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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD MARTIN,

Defendant and Appellant.

F062181

(Super. Ct. No. VMH010554)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Melinda M. Reed, Judge.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, and Kathleen A. McKenna, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J. and Detjen, J.

Ronald Martin appeals the extension, following a jury trial, of his commitment to the custody of the Department of Developmental Services (DSS) as a dangerous developmentally disabled/mentally retarded person. For the reasons stated, we will reject his claim of insufficient evidence and affirm.

PROCEDURAL HISTORY

On December 14, 2010, the Tulare County District Attorney filed a petition pursuant to Welfare and Institutions Code¹ section 6500, seeking a one-year extension of appellant's DSS commitment on the ground appellant was a developmentally disabled/mentally retarded person who was a danger to himself and others, and whose developmental disability/mental retardation caused him to have serious difficulty controlling his dangerous behavior.² Appellant requested a jury trial, which commenced on March 7, 2011. The next day, jurors found the allegations of the petition to be true. As a result, the trial court extended appellant's commitment to DSS for a period of time not to exceed one year. Appellant filed a timely notice of appeal.³

FACTS

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

² Appellant, born in 1958, was originally committed in 1984, after being found incompetent to stand trial on charges of attempted rape. He initially was admitted to Stockton Developmental Center, from which he absconded and attempted to kidnap and sexually assault a 14-year-old boy. He was later placed in a board and care home, but attempted to molest children and exhibited inappropriate sexual behavior toward staff. Eventually, he was transferred to Napa State Hospital, and, in April 2000, to Porterville Developmental Center (PDC). His commitment was extended each year following his transfer to PDC.

³ This appeal technically is moot, because the order appealed from was entered over one year ago. Nevertheless, we will exercise our discretion to address the merits of appellant's claim. Because a section 6500 order typically will expire before an appeal can be heard, were we not to do so, the issue of sufficiency of the evidence would repeatedly evade review. (See *People v. Wilkinson* (2010) 185 Cal.App.4th 543, 547.)

Dr. Vang, a psychologist employed at PDC, had known appellant for almost four and a half years. She had reviewed his clinical record, conducted a face-to-face interview with him, and prepared a certification of mental retardation and dangerousness in his case.

According to Vang, appellant currently met the diagnostic criteria for mild mental retardation.⁴ There was evidence of cognitive impairments prior to age 18. Appellant was enrolled in special education classes beginning at age 10, and had noted developmental delays in communication. A Stanford-Binet test administered when appellant was 14 showed he had an IQ of 72. As a result, Vang was able to say the onset of appellant's mental retardation occurred prior to his 18th birthday.

Vang explained that the general IQ score for someone diagnosed with mild mental retardation ranges from 50 to about 70, although the diagnosis can be made with an IQ of up to 75 due to potential measurement error. Average IQ is about 95 to 105. In 2009, appellant was assessed using the Wexler abbreviated scale of intelligence. He received a full scale IQ score of 69.⁵

⁴ Section 6500 does not define mental retardation. The term has a generally accepted technical meaning, however; namely, the condition of ““‘significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior’ and appearing in the ‘developmental period.’” [Citation.]’ [Citation.]” (*In re Krall* (1984) 151 Cal.App.3d 792, 795; see also Pen. Code, §§ 1001.20, subd. (a)(1), 1376.) Appellant’s jury was instructed in accord with this definition.

⁵ Vang acknowledged that appellant sometimes scored above 75 on IQ tests administered to him over the years, although other times he scored below 75. In 2006, he was assessed using the TONI-III test, and achieved a score of 82. That test, however, is a test of nonverbal intelligence, and measures only one aspect of cognition. Because appellant was verbal and able to make himself understood despite his speech impediment, the other part of his intelligence also had to be taken into consideration. None of appellant’s various scores affected Vang’s opinion that he currently suffered from mild mental retardation or that its onset occurred before appellant’s 18th birthday.

