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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC GUY CARDER,

Defendant and Appellant.

C076647

(Super. Ct. No. 09F0037)

Defendant Eric Guy Carder appeals the trial court's order granting a petition to extend his commitment to Napa State Hospital pursuant to Penal Code section 1026.5 by two years.¹ In particular, he contends there is insufficient evidence to support the court's finding that, by reason of mental disease or disorder, he is a substantial danger of physical harm to others. We affirm the court's order.

¹ Undesignated statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On July 9, 2010, defendant was charged by information with one count of stalking (§ 646.9, subd. (b)) and two counts of criminal threats (§ 422), all against the same victim, Jane Doe.

On July 28, 2010, defendant entered a plea of not guilty by reason of insanity. The trial court ordered a psychological evaluation of defendant pursuant to section 1026.

On October 6, 2010, defendant pleaded no contest to the stalking charge and submitted on the psychological evaluations. The remaining charges were dismissed. The trial court found defendant legally insane at the time he committed the stalking offense, suspended criminal proceedings, and ordered defendant evaluated by Central Valley Conditional Release Program (CONREP).

On November 3, 2010, the trial court ordered defendant committed to the trial competency program at Napa State Hospital (NSH) pursuant to section 1026, subdivision (g), set a maximum term of confinement of four years, and awarded defendant 125 days of credit.

On February 29, 2012, the trial court ordered that defendant remain in NSH.

On April 16, 2013, defendant filed a petition for transfer to outpatient treatment. The trial court denied the petition.

On March 7, 2014, the district attorney filed a petition to extend defendant's maximum time of commitment pursuant to section 1026.5, alleging defendant was a person who, by reason of mental disease, defect, or disorder, represented a substantial danger of physical harm to others. The petition included the evaluation report of NSH staff psychiatrist, Kaiser Sultana, M.D., who recommended defendant's commitment be extended for two years pursuant to section 1026.5, subdivision (b).

On March 25, 2014, defendant denied the allegation in the petition and waived his right to a jury trial.

At the court trial on May 21, 2014, the People called a single witness, Dr. Sultana, defendant's treating psychiatrist since December 19, 2012. Dr. Sultana testified her treatment of defendant included medication management, crisis management, treatment team plan and case formulation, and discharge planning. She met with defendant on a one-on-one basis once a month for 15 minutes, and had quarterly treatment team conferences. She also met defendant in the hallway on a day-to-day basis and when necessary "when he has crisis." Dr. Sultana also discussed defendant's case with nursing staff and the treatment team every morning.

When defendant was first transferred to her unit (transition one) at NSH in June 2011, Dr. Sultana evaluated him to determine whether the initial diagnosis he received when he was first admitted to NSH was still appropriate. According to Dr. Sultana's evaluation, defendant suffered from paranoid schizophrenia and polysubstance dependence, those substances being alcohol, cannabis, and "amphetamine-like" substances. The treatment team gave defendant a treatment plan and Dr. Sultana provided him with medications. During team conferences, defendant was told what he was doing wrong and what he needed to do to move towards discharge.

Dr. Sultana testified that, as of the date of the trial, defendant was symptomatic in terms of his schizophrenia in that he was having hallucinations (i.e., he hears voices) that he was in a relationship and has had children with his victim, Jane Doe, who he claimed he saw at the hospital. He was also symptomatic in terms of his substance abuse in that he was constantly requesting Ativan, an addictive medication, and asking the medical doctor for Vicodin even though it was not necessary.

Dr. Sultana testified that, while defendant's aggressive behavior had improved since 2011, he continued to have psychotic symptoms and exhibited verbal and physical aggression as catalogued in her November 20, 2013 report, including two instances of physical aggression in the prior year. The first incident occurred on May 22, 2013: When defendant was not given the type of pain medication he asked for, he yelled and

cursed at staff with clenched teeth and fists saying, “You are not doing your job. Fuck you. I’ll fuck you up.” Defendant was taken to a side room, given an injection of Haldol, and placed on unit restriction for 30 days. The second incident occurred on July 20, 2013: Defendant “had a problem with unit policy” in that, when the doors were supposed to be locked, he put a towel in the door to keep it open. When staff tried unsuccessfully to redirect him, the alarm was activated and hospital police came to assist. Defendant said, “I don’t care about any unit policy.”

