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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES JOINER,

Defendant and Appellant.

D056622

(Super. Ct. No. MH101115)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Reversed and remanded.

In this case appellant Charles Joiner was found to be a sexually violent predator (SVP) within the meaning of the Sexually Violent Predators Act (Welf. & Inst. Code, § 6600 et seq. (SVPA)). On appeal he attacks the trial court's rulings and the jury's verdict on a number of grounds. We reverse and remand for further proceedings.

As we explain it is not clear from the record the trial court understood it had the power to enter a verdict in favor of Joiner in the event the trial court determined that

following the first trial of the People's petition the People failed to present sufficient evidence of Joiner's status as an SVP.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Sexual Assault History*

a. *Frances B.*

On December 31, 1979, Joiner raped an acquaintance, Frances B. Joiner drove Frances to a dark and secluded place, where he made sexual advances on her and she resisted. In response, Joiner slapped Frances three times, threw her against his car, threw her to the ground, and choked her. After threatening her, Joiner then raped Frances. After being raped, Frances tried to escape from Joiner by jumping over a fence. In doing so she severed a finger and Joiner was able to recapture her and take her back to his car.

As a result of his assault on Frances, Joiner was charged with kidnapping, forcible rape and forcible oral copulation. Joiner was allowed to plead guilty to kidnapping in exchange for the prosecutor's agreement to dismiss the other charges.

b. *Jill H.*

Prior to December 12, 1980, Joiner raped another acquaintance, Jill H. On December 12, 1980, Joiner went to Jill's home, knocked on her front door and told her "[Y]ou are out telling people I raped you. We are going to make it happen." Joiner then entered Jill's home, knocked her to the floor, raped her and attempted to force her to orally copulate him. Jill resisted and Joiner raped her a second time. Joiner's assault was interrupted when another man entered the home and stopped Joiner.

Joiner pled guilty to felony assault on Jill.

c. Patricia D.

On July 4, 1984, less than a year after being released on parole, Joiner attempted to rape a neighbor, Patricia D., and force her to orally copulate him. Joiner went to Patricia's house, made sexual advances toward her, which she rejected. In response, Joiner grabbed Patricia by the wrists, dragged her to her bedroom, choked her and threatened to kill her and burn her house down if she resisted. After removing Patricia's panty hose and panties, he discovered she was menstruating. Patricia then informed Joiner she had herpes. When Joiner tried to force her to orally copulate him, Patricia told him she had oral herpes as well. Joiner then told her to call her doctor to confirm she had herpes; while Joiner listened on a second telephone line, Patricia was able to escape.

As a result of the attack on Patricia, Joiner was convicted of assault with intent to commit rape and assault with intent to commit oral copulation and sentenced to 11 years in prison.

On March 18, 1997, following his release from prison for the assault on Patricia, Joiner was convicted of second degree burglary and again sentenced to prison.

2. Trial Court Proceedings

On May 2, 2007, while Joiner was still incarcerated on the burglary conviction, the district attorney filed a petition alleging Joiner is an SVP. On August 17, 2007, the trial court found probable cause to believe Joiner is an SVP. (§ 6602.)

The district attorney's petition was initially tried between February 25, 2009 and March 10, 2009. After three days of deliberation the jury advised the trial court that it

was hopelessly deadlocked and the trial court declared a mistrial. Thereafter Joiner's counsel learned the jury voted eight to four in Joiner's favor.

Following the mistrial, Joiner moved to dismiss the petition on the grounds there was insufficient evidence to support it. In particular, he vigorously attacked the testimony of the two expert witnesses offered by the district attorney, Shoba Sreenivasan and Christopher Matosich. Joiner argued that although the experts concluded that he suffered from paraphilia, their conclusions were admittedly incomplete because Joiner had declined to be interviewed. Joiner also pointed out the experts' opinions were inconsistent in many respects with his behavior in prison and some aspects of the manner in which the predicate sex offenses were committed, in particular his ability to control himself when confronted with Patricia's claim she had herpes.