Vang also found appellant to currently demonstrate deficits in adaptive functioning. To meet diagnostic criteria for mental retardation, a person must have adaptive deficits in at least two areas. Appellant, however, had deficits in several. In the area of self-care, he had the ability independently to complete necessary tasks, but required prompts to initiate and complete some of those tasks, such as showering or brushing his teeth. In the area of social and interpersonal skills (the ability to monitor oneself to behave appropriately in social situations), appellant currently had open behavior plans to address harm to others, verbal aggression, and noncompliance with staff directions and/or facility policies.⁶

In the area of self-direction (the ability to make appropriate life decisions), appellant had demonstrated that he could set some goals, but he had difficulty reaching them, particularly in regard to decision-making in terms of his own life. In the area of communication, appellant had delays in communication at a young age. In addition, he had a speech impediment that could make him difficult to understand, although he had generally been able to make himself understood by PDC staff and was willing to repeat himself if necessary. In the area of functional academic skills, appellant had very limited reading and writing skills.

In the area of home living (the ability to live independently, manage money, and the like), appellant required prompts to keep his living area clean. In addition, he had trouble establishing a budget, and had had informal money management training related to his inability to make his money last from paycheck to paycheck. His trouble in this

⁶ Vang explained that when a PDC client exhibits a behavior on a frequent basis, a plan is opened. It is individualized, based on the client and how he or she responds to certain treatments. The team gets together, decides what the behavior is, defines the behavior, and sets a desired outcome for the client to meet. Once the client reaches the desired outcome, that plan is closed, although it may be reopened if the client subsequently exhibits the behavior.

regard manifested itself behaviorally, particularly with respect to his cigarette and soda consumption. As a result, appellant currently had a cigarette/soda plan under which his PDC team helped him purchase cigarettes and sodas from the community, where the price was cheaper than at the canteen. This helped appellant have a sufficient supply of cigarettes and sodas to last him through each month, although not at the level he desired.

Appellant had had significant difficulties in this area over the preceding two years. As a result of those difficulties, he sometimes acted out behaviorally, and had required the use of restraints on several occasions because he got so upset about his cigarettes or his soda. His behavior had deteriorated significantly in the last couple of years, and his acting out affected him negatively by completely disrupting his programming at PDC.⁷

Finally, appellant had deficits in the area of health. He had poor infection control and awareness, so he was constantly monitored for cleanliness and sanitation when he checked his blood sugar.

From her review of appellant's clinical record and her interaction with him, Vang formed the opinion that appellant currently continued to pose a danger to himself and others. She primarily looked at his behavior over the past year, during which time he had required the use of restraints on at least six occasions, mostly as a result of assaultive behavior toward peers or staff. In this regard, Vang relied on interdisciplinary notes, which were made based on observed behaviors, incidents, and medical issues, and which were maintained in the client's chart. When Vang summarized the interdisciplinary notes for her report, she did not discriminate between appellant actually assaulting someone, or attempting to assault but with staff able to intervene. Under PDC's procedures, appellant

⁷ Vang explained that PDC had daily programming, which was basically a schedule to be followed. Each client was assigned different classes based on his or her needs and histories, as well as vocational training and groups. When appellant acted out, he was unable to participate effectively in his programming, which in turn affected his treatment.

generally would not have been placed in restraints unless he had been redirected several times but continued to be aggressive.

Vang's summary of appellant's interdisciplinary notes showed that on March 15, 2010, appellant kicked at staff. On September 24, 2010, he threatened to harm staff, lunged at them with closed fists, and then pursued them. On October 6, 2010, appellant provoked a physical altercation with a peer. When staff arrived to intervene, appellant turned his aggression toward staff and spit on the staff members. On October 17, 2010, appellant was redirected to his assigned group area. He became upset, ran to his room, climbed under the bed, and flailed around, causing minor injuries to himself. Vang acknowledged, however, that it was unusual for appellant to harm himself.

Most of appellant's behaviors over the last year or two had been related to his soda and cigarette situation. He had been diagnosed with nicotine dependence and caffeine-related disorder.