Defendant stipulated that both the May 22, 2013, and July 20, 2013, incidents occurred, as well as each of the following additional incidents listed in Dr. Sultana’s November 20, 2013 report:

November 19, 2012: Defendant repeatedly asked for Vicodin for pain. “As he is a drug seeker, the medical doctor told him that she would not prescribe him vicodin. He became agitated, and was observed pacing the hallway threateningly and stating, ‘I will go to jail.’ Staff was concerned about unit safety. When [defendant] was interviewed by the psychiatrist, he said, ‘Do not give me your shit. I need pain meds.’ He also appeared restless, edgy, and irritable.”

December 13, 2012: Defendant “shoved hospital police aside during an altercation with his peers,” just prior to which he had been “attacked for ‘being a snitch.’ ”

February 1, 2013: Defendant approached a staff member who was speaking with another patient and said, “ ‘Doctor here is not giving the right medications.’ He was redirected and [told] that the staff member was watching another patient and could not talk. He stood and shouted, ‘Fuck you! I don’t like you,’ and walked away.”

February 6, 2013: Defendant was seeking Vicodin, focusing consistently on the medical doctor and medications nurse. “He needed redirection repeatedly. At around [8:20 p.m.], he went to the nursing station and glared at staff, verbally threatening, ‘I’ll make sure that I will fucking take you out of this hospital. Remember that.’ He

continued this threat in spite of redirection, and Hospital Police was [*sic*] dispatched after the alarm was pulled. He was redirected to an open side room and was given . . . Haldol”

February 9, 2013: Defendant repeatedly requested medication, including one he had already taken. “When staff explained that he had already taken the maximum dose, he became verbally abusive and said in a loud voice, ‘Fuck you, bitch! I don’t care for others. I only care what I want.’ After Hospital Police came, he went to his room. When police left, he came out of his room and stood in front of the nursing station, cursing. ‘You bitch. You know you are wrong. All I need [are] my medications.’ ” He demanded Tylenol, which was given to him, but he continued muttering to himself.

February 14, 2013: During an interview, defendant said, “I need meds for my body. I need . . . lactulose, Tylenol, motrin, vicodin. You do not know my body. You and your staff are messing with my body. They are doing the shit to me.” He became agitated and the interview was terminated.

February 16, 2013: Defendant “was aggressively asking for vicodin.” The alarm was activated when defendant became increasingly agitated and staff was unable to redirect him. He was given Haldol.

March 18, 2013: Defendant “became very agitated and verbally abusive to staff when he was not given . . . the medications he wanted. There was no order by the medical doctor for those particular medications.”

April 10, 2013: Defendant “was glaring at the psychiatrist and stated in a loud voice, ‘You write good things about me and send it to the court. Let me go out of this place. The judge will listen [to] whatever you said. My physical body broke up and they are not giving me the pain meds.’ When it was explained that the court letter would reflect what he had been doing for the last year, he became angry with tense facial muscles. ‘You are not doing your job. You take care of your staff who are rude to me.

You do not know how the guy misbehaved with me.’ ” The interview was terminated for safety reasons and defendant left the room saying, “You are keeping me here illegally.”

May 20, 2013: Defendant wanted to be seen by the psychiatrist. He repeatedly pointed at the psychiatrist with his middle finger. When the psychiatrist told him not to point, defendant “became angry, loud, and pressured, and refused to be seen by the psychiatrist.” Later, defendant apologized and blamed his behavior on the psychiatric technician who was accompanying him.

May 22, 2013: Defendant approached the nursing station and asked for new treatment for his neck pain. “A . . . theralgic was given, but [defendant] stated that he didn’t receive any treatment and asked nursing staff to look for a new treatment. When staff explained that he had no other treatment, he was cursing, yelling, and agitated, exclaiming, ‘You’re not doing your job!’ He exhibited tense features, including clenched teeth and crossed eyebrows, and his fists were in fighting stance as he yelled, ‘Fuck you! I’ll fuck you up!’ ” Defendant was given Haldol, escorted to an open room, and placed on unit restriction.