At the time the trial court ruled on Joiner's motion, it made the following statement: "So let me state, based upon the status of this case before this Court, the evidence that was received, that the trier of fact, the jurors, hung, and I understand it was an eight-to-four of the petition not being true. It appears that the evidence that was before the jurors as related to the experts in the case, the jurors questioned the value and the credibility of the expert opinion given that they were prepared to, at least eight of them, dismiss this particular petition as not being true.

"It must also be stated that subsequent to the jury not being able to resolve the matter, that there has been communication to this Court from third parties indicating that they have additional information which, if in fact is true, appears to this Court to be material and relevant on the issue of whether or not this petition is true. That evidence

seems to provide perspectives and relevant material as it relates to whether or not Mr. Joiner would be a threat to the community if he was released.

"It appears to the Court it's germane on one prong of the question that's before the trier of fact, and the Court believes that if it's admitted and brought before the trier of fact, it very well may result in a unanimous verdict of the petition not being true.

"Now, having said that, I would indicate for the record that given what this Court has heard, given the split in the jury not being able to reach a decision, given the new information that's been provided the Court, but for this Court believing it is without authority under Penal Code section 1385 to dismiss this matter, the Court would strongly consider granting respondent's motion.

"I don't see that I have legal authority to do so. So if, in fact, the Court's in error, I certainly would like the opportunity to reconsider that motion, but I don't believe there's any authority that provides for this Court to dismiss this matter on the basis of what has been brought to the Court. So for that reason the Court denies the motion."

Joiner filed a petition for a writ of mandate challenging the trial court's order, which we summarily denied on the grounds Joiner had an adequate remedy by way of appeal. Thereafter the district attorney's petition was tried a second time. Sreenivasan and Matosich again testified Joiner suffers from paraphilia, a sexual deviancy which manifests itself in intense and recurrent fantasies, urges, and behaviors involving sexual acts with nonconsenting partners. Both experts found traits of sexual sadism in the brutality, domination, containment and choking Joiner used in his assaults.

Both psychologists also again concluded Joiner was likely to reoffend. They based their respective opinions on actuarial assessments which showed a moderate-to-high risk Joiner would reoffend, the dynamic between Joiner's personality disorder and his paraphilia, his criminal history, including his poor performance on parole, and the continuous nature of his criminality. At the second trial the jury unanimously determined Joiner is an SVP. Following the jury's verdict, the trial court then entered an order committing Joiner to the Department of Mental Health for an indeterminate life term.

Joiner filed a timely notice of appeal.

DISCUSSION

The first issue Joiner raises on appeal is his contention that following the mistrial the trial court erred in failing to grant his motion to dismiss. We asked the parties for additional briefing with respect to whether, in light of the fact the second jury eventually determined Joiner is an SVP, any failure to dismiss the petition earlier is now moot. We conclude that in light of our summary dismissal of Joiner's petition for a writ of mandate, the interests of justice require that we reach the merits of Joiner's procedural claim.

I

The Power to Terminate SVP Proceedings

The SVP statute does not itself provide for dismissal of a petition following a finding of probable cause. (See *Bagrations v. Superior Court* (2003) 110 Cal.App.4th 1677, 1683-1684.) However, the Supreme Court has recognized the inherent power of courts to review and determine questions of law when they arise under the SVP statute,

even when a mechanism for such review is not expressly set forth in the statute. (See *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 909-915.)

In *Ghilotti* a district attorney filed an SVP petition which alleged that two expert evaluators had erroneously concluded the inmate was not likely to reoffend. The district attorney alleged the evaluators had erroneously interpreted the level of risk required by the statute. The trial court dismissed the petition as failing to meet the requirements of section 6601, subdivisions (d) and (e) that it be supported by two expert evaluations. The Court of Appeal denied the People's petition for a writ of mandate and the Supreme Court granted review. The Supreme Court agreed that the People could not avoid the requirement that its petition be supported by two expert evaluations but found the People could challenge the evaluators' conclusions as to the level of risk required by the statute. Although the statute provided no specific means of making such a challenge, the court found inherent power in the trial court to make such a legal determination. "[T]he requirement that SVPA evaluators apply *criteria set forth in the statute* invokes the inherent judicial power to determine whether an evaluator's recommendation stems, on its face, from an inaccurate understanding of those criteria, and thus constitutes legal error." (*Ghilotti, supra*, 27 Cal.4th at p. 912.) Thus, the court concluded the Director of the Department of Corrections "cannot be powerless to take action for the public safety when he disagrees, on legal grounds, with evaluators' conclusions that a person does not meet the criteria for commitment or recommitment." (*Ibid.*) The Supreme Court found the People could file an SVP petition even though the evaluators did not support it, the alleged SVP could challenge the petition by way of a motion to dismiss, and in response

