App.3d 1425, on which appellant relies. There, we held unconstitutional a *former* version of the MDO statute that created a presumption of dangerousness based solely on unremitted mental illness. (*Id.* at pp. 1439-1440.) Here, the finding of dangerousness is based on appellant's past violent behavior and Dr. Kwartner's expert opinion that features of his current mental illness create a substantial risk that he will physically harm others.

The judgment (order of commitment) is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

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