Vang also formed the opinion that appellant's mental retardation was a substantial factor that contributed to his dangerous behavior. In addition to the observable impairments in adaptive behaviors resulting from his retardation, appellant frequently got into the same situations over and over, despite being counseled and offered alternatives. This demonstrated the difficulty he had in learning from previous experiences. Although appellant had been in treatment at PDC for a long time, it had taken him a while to learn some of the concepts relating to his offense cycle, which Vang believed could be attributed to his cognitive functioning.

According to facility records, appellant was currently diagnosed with intermittent explosive disorder, an angry, impulsive response that is out of proportion to the circumstances. This also made it difficult for appellant to control his impulses. Vang believed that, although appellant met the criteria for intermittent explosive disorder, the diagnosis was not warranted, because appellant's behaviors appeared to be due to lack of

social interpersonal skills and poor decision-making skills, which in turn were directly related to his mental retardation.

Appellant's behaviors were dealt with when they occurred, with the staff generally following the behavioral treatment plans. Appellant was also enrolled in classes as part of the Sex Offender Active Reorientation System (SOARS) program. SOARS has three components: a sex offender relapse prevention class that appellant was taking, a collateral group with a social worker, and a core therapy group run by a psychologist or psychology intern supervised by a psychologist. Vang was not directly involved with appellant's classes, but had been told his participation had improved over the last couple of years. Although he continued to lack complete insight into his own offenses, he had increased his knowledge and was providing adequate feedback to peers in terms of his core group participation.

Dr. Gonzalez, a physician at PDC, had treated appellant for more than six years. They met regularly once a month, and more often if needed. Gonzalez prescribed medications for appellant that included, on recommendation of the psychiatrist, psychotropic medications. Appellant was taking risperidone to help him control his anger issues; Wellbutrin, an antidepressant, to help with his cigarette addiction; olanzapine for behavioral issues; and Klonopin for his outbursts of anger or aggression. Insofar as Gonzalez knew, appellant did well on his medications. In the past 12 months, however, he had had some behavioral issues where he had gotten aggressive, mostly with staff. Although appellant sometimes initiated an increase or decrease in medication in order to help him control his behavior, Gonzalez was unable to say whether appellant was capable of taking his own medication without assistance, because he had only observed appellant within a controlled environment.

Appellant testified that he had lived at PDC for 11 years, and liked living there. Sometimes he got along with the other people in his unit, but sometimes they teased him and called him "big lip." Appellant did not agree with what Vang said about him; he

did not believe he was dangerous. Before he got “fired,” he used to use the power edger. He never hurt anybody; rather, people hurt him. He had only been placed in physical restraints about four times. He was placed in restraints because people were teasing him and he got mad.

Appellant believed his sex offender classes were going well. He participated in them and talked about what might be some of his sexual triggers. When he got mad and worried, then sometimes he wanted to have sex. He used to be attracted to teenage boys, but now, because of his classes, he liked women.

Appellant believed he was mentally retarded, but “not that much.” He could do a lot of things, like sewing, knitting, and crocheting. Appellant admitted that sometimes he got agitated when he ran out of cigarettes. To control his agitation, he sometimes asked people for a cigarette, although he knew he was not supposed to do that.

Appellant’s goal was to go back to his old job on the yard crew at PDC. He also wanted to get back to the highest behavioral reward level. To make that happen, he was earning all his points. He had not been in restraints in the last several months. When he got angry, he went to bed and listened to his roommate’s radio or watched television.

DISCUSSION

Section 6500 allows a mentally retarded person to be committed to DSS, for one year at a time, if he or she is a danger to self or others. Cases have held that in order for the statute to pass constitutional muster, it must be read so as to also require a finding that the person’s mental retardation causes him or her to have serious difficulty controlling dangerous behavior. (*People v. Bailie* (2006) 144 Cal.App.4th 841, 847-850; cf. *In re Howard N.* (2005) 35 Cal.4th 117, 132.) Accordingly, to sustain a finding under section 6500, there must be proof the individual “(1) is mentally retarded; (2) is dangerous to himself or others; and (3) has serious difficulty controlling his dangerous behavior because of his mental retardation.” (*People v. Sweeney* (2009) 175 Cal.App.4th 210, 216, fn. omitted; accord, *People v. Wilkinson, supra*, 185 Cal.App.4th at p. 546.)

