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

THE PEOPLE,

Plaintiff and Respondent,

v.

BRODERICK JEROME STEELE,

Defendant and Appellant.

F065016

(Super. Ct. No. CF06904028)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Arlan L. Harrell, Judge.

Rachel Lederman, 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, Kathleen A. McKenna and Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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

Appellant Broderick J. Steele was committed to Atascadero State Hospital (ASH) for continued involuntary treatment as a mentally disordered offender (MDO) pursuant to Penal Code section 2960 et seq.¹ Steele contends that the trial court erred when it refused to instruct the jury that his mental disorder must cause him to have serious difficulty controlling his behavior in order to commit him as an MDO. He also contends that there is insufficient evidence to recommit him as an MDO. We disagree and will affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Steele's commitment offense occurred in June of 2006 when a security officer asked him to leave a casino where he was harassing people. Steele pulled a knife and threatened to cut the officer, but then dropped the knife and ran away. When arrested, he told officers that he was at the casino attending a Klu Klux Klan meeting and also that he worked at the bar in the casino. Steele was sent to prison and then to ASH after he completed his sentence in 2009.² He has remained there since and had a controlling discharge date of June 12, 2012.

On November 8, 2011, a petition for involuntary treatment pursuant to section 2970 was filed. On May 11, 2012, the jury found the petition to be true and Steele was recommitted to ASH.

Testimony at trial established that, in April of 2012, Officer Subenie Bruton, a correctional officer at the county jail, was conducting a routine check of the pod in which Steele's cell was located.³ Steele got Officer Bruton's attention and told her she was

¹ All further statutory references are to the Penal Code unless otherwise stated.

² Steele earlier received mental health treatment at California Medical Facility Vacaville for a few months at the end of 1995 and beginning of 1996, and at ASH from August 2002 to November of 2002.

³ Steele was transferred from ASH to county jail in mid April to attend court on April 23, 2012.

supposed to interrupt the check she was conducting and bring him a new mattress. Officer Bruton informed Steele that she could not do so. Steele “became belligerent.” He raised his voice, his eyes became bigger and his body language became more intense.

Several days later, on April 23, 2012, Officer Bruton was serving breakfast at the county jail. When she opened Steele’s cell door, he told her he had been promised a new mattress and was still waiting for it. Officer Bruton told Steele she could not do anything about it at that moment, but she would return after she was done serving breakfast and try to resolve the issue. Steele became agitated and began pacing back and forth, at times clenching his fists. Steele raised his voice and called Officer Bruton a “bitch,” “slut,” and “whore.” Officer Bruton left Steele’s cell to finish serving breakfast. Steele kicked and banged on the cell door and continued to make derogatory comments.

Steele’s outburst stopped but resumed when Officer Bruton returned to his cell 15 minutes later. He again called Officer Bruton names and made unpredictable movements. Officer Bruton told Steele that if he did not stop, he would be handcuffed and removed from his cell. At this point, another officer came to assist Officer Bruton and the two handcuffed Steele and walked him to a classroom.

Once in the classroom, Officer Bruton’s partner told Steele to sit down, but he refused, started yelling about his mattress and continued to call the officers names. Steele eventually sat down, but when spoken to, began to stand up slightly. Steele spat in Officer Bruton’s partner’s eye. Officer Bruton’s partner used a reverse hand lock to gain control of Steele and then placed him on the floor.

Expert Testimony

Dr. Brandi Mathews, an expert in forensic psychology, testified that, in her opinion Steele suffered from a severe mental disorder that substantially impaired his thought process, perception of reality, emotional process, and behavior. In reaching this conclusion, Dr. Mathews conducted an interview with Steele and reviewed his mental health treatment history, dating back to 1984. Steele had previously been diagnosed with

shizoaffective disorder, a diagnosis Dr. Mathews agreed with. The disorder has both psychotic symptoms (such as losing touch with reality, auditory hallucinations and paranoia) and mood symptoms (such as agitation, insomnia, excessive energy and racing thoughts).

