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

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY HEVRON,

Defendant and Appellant.

F069952

(Super. Ct. No. F12903876)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. John F. Vogt, Judge.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Gomes, J. and Poochigian, J.

Appellant Anthony Hevron appeals a jury's finding that he is subject to a one-year recommitment under the Mentally Disordered Offender Act (MDO Act) (Pen. Code, § 2970).<sup>1</sup> Appellant contends there was insufficient evidence to conclude he met each of the three requirements for commitment: (1) not being in remission or not being able to be kept in remission without treatment; (2) currently being physically dangerous; and (3) having serious difficulty controlling dangerous behavior due to a mental disability. For the reasons set forth below, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In 2012 appellant pleaded nolo contendere to multiple charges resulting from a vehicle theft and high speed chase. Appellant was sentenced to one year and four months in state prison.

On March 18, 2013, appellant was granted parole, subject to the special condition that he receive mental health treatment pursuant to section 2962. He was admitted to Atascadero State Hospital for treatment, reaffirmed for commitment in May 2013, and again reaffirmed for commitment at his annual review in May 2014.

Appellant's parole was originally scheduled to terminate in 2016. When an administrative error was noticed, however, appellant's release date was adjusted to August 19, 2014. Once the district attorney's office learned of this fact, it filed an expedited petition to extend treatment under section 2970. Appellant denied the petition, and a jury trial was held on August 7, 2014.

At trial, the People called Dr. Phylissa Kwartner, a forensic psychologist at Atascadero State Hospital, to provide expert testimony regarding appellant's mental state and whether he qualified as a mentally disordered offender (MDO). Dr. Kwartner based her opinions upon a meeting with appellant in April 2014 that was conducted as part of his annual review, an independent review of appellant's medical and criminal history, and

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

a consultation with appellant's psychologist, Dr. Dehot. Dr. Kwartner opined that appellant has a severe mental disorder which is not yet in remission and cannot be kept in remission without treatment and that appellant continues to represent a substantial danger of harm to others because of his severe mental disorder.

With respect to her opinion that appellant has a severe mental disorder, Dr. Kwartner testified that appellant came to their meeting looking disheveled and having an odor to him, which suggested he was not taking care of his personal hygiene. Dr. Kwartner also detailed appellant's mental history, noting he was diagnosed with bipolar disorder by age 15, had required several involuntary psychiatric hospitalizations under Welfare and Institutions Code section 5150, and had required extensive mental health care while incarcerated, including three emergency hospitalizations. Dr. Kwartner explained that appellant suffers from a schizoaffective disorder, which includes both mood and psychotic symptoms, including auditory hallucinations. As examples of symptomatic behavior, Dr. Kwartner testified about documented instances where appellant rapidly changed topics in conversation, placed food down his pants, or engaged in bizarre mannerisms, such as talking on the phone when no one was on the line.

Dr. Kwartner further opined that appellant's mental disorder was not in remission and cannot be kept in remission without treatment. In opining that appellant's mental disorder was not in remission, Dr. Kwartner noted appellant's antipsychotic medication had been increased in the recent past, he had requested additional medication multiple times, he had been writing the word "jealousy" repeatedly on paper taped to the walls, and that appellant was unable to acknowledge his mental illness existed. Dr. Kwartner opined appellant's mental disorder could not be kept in remission without treatment for similar reasons. In particular, Dr. Kwartner noted appellant was on a forced medication order and had stated he did not plan on taking his medicine once released. Because appellant was unable to recognize the existence of his mental illness and believed his

medicine did not help him, Dr. Kwartner believed appellant had a high likelihood of relapse due to the likely fact he would not continue to take medication if released.

Finally, Dr. Kwartner opined that appellant continued to represent a substantial danger of harm to others because of his severe mental disorder. Dr. Kwartner explained how an individual similar to appellant would suffer an increase in symptoms in going off of their medication, which could lead to substance abuse, difficulties in their social relationships, and a greater risk to act in impulsive or otherwise dangerous ways. Reviewing appellant's history, Dr. Kwartner noted several instances where appellant's poorly controlled symptoms resulted in aggression or increased aggression. These included the theft and high-speed chase resulting in appellant's current treatment, aggressive behaviors that arose during appellant's incarceration and later treatment at the mental hospital, and prior incidents involving domestic violence. Dr. Kwartner then noted appellant lacked a full discharge plan, which details how appellant intends to manage symptoms and obtain assistance when released. Given appellant's lack of awareness of his mental condition, his refusal to take medications, his history of increased aggression when his symptoms are not controlled, and his lack of a plan to manage symptoms if released, Dr. Kwartner concluded appellant would pose a substantial danger to others due to his mental illness.

In further support of the petition, the People called Shannon Parkinson, a program clinician from the Central California Conditional Release Program (CONREP), to testify regarding appellant's suitability for that program. CONREP is a state program which supervises mentally disordered offenders as they transition out of a hospital and into the community. Based on appellant's lack of insight into his mental illness, his lack of a relapse plan, and his unwillingness to take medication, Ms. Parkinson testified that appellant would not have qualified for outpatient services through CONREP.

In opposition to the petition, appellant testified in his own defense. He claimed to only suffer from depression. While other people had told him he suffered from a mental

health disorder, he did not believe that diagnosis applied to him. Appellant stated he was willing to take medication for his depression if it was prescribed and that he would attend substance abuse classes if released.