July 20, 2013: Defendant was mumbling and glaring at staff. When questioned, he yelled out, “I want you out of this unit!” Prior thereto, defendant had propped a door open with a towel in violation of unit policy. “When [defendant] was provided teaching by staff, who were in the presence of Hospital Police, he replied, ‘I don’t care it is against policy.’ ”

Dr. Sultana testified defendant hallucinated and heard voices, and had been observed in the hallway or in group responding to internal stimuli. In particular, defendant heard the voice of his victim, Jane Doe, every day and “it makes him crazy.” He also believed he saw the victim working at NSH.

Dr. Sultana opined that defendant was not ready to transition to the next unit (transition two, which precedes transition to conditional release) because he was still symptomatic, did not have any insight into his mental illness, and did not believe he had a

mental illness. During an April 28, 2014, meeting, defendant, who does not eat meat, told Dr. Sultana, "I don't have mental illness. You have mental illness because you eat dead animals." Over the past three years of treatment with Dr. Sultana, defendant denied having a mental illness. He believed using alcohol and drugs such as marijuana and methamphetamine helped him, and told Dr. Sultana that if he were released into the community, he would start using drugs or self-medicating.

When asked about defendant's stalking conviction and whether defendant's comments to the victim constituted threats, Dr. Sultana noted that, according to the report regarding the stalking incident, defendant violated the restraining order by going to see the victim, approaching her, and talking to her until someone escorted him away. He was "very delusional," "not redirectable," "hearing voices," and "making comments." Dr. Sultana opined that, based on her personal and clinical experience, defendant might have physically attacked the victim if someone had not been there to intervene.

In Dr. Sultana's opinion, defendant posed a danger of physical harm to others because, despite his progress over the past year, he had a diagnosis of schizophrenia and polysubstance abuse; he was still symptomatic; he had a history of criminal behaviors and was physically and verbally aggressive; and he lacked insight about his mental illness, his medication, and his substance abuse problem. Dr. Sultana added that defendant had "minimal" family support, noting that no one from his family ever contacted NSH or the treatment team regarding defendant's treatment.

Dr. Sultana opined that defendant had difficulty controlling his dangerous behavior. She testified that, if his commitment were not extended for several years, his treatment would potentially stop and, if he did not take medication, he would "definitely . . . relapse." She further opined defendant was still symptomatic even when medicated and that his use of illegal drugs "precipitate[d] his symptoms" and increased his chances of reoffending. In her opinion, defendant would "definitely . . . go to the victim, whom

he sees or thinks about all the time, whom he hears voices all the time,” creating a “very high” chance he would reoffend.

Defense counsel stipulated that defendant suffered from paranoid schizophrenia at the time of the underlying conviction and continued to so suffer as of the date of the trial.

The court granted the request for extension of defendant’s commitment by two years, finding that, by reason of mental illness or mental disease, defect, or disorder, defendant represents a substantial danger of physical harm to others. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends there is insufficient evidence to support the trial court’s finding that, due to his mental illness, he represents a substantial danger of physical harm to others. In particular, he claims the People failed to prove he has serious difficulty controlling his dangerous behavior.

Commitment to a state hospital under section 1026 may only be extended if the defendant was committed for a felony “by reason of a mental disease, defect, or disorder [and] represents a substantial danger of physical harm to others.” (§ 1026.5, subd. (b)(1).) Section 1026.5 has been interpreted to require “proof that a person under commitment has serious difficulty in controlling dangerous behavior.” (*People v. Galindo* (2006) 142 Cal.App.4th 531, 536; *People v. Bowers* (2006) 145 Cal.App.4th 870, 878 (*Bowers*).

“ “Whether a defendant ‘by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others’ under section 1026.5 is a question of fact to be resolved with the assistance of expert testimony.” [Citation.] “In reviewing the sufficiency of evidence to support a section 1026.5 extension, we apply the test used to review a judgment of conviction; therefore, we review the entire record in the light most favorable to the extension order to determine whether any rational trier of fact could have found the requirements of section 1026.5(b)(1) beyond a reasonable doubt.

[Citations.]” [Citation.]’ [Citation.] A single psychiatric opinion that an individual is dangerous because of a mental disorder constitutes substantial evidence to support an extension of the defendant’s commitment under section 1026.5. [Citation.]” (*Bowers, supra*, 145 Cal.App.4th at pp. 878-879; accord, *People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165.)