the People could then assert the evaluators' legal error. (*Ghilotti, supra*, 27 Cal.4th at pp. 912-913.)

When the People fail to present sufficient evidence of one or more of the elements required for commitment as an SVP, plainly a question of law is presented. (See *People v. Mendoza* (2011) 52 Cal.4th 1056, 1079 [sufficiency of the evidence is a question of law].) It is axiomatic that on appeal we have the power to determine, as a question of law, whether an SVP commitment is supported by sufficient evidence. (See *People v. Mercer* (1999) 70 Cal.App.4th 463, 466.) We believe that when, following presentation of the People's case at trial, the record does not provide sufficient evidence of the elements required by the statute, the trial court also has inherent power to act on such a question of law and terminate proceedings on the People's petition in favor of the inmate.

Our willingness to recognize such inherent power in the trial court is borne out of both practical as well as analytical considerations. In the unusual case where, notwithstanding a finding of probable cause, it later turns out the case presented by the People at trial is legally insufficient, it makes little sense to require that a jury decide the issue and potentially leave the inmate with only an appellate remedy as the means of correcting a legal error. We do not believe the Legislature intended that the trial court be unable to confront and determine pure questions of law in an expeditious manner.

We recognize that in *Bagration v. Superior Court, supra*, 110 Cal.App.4th at pages 1687-1689, the court held that pretrial determination of the legal sufficiency of a petition by way of a motion for summary judgment is not permissible in an SVP proceeding because the reciprocal pretrial discovery which is the predicate for summary

judgment motions in civil cases is not available under the SVPA. We agree with the holding and reasoning of *Bagration*. Here, however, once the People have presented their case at trial, it is ripe for review of its legal sufficiency without the need for any discovery or further proceedings.

II

Remand

In denying Joiner's motion to dismiss, it does not appear the trial court believed it had such inherent authority to dismiss the petition if it were to conclude that the evidence that the People presented at trial was insufficient. We believe the interests of justice will best be served by giving the trial court an opportunity to fully consider Joiner's argument in light of our conclusion that the trial court had the power to review the sufficiency of the evidence presented at the first trial. Thus, we will reverse the judgment of commitment and remand so that the trial court can consider the merits of Joiner's motion to dismiss.¹

¹ In light of our disposition of Joiner's appeal, we need not and do not consider the additional issues he has raised.

In the event the trial court determines there was sufficient evidence presented at the first trial and that it properly denied Joiner's motion in the first instance, the trial court is directed to enter judgment on the second verdict. In that instance, Joiner may seek review of the trial court's ruling on the motion as well as challenge errors he believes occurred during the second trial.

In the event the trial court determines there was insufficient evidence presented at the first trial, the trial court should enter a verdict determining Joiner is not an SVP and a judgment in his favor on the verdict. The People may then challenge that judgment on appeal; on such an appeal by the People, Joiner may challenge errors which occurred in the second trial by way of a prophylactic cross-appeal.

We offer the following observations for the guidance of the trial court and parties on remand. The inherent power we have recognized here is quite limited and does not give the trial court the power to weigh the evidence presented by the People. In determining the sufficiency of evidence, the trial court must review the whole record in the light most favorable to the People "and decide 'whether it discloses substantial evidence . . . such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] Under this standard, the court does not 'ask itself whether *it* believes that the evidence at the trial established guilt beyond doubt." [Citation.] Instead, the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*People v. Hatch* (2000) 22 Cal.4th 260, 272.)

DISPOSITION

The judgment of commitment is reversed and remanded for further proceedings consistent with the views we have expressed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.