Based on this evidence, a jury found the petition to be true. This appeal timely followed.

## **DISCUSSION**

Appellant argues there was insufficient evidence to support any of the factors necessary to recommit him as an MDO.

### **Standard of Review and Applicable Law**

“The Mentally Disordered Offender Act (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 ... until their mental disorder can be kept in remission.” (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1061 (*Lopez*), disapproved on another point in *People v. Harrison* (2013) 57 Cal.4th 1211; § 2962 et seq.) “Commitment as an MDO is not indefinite; instead, ‘[a]n MDO is committed for ... one-year period[s] and thereafter has the right to be released unless the People prove beyond a reasonable doubt that he or she should be recommitted for another year.’” (*Lopez, supra*, at p. 1063.)

In order to recommit an MDO for an additional year, the People must prove that (1) the person has a severe mental disorder; (2) the person’s mental disorder is not in remission or cannot be kept in remission without treatment; and (3) because of the mental disorder, the person continues to represent a substantial danger of physical harm to others. (§ 2972, subd. (c); *People v. Cobb* (2010) 48 Cal.4th 243, 252.)

In reviewing whether the evidence presented was sufficient to support an MDO finding, we “must determine whether, on the whole record, a rational trier of fact could have found that [appellant] 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.” (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082 (*Clark*)). ““““[I]t is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the [finding] is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.”””” (*Id.* at p. 1083.)

A single opinion by a psychiatric expert that a person is currently dangerous due to a severe mental disorder can constitute substantial evidence to support the extension of a commitment. (*See People v. Bowers* (2006) 145 Cal.App.4th 870, 879; *People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165 [§ 1026.5 commitment].) “Expert opinion testimony constitutes substantial evidence only if based on conclusions or assumptions supported by evidence in the record. Opinion testimony which is conjectural or speculative ‘cannot rise to the dignity of substantial evidence.’” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

### **Sufficient Evidence Supports the Verdict**

We reject appellant’s contention that the evidence is insufficient to support his recommitment as an MDO. Dr. Kwartner’s testimony, based on specific instances of conduct, is substantial evidence that appellant suffers from a severe mental disorder that is not in remission and cannot be kept in remission without treatment, and which causes appellant to represent a substantial danger of physical harm to others.

As shown above, Dr. Kwartner detailed appellant’s mental disorder—a schizoaffective disorder including both mood and psychotic symptoms, along with auditory hallucinations—and identified specific instances of conduct demonstrating that the disorder was not in remission under the current medication. Dr. Kwartner further demonstrated that appellant’s condition was not likely to be kept in remission without treatment due to appellant’s lack of awareness regarding his mental issues and his resulting statements that he would not take his medication if released. Indeed, appellant

himself confirmed this fact by refusing to acknowledge any diagnosis other than depression. Finally, Dr. Kwartner provided a detailed and incident-specific expert opinion which demonstrated appellant's mental disorder resulted in difficulty for appellant in controlling his behavior, and that appellant posed a danger to others due to his mental disorder. This testimony was sufficient to find appellant was an MDO in need of recommitment.

Appellant argues that his mental disorder could be kept in remission without treatment. In particular, appellant contends the primary basis for Dr. Kwartner's conclusion to the contrary was an involuntary medication order and appellant's statements that he would not take medication upon release, but that these were contradicted by the fact that appellant had taken his medication over the last year and testified at trial that he would comply with any doctor's prescriptions. We disagree. Appellant's contention that his involuntary medication order and statements were the sole evidence supporting the claim he needs treatment to ensure remission is inaccurate. Dr. Kwartner's opinion included substantial discussion of appellant's lack of awareness of his mental disorder, lack of a discharge plan, and the effect those facts would have on his treatment if released. Moreover, to succeed, appellant's argument requires us to give more weight to appellant's evidence of compliance than Dr. Kwartner's expert opinion. We cannot do so. (*Clark, supra*, 82 Cal.App.4th at p. 1083.) Finally, even if we accepted appellant's argument, it does not discount the findings presented by Dr. Kwartner that appellant's mental disorder was not in remission at all, as evidenced by multiple instances of recent symptomatic behavior and an increase in his medications.

Appellant also contends his mental disorder does not cause difficulty in controlling dangerous behaviors. He claims there was no evidence of recent violent actions by him and that the claim he might go off his medication was pure speculation. Again, we disagree. The MDO Act specifically states the "substantial danger of physical harm" element does not require proof of a recent overt act. (§ 2962, subd. (f); *see*

*In re Qawi* (2004) 32 Cal.4th 1, 24 [noting that “substantial danger of physical harm to others” is without definition but appears to mean a prediction of future dangerousness by mental health professionals].) Dr. Kwartner provided a detailed and fact-specific opinion which supported the conclusion that appellant was a danger to others when his psychotic symptoms were poorly controlled and that his current mental state would result in poorly controlled symptoms if he ceased treatment. In Dr. Kwartner’s expert opinion, because appellant was unable to recognize his mental illness, he was likely to cease taking his medications and suffer a severe relapse of symptoms. This opinion was not speculative. Dr. Kwartner pointed to identifiable mental health care interventions near in time to each violent behavior considered, and appellant himself provided evidence supporting Dr. Kwartner’s opinion that he was unaware of his mental illness and thus likely to go off his medication.

#### **DISPOSITION**

The judgment is affirmed.