Dr. Sultana testified regarding defendant’s dangerousness. Having treated defendant since December 2012, during which time she managed his medication, participated in case formulation and treatment planning, met with him one-on-one monthly, and saw him in the halls daily and whenever he was in crisis, Dr. Sultana was familiar with defendant’s history as well as his progress at NSH. She testified defendant was committed to NSH and diagnosed with paranoid schizophrenia and polysubstance dependence. That diagnosis does not appear to be in dispute. The original diagnosis was made after defendant violated the victim’s restraining order by going to the victim’s shop, approaching her, and talking to her until he was escorted away. Dr. Sultana stated that defendant was “very delusional,” “not redirectable,” “hearing voices,” and “making comments” at that time, and opined that he may have physically attacked the victim if someone had not intervened. She testified that those symptoms were still present, as defendant continues to hear voices (in particular the voice of his victim) and hallucinate (he believes he is in a relationship with the victim and claims he sees the victim at NSH despite that she is not there).

Dr. Sultana testified that, despite minimal progress, defendant continued to exhibit aggressive behaviors such as yelling and cursing at NSH staff with clenched teeth and fists when not given pain medication (May 2013) and rebuffing staff’s efforts to redirect him (July 2013), requiring either intervention from staff and hospital police or the administration of Haldol and unit restriction, or both. In addition, the November 20, 2013 report identified numerous instances of past aggressive acts to which defendant stipulated, most of which included drug-seeking and yelling and cursing at staff when

denied those drugs. Defendant became increasingly agitated and nondirectable during several of those incidents, and shoved hospital police during an altercation with other patients during another incident.

Noting that defendant has, over the past three years of treatment and as recently as April 28, 2014, denied having a mental illness, Dr. Sultana opined that defendant poses a danger of harm to others and has difficulty controlling his dangerous behavior because, in addition to his behaviors described in the November 20, 2013 report, his lack of insight into his mental illness, and his belief that alcohol and drugs are beneficial to him, he continues to be symptomatic and singularly focused on the victim just as he was when he first arrived at NSH several years ago. She further opined that, without continued treatment and managed medication, and given that by his own admission he would start using drugs if released into the community, there is a high likelihood defendant would reoffend by making contact with the victim again.

Defendant argues that while Dr. Sultana stated she believed defendant has difficulty controlling his dangerous behavior, she never testified that he was dangerous beyond his control by reason of his mental illness, nor was there any evidence to support such a conclusion. He argues there were only two specific incidents of physical violence in the last year, and there is no evidence any of the aggressive incidents had anything to do with his auditory hallucinations or his delusions concerning his victim; rather, they had to do with drug seeking and there was no evidence those actions were volitional. He argues the fact he became angry and threatening when he did not receive the drugs he wanted and that he was still symptomatic for schizophrenia does not prove he was presently dangerous beyond his control as a result of his mental disorders. We disagree.

Dr. Sultana's testimony was sufficient to support the court's order, given that "[o]ne single recent act of violence unrelated to the original crime, or a single psychiatric opinion that an individual is dangerous as a result of a mental disorder, constitutes substantial evidence to support an extension. [Citation.]" (*People v. Superior Court*

(*Williams*) (1991) 233 Cal.App.3d 477, 490, overruled on other grounds in *Hudec v. Superior Court* (2015) 60 Cal.4th 815, 828.) Dr. Sultana attested to defendant's dangerousness and his inability to control his dangerous behavior, basing her opinions and conclusions on defendant's past history (including the conduct which resulted in the stalking charge against him), his diagnosis of mental disorder, and her almost daily observations of his behavior over a three-year treatment period. She further attested to at least one incident during which defendant shoved hospital police, and numerous incidents in which defendant made verbal threats and exhibited threatening behaviors which ended short of any physical violence due to staff intervention, but nonetheless raised safety concerns such that NSH police were summoned and defendant had to be medicated and segregated from other patients. As such, Dr. Sultana's testimony here meets the required threshold. There is sufficient evidence to support the court's order extending defendant's commitment.

DISPOSITION

The trial court's order is affirmed.

NICHOLSON, Acting P. J.

We concur:

MAURO, J.

RENNER, J.