These elements must be proven beyond a reasonable doubt (*Money v. Krall* (1982) 128 Cal.App.3d 378, 398), and appellant's jury was so instructed.

The United States Supreme Court has recognized that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. [Citations.]" (*Addington v. Texas* (1979) 441 U.S. 418, 425.) This being the case, the parties agree that in reviewing the sufficiency of the evidence to support an involuntary commitment under section 6500, we apply the same standard of review as we would in a criminal matter. (See, e.g., *People v. Mercer* (1999) 70 Cal.App.4th 463, 465-466 [applying standard of review applicable in criminal cases to commitments under Sexually Violent Predators Act]; *People v. Overly* (1985) 171 Cal.App.3d 203, 207 [same re: extensions of commitment for defendants found not guilty by reason of insanity].) Accordingly, "[i]n assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" [Citation.] We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. [Citation.]" (*People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1507-1508; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Johnson* (1980) 26 Cal.3d 557, 578; *People v. Reilly* (1970) 3 Cal.3d 421, 425.)

The evidence adduced at trial is set out at length, *ante*, and we need not repeat it here. Vang's testimony was clearly credited by the jury, and we are not free to reweigh or reinterpret it. (*People v. Mercer, supra*, 70 Cal.App.4th at pp. 466-467.) Although it was sufficient to uphold the judgment standing alone (Evid. Code, § 411; *In re Frederick G.* (1979) 96 Cal.App.3d 353, 366), the other testimony also gave support to the jury's finding.

Appellant argues he was not shown to be mentally retarded, and he points to the fact he had several IQ scores above 75. His most recent full scale IQ score was 69, however, well within the range for mild mental retardation. In addition, he manifested the requisite deficits in adaptive behavior, and the evidence showed onset before his 18th birthday. As jurors were instructed, mental retardation “is not measured according to a fixed intelligence test score or a specific adaptive behavior deficiency, but rather constitutes an assessment of the individual’s overall capacity based on a consideration of all the relevant evidence.”

With respect to the requirement of dangerous behavior, appellant says Vang was not present on the occasions when he was placed in restraints, and there was no evidence he actually hit, kicked, spit on, or hurt anyone. That Vang’s testimony was not based on her personal observations did not render it inadmissible (*People v. Phillips* (1981) 122 Cal.App.3d 69, 85), and its weight was for the jury to determine. Appellant points to no authority requiring infliction of actual injury before dangerousness can be found; indeed, section 6500 specifies that if, as here, the mentally retarded person is in the care of a developmental center when the petition is filed, “proof of a recent overt act while in the care and treatment of” said developmental center or other facility “is not required in order to find that the person is a danger to self or others.” (§ 6500, 2d par.) Here, the evidence showed that within the relevant time frame, appellant had been placed in restraints on several occasions due to aggressive and potentially violent and harmful behavior. Given PDC’s policy, the fact restraints were used strongly suggests appellant remained aggressive and out of control despite attempts to redirect him. In light of the nature of the incidents, which included threatening and pursuing staff, the evidence sufficiently showed the requisite dangerousness, to wit, the potential for infliction of substantial physical harm by appellant upon himself or others. (See *People v. Hartshorn* (2012) 202 Cal.App.4th 1145, 1148; *People v. Alvas* (1990) 221 Cal.App.3d 1459, 1467.)

As for the issue of control, appellant says Vang's testimony failed to establish that his behavior resulted from the slow learning attendant to his mental retardation; rather, he argues, his nicotine addiction and caffeine-related disorder were responsible. As the jury was instructed, however, although mental retardation had to be a substantial factor causing appellant to have serious difficulty controlling his dangerous behavior, it did not have to be the *only* causative factor. (*People v. Sweeney, supra*, 175 Cal.App.4th at p. 225.) Here, there was ample evidence appellant had serious difficulty in controlling his dangerous behavior, and that his mental retardation, which caused him to have trouble learning from previous experiences, was a substantial factor in that regard.

DISPOSITION

The judgment (order for commitment) is affirmed.