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

THE PEOPLE,

Plaintiff and Respondent,

v.

LENNETTE LELA BAKER,

Defendant and Appellant.

F063756

(Super. Ct. No. FP003777A)

**OPINION**

APPEAL from an order of the Superior Court of Kern County. John W. Lua,  
Judge.

Paul Bernstein, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and  
Melissa Lipon, Deputy Attorneys General, for Plaintiff and Respondent.

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The trial court found appellant Lennette Lela Baker to be a mentally disordered offender (MDO) and committed her civilly for a period of one year, until October 19, 2012. Baker contends the order must be reversed because there was insufficient evidence she (1) presents a substantial danger of physical harm to others because of her mental disorder, and (2) has serious difficulty controlling her dangerous behavior. She also contends the issues will not be made moot when the commitment order expires.

The People agree the issues will not become moot; therefore, we consider the merits. We conclude there was sufficient evidence to support a civil commitment order pursuant to Penal Code section 2960 et seq. (All further statutory references are to the Penal Code unless otherwise specified.) Consequently, we will affirm the order.

#### **FACTUAL AND PROCEDURAL SUMMARY**

On February 8, 2005, Baker was found guilty of committing arson of an inhabited dwelling. Baker was committed to Patton State Hospital (PSH) on May 17, 2010. On June 21, 2010, the Board of Parole Hearings determined that Baker was an MDO within the meaning of section 2962. (*People v. Baker* (2012) 204 Cal.App.4th 1234, 1238.) On August 3, 2011, the Kern County District Attorney filed a petition to extend Baker's civil commitment.

Baker waived her right to a jury trial. The People presented testimony from Dr. Glenn Potts, a staff psychologist at PSH, Baker's treating physician, and an expert in the area of mental health. Potts reviewed Baker's criminal records, her MDO records, and her psychological assessment. Potts formed the opinion that Baker suffered from paranoid schizophrenia coupled with substance dependence.

Baker had a criminal record that included possession and use of narcotics, resisting arrest and assaulting law enforcement officers, and setting fire to her own home while it was occupied by family members. She engaged in two instances of physical aggression against other patients at PSH. She also had a history of resisting hospital staff members. She suffered from several fixed grandiose and persecutory delusions.

During group therapy sessions, Baker frequently isolated herself from the group. She had a history of refusing her medications and was involuntarily medicated pursuant to a court order. PSH obtained the order because without her medication, Baker was a danger to herself and others.

By March or April 2011, consistent use of medication had had an effect on Baker's delusions. Her insight into her mental illness, however, was extremely limited. She was not in remission, though, and did not demonstrate the qualities that would suggest a fair chance of a successful recovery. She also was in denial of her history of substance abuse.

Potts opined that if Baker achieved remission for a period of at least six months to a year in a controlled hospital setting, she might be ready for a conditional release into Kern County's program. The program, however, required a person with a substance abuse problem to complete a comprehensive substance abuse program before being conditionally released. Baker had not completed a substance abuse program.

Potts opined that if Baker were released, her failure to appreciate the nature of her illness would cause her to cease taking her medication and she would relapse into paranoid psychotic delusions. Potts opined that Baker would be a substantial danger to others if released because she would fail to continue her medication, thereby recreating the circumstances that caused her to exhibit dangerous behavior in the past.

Baker testified on her own behalf. She acknowledged she has a mental illness, but disagreed with her diagnosis. She denied (1) suffering from delusions, (2) engaging in physically aggressive behavior toward other patients, (3) that substance abuse was a factor in her problems, and (4) that she deliberately set fire to her home.

Baker denied receiving any benefit from being medicated and denied any benefit from the therapy sessions. She had only a vague statement about her wellness and recovery plan.

On October 21, 2011, the trial court found that Baker had a severe mental disorder within the meaning of section 2970. The trial court issued an order extending her commitment one year, to October 19, 2012.

## **DISCUSSION**

Baker raises two challenges to the sufficiency of the evidence. Baker contends the commitment order must be reversed because there was insufficient evidence she (1) presents a substantial danger of physical harm to others because of her mental disorder, and (2) has serious difficulty controlling her dangerous behavior.

### ***MDO Act***

The MDO Act, enacted in 1985, requires that offenders who have been convicted of violent crimes related to their mental disorders, and who continue to pose a danger to society, receive mental health treatment during and after the termination of their parole until their mental disorder can be kept in remission. (§ 2960 et seq.) Although the nature of an offender's past criminal conduct is one of the criteria for treatment as an MDO, the MDO Act itself is not punitive or penal in nature. (*People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 836-840.) Rather, the purpose of the scheme is to provide MDO's with treatment while at the same time protecting the general public from the danger to society posed by an offender with a mental disorder. (§ 2960.)

In keeping with the scheme's nonpunitive purpose, section 2972, subdivision (g) provides that MDO's who have been committed civilly after their parole period has expired are granted the same rights that are afforded involuntary mental patients under Welfare and Institutions Code section 5325 et seq.