According to Dr. Mathews, Steele exhibited psychotic symptoms of shizoaffective disorder. Steele had reported hearing voices, which at times, told him to kill people, and he had been observed talking to himself when no one else was around. Steele had expressed several paranoid beliefs, including his belief that the government was tracking him, that people were trying to kill him, and that people could read his mind. Steele had also been delusional, at one point reporting that he believed he was a CIA agent.

Dr. Mathews testified that Steele also exhibited mood symptoms of schizoaffective disorder. At times he did not sleep, he consistently paced and was restless and reported having racing thoughts. His speech was pressured and he rambled. In addition, his mood was labile, meaning he could become agitated verbally or physically without provocation. Dr. Mathews opined that these psychotic and mood symptoms impaired Steele's thought processes and behavior by causing him to lose touch with reality and act impulsively.

Dr. Mathews also testified that, in her opinion, Steele's severe mental disorder was not in remission. Although he was relatively stable in January, when he was taking both a mood stabilizer and an antipsychotic, he began to exhibit significant mood symptoms soon after stopping the mood stabilizer. He was described as very agitated and labile, and he was observed pacing and not sleeping on numerous occasions. In Dr. Mathews opinion, as long as Steel was not taking a mood stabilizer, he would continue to exhibit mood symptoms.

Dr. Mathews stated that the incident that took place in April of 2012 was consistent with the mood symptoms of schizoaffective disorder and supported her conclusion that Steele's mental disorder was not in remission. Dr. Mathews described

earlier instances in which Steele had been violent. On June 3, 2011, Steele threatened a female staff person, banged on the nurse's station and cursed at her. Steele was so agitated during this incident that he had to be placed in restraints. On June 30, 2011, Steele ran down the hall and began striking another patient without provocation. The two then fought each other.

Dr. Mathews also testified that her opinion regarding remission was based in part on Steel's failure to comply with his treatment plan. He had refused to take his medications on numerous occasions and attended less than 20 percent of his group therapy sessions in the previous two to three months.

Finally, Dr. Mathews opined that, due to Steele's severe mental disorder, he posed a substantial danger or a substantial risk of physical harm to others. Dr. Mathews based her opinion on several factors. She considered his June 2006 committing offense in which Steele harassed individuals at a casino. When asked by security to leave, Steele became agitated, pulled a switchblade out of his pocket, opened it, and threatened to cut the security officer. When he was arrested, Steele rambled and told the police officer he was at the casino to attend a meeting of the Klu Klux Klan.

Dr. Mathews considered Steele's lack of insight into his mental illness. He denied having a mental illness and refused to take his medication on numerous occasions, indicating his medication compliance would be poor in the future. Dr. Mathews also considered Steele's 12 parole violations and that his poor performance while on parole was indicative of how he would perform if he were released into a less structured environment.

Dr. Mathews also considered Steele's history of substance abuse, which included use of cocaine, methamphetamine, alcohol, marijuana, and LSD, and his arrests and convictions for numerous substance related offenses. According to Dr. Mathews, abuse of controlled substances can aggravate or exacerbate both the psychotic and mood symptoms of a mental disorder, as well as render any medication ineffective. Steele's

therapy included treatment for substance abuse, but despite having ample time to complete such treatment, he remained in the first of four stages of his treatment due to poor attendance. Because he had not completed the substance abuse treatment program, Steele lacked the tools to abstain from drug use while unsupervised in the community.

Based on all of the foregoing, Dr. Mathews concluded that it was unlikely that Steele would seek treatment, continue taking his medication, or abstain from drug use if he were released into the community.

Steele's Testimony

Steele testified in his own behalf. He denied believing that he was a CIA agent, explaining that he had fantasized about being involved in law enforcement since he was 18 years old and went on a ride-along with a deputy sheriff. Steele admitted that he used to believe a satanic cult wanted to kill him, but had not believed that since 2004. Steele acknowledged his previous belief that other people could read his mind, explaining that the belief likely came from a movie he once saw in which people could read other people's minds and blow up their heads by staring at them. At this point, Steele thought only that God could read his mind. Steele claimed he could hear God speaking to him, but that God never instructed him to do anything that would result in harm to others.

