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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

E059445

(Super.Ct.No. FELSS1204484)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone,
Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant and appellant M.M. met the criteria of a mentally
disordered offender (MDO) pursuant to Penal Code sections 2962 and 2966, subdivision

(c).¹ After defendant's trial counsel filed the notice of appeal, this court appointed counsel to represent defendant. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a statement of the facts, and identifying three potentially arguable issues: 1) whether the staff at Patton State Hospital (PSH) properly and adequately considered the least restrictive environment in order to reintegrate defendant back into the community; 2) whether there was sufficient evidence to support the trial court's finding extending defendant's confinement to a mental hospital as an MDO; and 3) whether the trial court erred in denying defense counsel's proposed special jury instruction that section 2962 excludes consideration of defendant's involvement in physical violence due to self-defense. We affirm.

FACTUAL AND PROCEDURAL HISTORY²

In 2003, defendant grabbed an eight-year-old girl in public and dragged her 10 to 15 feet away from her mother insisting the girl's mother had stolen the girl from defendant the day before. Defendant screamed obscenities at the girl's mother. Police officers arrived and interviewed defendant. Defendant told the police she was an undercover officer who had taken the girl into her custody for the girl's protection.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² We grant appellate counsel's request that we take judicial notice of our opinion in defendant's prior appeal of her initial commitment in case No. E054166. (Evid. Code, § 451, subd. (a).)

Defendant refused to identify herself and stated she was forbidden to carry identification. Defendant verbally abused the officers and spat in an officer's face.

On May 8, 2007, defendant admitted a charge of attempted kidnapping (§§ 664/207) and an allegation she had suffered a prior serious felony conviction (former § 667, subd. (a)(1)). The court sentenced defendant to 10 years' incarceration. Defendant filed a petition pursuant to section 2966, subdivision (b), challenging a subsequent Board of Prison Terms' certification she met all six criteria for commitment for treatment as a condition of parole under the MDO Act (§§ 2960 et seq.). The trial court found the MDO criteria had been met. We affirmed the judgment on appeal.

On September 27, 2012, the Board of Parole Hearings found defendant met the criteria for continued commitment as an MDO pursuant to sections 2962 and 2966, subdivision (c). Defendant filed a petition seeking to challenge the Board of Parole Hearings' finding. The matter proceeded by way of jury trial.

Dr. Jyotila Singh, a staff psychiatrist at PSH who treated defendant beginning in May 2012, testified defendant had been diagnosed with Chronic Paranoid Schizophrenia and previously with Schizoaffective Disorder. Singh added a diagnosis of poly substance dependency. Defendant had a history of abusing alcohol, methamphetamine, cocaine, and marijuana. Defendant had a history of hospitalizations, suicide attempts, and interactions with law enforcement.

Defendant appeared to hear and respond to voices. Defendant would get very paranoid at times and suffered delusions, hallucinations, disorganized speech, and disorganized behavior. Defendant required antipsychotic medication to control these

symptoms. However, defendant had a history of medical noncompliance. Even with her medications, defendant still suffered delusions, impaired reality testing, disorganized speech, and disorganized thought patterns.

Defendant had no clear understanding, insight, or even acknowledgment of her mental illness. She had never made the connection between her mental illness with her criminal behavior. Defendant had not completed any program dealing with mental illness and substance abuse.

At the Board of Parole hearing, defendant acted out loudly and called Singh a “lying bitch” after Singh testified. Defendant threatened Singh. Singh testified defendant was “unable to contain herself [which] leads to verbal fights and physical altercations.”

Singh opined defendant had an illness that substantially impaired her thoughts, perception of reality, emotional processes, and judgment for which remission is unlikely in the absence of treatment. She believed in an unstructured environment defendant would return to the use of alcohol and drugs which would make her behavior and mental symptoms worse. Singh opined defendant posed a substantial danger of harm to others by reason of her severe mental disorder.

Kenneth Sandoval, a licensed clinical social worker at PSH who treated defendant on a daily basis from January 31, 2011, to January 21, 2012, testified defendant was an “unreliable [personal] historian, largely based on the fixed delusional system.”

Defendant had delusions she had been kidnapped by the KKK when she was a child; invented or was employed by NASA; obtained multiple PHD’s in different disciplines, including psychology and law; and procured ownership of the Hershey Corporation. She

believed David Bowie was her father, Billy Idol her caretaker, Cher her mother, and Walt Disney her grandfather. She reported she was an undercover government operative in the hospital sent to evaluate the staff and a bounty hunter when she attempted to apprehend another patient as one of America's Most Wanted. Defendant continued to believe that she was saving the girl she attempted to kidnap.

At times, defendant would "engage in verbal and physically assaultive behavior." Sandoval opined defendant could not obtain appropriate treatment for her illness outside of hospitalization, had a severe mental disorder which was not in remission, and represented a substantial danger of physical harm to others due to her severe mental disorder.

Defense counsel requested the court read the jury a special instruction providing that "[section] 2962 excludes involvement in physical violence due to self-defense. In determining whether [defendant] meets criteria pursuant to [section] 2962 as of September 27, 2012, you must determine whether any alleged act of assault/battery/violence/aggression attributed to her was done in self-defense. If the District Attorney does not prove beyond a reasonable doubt that [defendant] did not act in self-defense, then the alleged act(s) of assault/battery/aggression/violence cannot be used in assessing whether [defendant] meets any of the three MDO criteria."

The court denied the request finding "[t]here was no suggestion that [defendant] was acting in self-defense from the Court's perspective. For that reason, the Court does not find any facts or evidence admitted in trial to which this could apply." Nevertheless, the court instructed the jury with CALCRIM No. 3457 which read, in part, that the jury

could consider whether defendant had been “physically violent except in self-defense” The People argued in closing the jury could consider whether defendant was “physically violent, except in self-defense.”

DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, but she has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (*People v. Harrison* (2013) 57 Cal.4th 1211, 1229 [Failure to raise issue below forfeits contention on appeal.]; See *People v. Gram* (2012) 202 Cal.App.4th 1125, 1141-1143 [Challenges to conditions of confinement must be made in a petition for writ of habeas corpus.]; *People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1407 [commission of violent act within previous year sufficient evidence the defendant could not be kept in remission without treatment.]; *People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1097 [evidence the defendant suffered a severe mental disorder which was a factor in the commission of the initial offense and could not be kept in remission without treatment sufficient to sustain commitment.]; *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1399-1400 (Fourth Dist., Div. Two) [failure to follow treatment plan while committed sufficient evidence to sustain commitment.]; *People v. Salas* (2006) 37 Cal.4th 967, 982-983 [court required to give particular jury instruction only where substantial evidence supports the instruction.]

DISPOSTION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.