### ***Standard of review***

"In considering the sufficiency of the evidence to support MDO findings, an appellate court must determine whether, on the whole record, a rational trier of fact could have found that defendant is an MDO beyond a reasonable doubt, considering all the evidence in the light which is most favorable to the People, and drawing all inferences the

trier could reasonably have made to support the finding. [Citation.]” (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.)

***Substantial danger of physical harm to others***

Baker contends that the prosecution failed to provide sufficient evidence to support one of the statutory criteria for an MDO commitment -- that by reason of the severe mental disorder she “represents a substantial danger of physical harm to others.” (§ 2962, subd. (d)(1).) We disagree.

Baker does not dispute that she suffers from a severe mental disorder. She contends, however, that the trial court should have released her into the community because the People failed to provide substantial evidence that by reason of her schizophrenia she posed a substantial danger of physical harm to others.

The trial court denied Baker’s request to be released, finding that Potts’s testimony established she suffers from a severe mental disorder that is not in remission. The trial court further found that Baker’s severe mental illness caused her to present a substantial danger of physical harm to others if she were released.

Baker contends Potts’s testimony was merely an expert’s opinion, and the facts upon which the opinion was based were not proven independently. While some of the evidence upon which Potts relied may have been unproven hearsay, most of his factual assumptions had a basis in record evidence, including Baker’s testimony.

Contrary to Baker’s contention, Potts’s testimony was more than an unsubstantiated conclusion that Baker posed a risk of physical harm to others. Potts’s opinion that Baker posed a substantial risk of physical harm to others because her schizophrenia was not in remission was based upon numerous factors. Potts noted that Baker had a history of possession and use of narcotics. Her criminal history also included resisting arrest and committing assaults on law enforcement officers. In 2003, Baker set fire to her home while family members were inside because she wanted to “release demons” from the home.

Potts opined that Baker was not likely to take her medication if released; she had a history of refusing medications and an order to medicate her involuntarily was obtained. That Baker is not likely to take her medication if released into the community is relevant to whether she poses a substantial danger of physical harm to others. (*People v. Bolden* (1990) 217 Cal.App.3d 1591, 1604-1605.)

Other factors noted by Potts were (1) Baker still had no understanding of her mental illness or substance dependence; (2) she was not in remission; (3) she was physically aggressive toward other patients in two instances that occurred within a year of the hearing; (4) she had a history of resisting hospital personnel; (5) she held multiple fixed delusions; (6) she did not perform well when previously paroled; and (7) her global assessment and functioning (GAF) score was 40, indicating she has significant trouble managing daily life due to the severity of her mental illness. A typical GAF score is between 70 and 90.

Baker repeatedly denied any issues with substance abuse, despite her multiple drug-related convictions. She also claimed setting her home on fire was an accident; however, the records from the case indicate Baker set the home on fire in several locations. Baker does not have a family support system or other support systems in place outside the hospital setting.

Potts opined that Baker's failure to understand the nature of her illness would cause her to cease taking medication if released, which would cause a relapse into paranoid psychotic delusions that would pose a danger to others.

A trial court is entitled to rely on an expert's opinion that the person represents a danger of physical harm to others. (*People v. Ward* (1999) 71 Cal.App.4th 368, 374.) The testimony of a single mental health expert constitutes substantial evidence supporting a civil commitment. (*People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165.)

Here, Potts's expert opinion was not an unsubstantiated conclusion; rather, it was based upon multiple factors contained in the record evidence. Baker's contention

amounts to a request that we reweigh the evidence and substitute our judgment for that of the trial court, in its capacity as the trier of fact. This we will not do. “That is not the function of an appellate court. [Citation.]” (*People v. Miller* (1994) 25 Cal.App.4th 913, 919.)

***Serious difficulty controlling dangerous behavior***

Baker also contends there was insufficient evidence to support a finding that she has serious difficulty controlling her dangerous behavior. She argues that the People failed to ask Potts specifically if she (Baker) had serious difficulty controlling her dangerous behavior; consequently, there was no evidence from which the trial court could make this finding. Again, Baker’s contention fails.

Potts’s testimony was that if released, Baker would discontinue her medication, which would cause a relapse into paranoid psychotic delusions. As Potts explained, a psychotic delusion compromises a person’s cognitive abilities in such a way that the person, in this case Baker, is unable to perceive the need to resist the urge to act in a manner that harms others. When not medicated and while suffering from psychotic delusions, Baker demonstrated an inability to control her dangerous behavior -- she set fire to her home while it was occupied. Even in a controlled hospital setting, she physically fought with two other patients. Potts opined that Baker would have greater difficulty controlling her behavior in an unstructured setting outside the hospital.

Potts was not required to use any specific words or phrases in order to convey the concept of volitional impairment. (*People v. Williams* (2003) 31 Cal.4th 757, 778; *People v. Sudar* (2007) 158 Cal.App.4th 655, 665; *People v. Bowers* (2006) 145 Cal.App.4th 870, 879.) It is clear from Potts’s testimony that Baker’s paranoid schizophrenia gave rise to distorted perceptions and thinking that seriously compromised her ability to regulate her dangerous behavior.

**DISPOSITION**

The civil commitment order is affirmed.

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CORNELL, Acting P.J.

WE CONCUR:

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KANE, J.

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DETJEN, J.