Steele described the circumstances surrounding each of the instances testified to by others. Regarding the June 3, 2011 incident, Steele explained that he had been standing in line to shave when he said, "I bet a lot of guys stare at you" to the nurse handing out shaving kits. The nurse shook her head and said, "I don't know." Steele then asked the nurse, who was wearing clogs at the time, how many pairs of clogs she had. Steele thought he and the nurse were "really close" and that he could confide in her. He denied sexually harassing her. Steele explained that he became angry with the nurse because she "snitche[d]" on him, so he banged on the window and flipped her off.

Regarding the June 30, 2011, incident, Steele explained that when he came out of his room, another patient said, "Hey, you fucking nigger, you guys aren't about shit."

Steele then ran down the hall and bumped into the patient with his shoulder, causing the patient's nose to bleed. Steele thought the patient was a Nazi.

Regarding his committing offense on June 6, 2006, Steele denied brandishing a knife at the security guard and explained that the knife fell off of his belt as he crossed the street. Steele believed the security guard was a Nazi and a member of the Klu Klux Klan, was prejudiced against him and had never liked Steele because he used to panhandle at the casino when he was homeless. Steele stated that if he were released into the community, he would probably gamble again, but not at the casino where the incident took place. If he saw the security guard who accused him of brandishing a knife at him, Steele stated that he might ask him why he "set [him] up," but that he would walk away if he did not answer or said something hostile.

As for the April 23, 2012, incident, Steele testified that he had asked Officer Bruton for a new mattress three days in a row, but she kept telling him it was not her job. Steele was fed up and agitated because he had not slept well for several days. When Steele banged on the door of his cell to get her attention, Officer Bruton told him there was something wrong with him and that he needed a psychiatrist. After Officer Bruton and her partner escorted him to another room, they told him to sit down, but he could not because his back hurt and it hurt to sit. Steele testified that Officer Bruton's partner raised his voice and ordered him to sit down again and this time he complied. Then, according to Steele, Officer Bruton's partner got close to his face and told him in a loud voice "I'm not going to be playing your little games." When Steele replied that he was not playing games, some spit and a small piece of food came out of his mouth because he was missing a tooth. Steele denied intentionally spitting on Officer Bruton's partner.

Steele testified that the last time he used drugs was in 2004. He also claimed he had not heard voices in two and a half years. At the time of trial, he had been taking Haldol continuously since his arrest in 2006. According to Steele, he refused to take his medication once in 2009 because he stopped hearing voices and he thought the medicine

was no longer necessary. Steele testified that, when he was still hearing voices, he heard the voice of God telling him to do things like kill political officials. Steele thought this was a test and he never obeyed any negative commands.

Steele testified that he would continue taking Haldol if he were released from ASH. He would go to the Veteran's Administration for shots, as he had done in the past. He would try to find housing at Victory Outreach.

Rebuttal

Dr. Mathews testified that one of the psychotic symptoms of shizoffective disorder is paranoia, which included the perception that others are persecuting you and lying about you. Dr. Mathews explained that this misperception can be dangerous because the patient might believe someone is trying to harm him and he may lash out in response.

DISCUSSION

I. 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 civilly committed after the parole period has expired are granted the same rights that are afforded involuntary mental patients under Welfare and Institutions Code section 5325 et seq.

II. JURY INSTRUCTIONS

Steele contends that the trial court erred when it refused to instruct the jury that his mental disorder must cause him serious mental difficulty in controlling his behavior. Therefore, he claims his due process rights were violated and the commitment order must be reversed. We disagree.

“[T]he safeguards of personal liberty embodied in the due process guaranty of the federal Constitution prohibit the involuntary confinement of persons on the basis that they are dangerously disordered without ‘proof [that they have] serious difficulty in controlling [their dangerous] behavior.’ [Citation.]” (*People v. Williams* (2003) 31 Cal.4th 757, 759 (*Williams*), quoting *Kansas v. Crane* (2002) 534 U.S. 407, 413 (*Crane*).) In *Williams*, our Supreme Court applied the due process standard established in *Crane* to a challenge to a civil commitment under the Sexually Violent Predator Act (SVPA) (Welf. & Inst. Code, § 6600 et seq.).

The defendant in *Williams* contended his commitment was invalid because the statutory language of the SVPA did not include the federal constitutional requirement of proof of a mental disorder that causes “serious difficulty in controlling behavior” (*Crane, supra*, 534 U.S. at p. 413), and the jury was not specifically instructed on the need to find such impairment of control. (*Williams, supra*, 31 Cal.4th at p. 764.) Our Supreme Court rejected this argument, holding that the express terms of the SVPA limited persons eligible for commitment to persons “who have already been convicted of violent sexual offenses against multiple victims [citation], and who have ‘diagnosed mental disorder[s]’ [citation] ‘affecting the emotional or volitional capacity’ [citation] that ‘predispose[] [them] to the commission of criminal sexual acts in a degree constituting [them] menace[s] to the health and safety of others’ [citation], such that they are ‘likely [to] engage in sexually violent criminal behavior’ [citation].” (*Williams, supra*, at p. 759, quoting Welf. & Inst. Code, § 6600, subds. (a)(1), (c).) The court held that this statutory language inherently encompassed and conveyed to the jury the requirement of a mental

disorder that caused serious difficulty in controlling criminal sexual behavior. The court concluded that, because the jury instructions tracked the statutory language, including the SVPA's definition of a "diagnosed mental disorder[s]," no additional instruction was necessary. (*Williams, supra*, at p. 759.)

In *People v. Putnam* (2004) 115 Cal.App.4th 575 (*Putnam*), the court applied the same principles to the MDO civil commitment scheme. The *Putnam* court held that even though *Williams* involved a different statutory scheme, the *Williams* court's rationale also foreclosed the argument for MDO civil committees: "In the MDO context, just as in the SVPA context, instructing the jury with the applicable statutory language adequately informs the jury of the kind and degree of risk it must find to be present in order to extend an MDO commitment." (*Putnam, supra*, at pp. 581-582.) The *Putnam* court reasoned that the instructions that tracked the MDO statutory elements and definition of severe mental disorder "informed the jury that in order to find that appellant had a severe mental disorder, it had to find that he had 'an illness or disease or condition that substantially impair[ed] [his] thoughts, perception of reality, emotional process, or judgment, or which grossly impair[ed] [his] behavior.' Moreover, in order to find that the disorder was not in remission, the jury had to find that 'the overt signs and symptoms of the severe mental disorder' were not under control. Finally, the jury was instructed it had to find that 'by reason of such severe mental disorder, [appellant] represents a substantial danger [of] physical harm to others.'" (*Putnam, supra*, at p. 582.) Taking these instructions as a whole, the court concluded the jury could not have sustained the section 2970 petition without having found that, "as a result of [the defendant's] mental disorder, he suffered from a seriously and substantially impaired capacity to control his behavior, and that, for this reason, he represented a substantial danger of physical harm to others. In other words, the instructions given here, which tracked the language of the MDO statute, necessarily encompassed a determination that [the defendant] had serious difficulty in controlling his violent criminal behavior, and thus, ... separate instructions

on that issue were not constitutionally required. [Citation.]” (*Putnam, supra*, at p. 582, fn. omitted.)

Here, as in *Putnam*, the jury instructions defined the statutory elements of an MDO finding. As in *Putnam*, the instructions informed the jury that a “*severe mental disorder* is an illness or disease or condition that substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or that grossly impairs his or her behavior “ (CALCRIM No. 3457.) The instructions further stated that, to find that the disorder was not in remission, the jury had to find that “the external signs and symptoms of the severe mental disorder” were not under control. Finally, the instructions stated the jury had to find that, “[b]ecause of his severe mental disorder, he presently represents a substantial danger of physical harm to others.” (CALCRIM No. 3457.)

Although Steele acknowledges the holding in *Putnam*, he claims it does not resolve the issue against him because the court in *Putnam* explicitly declined to decide whether an instruction about volitional control might be appropriately given where, as here, it was requested. (*Putnam, supra*, 115 Cal.App.4th at p. 583.) But the fact that Steele requested a modification to the instruction⁴ does not change the court’s instructional obligation. The law requires that the trial court correctly instruct on any points of law pertinent to the issue. (§ 1093, subd. (f).) A trial court is not required to give a requested instruction that merely restates a pertinent legal principle in another way. (*People v. Hendricks* (1988) 44 Cal.3d 635, 643, citing *People v. Anderson* (1966) 64 Cal.2d 633, 641.) Here, the instruction given adequately informed the jury of the required causal connection between Steele’s severe mental disorder and his lack of

⁴ The requested modification added the italicized wording: He had a severe mental disorder *that causes serious difficulty controlling dangerous behavior. Serious difficulty controlling dangerous behavior as a result of a severe mental disorder means that a person tried to control his dangerous behavior, encountered serious difficulty in trying to do so, and experienced the serious difficulty due to a severe mental disorder.*

volitional control over his violent criminal behavior. (See *Putnam, supra*, at p. 582.) The modification requested by Steele merely restated what was already adequately conveyed to the jury in the instructions given.

Steele also argues that *In re Howard N.* (2005) 35 Cal.4th 117 (*Howard N.*) supports his position. But in *Howard N.*, our Supreme Court addressed a different statutory scheme under Welfare and Institutions Code section 1800 et seq. for juvenile civil commitments. Unlike the MDO and SVP statutes, the juvenile statutory scheme addressed in *Howard N.* did not include a definition linking the defendant's mental disorder to a lack of volitional control. (*Howard N., supra*, at p. 136.) Consequently, jury instructions tracking the statutory language of the juvenile scheme did not necessarily inform the jury of the required showing that the mental disorder impaired the ability to control dangerous behavior. (*Id.* at p. 130.)

We find the analysis and conclusion of the *Putnam* court persuasive, and for the reasons stated in *Putnam*, we conclude that under the instructions given, which tracked the MDO statutory language, the jury necessarily found that Steele's mental disorder caused serious difficulty in controlling his dangerous behavior. (*Putnam, supra*, 115 Cal.App.4th at pp. 581-582.) Steele's recommitment as an MDO met federal due process standards.

III. SUFFICIENCY OF THE EVIDENCE

Steele contends his recommitment must be reversed because it is not supported by substantial evidence. We disagree.

Section 2972, subdivision (c) states that an MDO may be recommitted for an additional term of one year “[i]f the ... jury finds that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his ... mental disorder, the patient represents a substantial danger of physical harm to others” The findings supporting a recommitment order will be affirmed on appeal so long as they are supported by

substantial evidence. (*People v. Miller* (1994) 25 Cal.App.4th 913, 919-920.)

“[S]ubstantial evidence” in this context, just as in a criminal case, means “evidence that is reasonable, credible, and of solid value – to support the jury’s finding.” (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398, fn. omitted.)

Here, Steele challenges the jury’s findings in two respects. He argues there was no substantial evidence to support the conclusion that he currently represented a substantial danger of physical harm to others because of his mental disorder or that his severe mental disorder causes serious difficulty controlling dangerous behavior. We disagree. Dr. Mathews testified that, due to Steele’s severe mental disorder, he posed a substantial risk of physical harm to others. Dr. Mathews opined that when Steele was experiencing mood symptoms, he overreacted to situations and his reactions typically involved some type of physical violence. According to Dr. Mathews, Steele was “incapable of monitoring or gauging his emotional reactions.” This opinion was supported by Steele’s pattern of being violent or threatening when he displayed mood symptoms of his schizoaffective disorder. Steele’s history of violent conduct, his lack of insight into his mental disorder, and his threatening behavior all suggested Steele’s judgment was poor and that he was at risk of future dangerous behavior. Plainly, there was substantial evidence to support the conclusion that Steele was dangerous because of his mental disorder.

Steele argues that Dr. Mathews opinion that he was currently dangerous and unable to control his behavior as a result of his mental disorder was largely based on his 2006 committing offense and not on proof of continuing dangerousness. This is incorrect. Dr. Mathews also considered Steele’s 2011 incidents in which he threatened a female employee at the jail and a separate incident in which he fought with a fellow patient, as well as the 2012 incident in which he lost his temper, failed to cooperate with several officers at the county jail, continuously yelled at them, and spit on one of them. No more was required.

We conclude the order is supported by substantial evidence.

DISPOSITION

The order is affirmed.