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

THE PEOPLE,

Plaintiff and Respondent,

v.

DILLON VAN PHAN,

Defendant and Appellant.

H037803

(Santa Clara County

Super. Ct. No. CC242072)

After a court trial, defendant Dillon Van Phan was found to be a mentally disordered offender (MDO) and was ordered committed for continued involuntary treatment for one year (see Pen. Code, §§ 2970, 2972).¹ Defendant was not present at a pretrial hearing when his counsel waived a jury trial. On appeal, defendant contends that the trial court erred by failing to obtain a waiver from him personally, and by failing to advise of him of his right to a jury trial. Defendant argues that the errors violated his statutory rights and denied him due process, and that reversal is required.

For reasons that we will explain, we will affirm the judgment.

BACKGROUND

In June 2011, the district attorney filed a petition for continued involuntary treatment of defendant as an MDO for one year pursuant to section 2970. According to

¹ All further statutory references are to the Penal Code.

the petition and supporting attachment, defendant had committed battery with serious bodily injury (former § 243, subd. (d)) and elder abuse (§ 368, subd. (b)(1)) in 2002, and was sentenced to eight years in prison. In 2008, defendant was admitted to Atascadero State Hospital (Atascadero) pursuant to section 2684. In 2009, he was found to be an MDO pursuant section 2962. Defendant's parole termination date was January 28, 2012. In the June 2011 petition, the district attorney sought defendant's continued involuntary treatment for one year, until January 28, 2013.

Defense counsel appeared without defendant for all court hearings prior to trial on the petition. In particular, on September 30, 2011, defense counsel appeared in court, waived defendant's appearance, and confirmed that a jury was waived.

At the trial on November 29, 2011, defendant was assisted by a Vietnamese-language interpreter. The sole witness testifying at the trial was Dr. Timothy Nastasi, an expert in the diagnosis and treatment of mental disorders and in the assessment of dangerousness. Dr. Nastasi previously worked as a clinical psychologist at Atascadero, and he currently worked as a psychologist in the forensic services department at Atascadero. In the latter position, Dr. Nastasi prepared forensic evaluations, which required him to conduct interviews, review records, consult with treating psychiatrists or psychologists, prepare reports, and testify about the reports.

Dr. Nastasi had prepared forensic evaluations of defendant. He interviewed defendant once in 2009 and twice in 2011, with the last interview occurring in May 2011. Dr. Nastasi testified that defendant spoke English, and that it was documented in prior assessments that defendant spoke English "just fine." Dr. Nastasi talked to defendant's treating psychiatrist and treating psychologist numerous times, and he last spoke to them on November 23, 2011, a few days before trial. Based on the information Dr. Nastasi received from the treating professionals, he determined that defendant's condition had not changed since he last interviewed defendant in May 2011.

Dr. Nastasi believed defendant was currently dangerous due to a severe mental disorder not in remission, and that his commitment should be extended. Dr. Nastasi diagnosed defendant with schizophrenia disorganized type. Defendant's current symptoms included "grossly disorganized behavior, speech and thinking." For example, his thinking was "illogical and tangential with loose associations." His speech was "rambling," "most of the time incoherent," and "[a]t times . . . to the degree of word salad," meaning he was "saying different words that don't mean anything in context." Dr. Nastasi also testified that defendant "continues to respond to internal stimuli, which is indicative of auditory hallucinations," and he "shows some paranoia and apparently some persecutory and grandiose delusional ideation." In the latter regard, Dr. Nastasi acknowledged that, because of defendant's "level of disorganization," it was "hard to differentiate" whether defendant had "true delusions" or whether it was "just part of the disorganization."

Dr. Nastasi testified that defendant did not believe he had a mental disorder, and that defendant had refused medication. Dr. Nastasi explained that psychotropic medications "would likely help with symptoms such as disorganization and paranoia and get [defendant] to the point where he can go to groups such as wellness and recovery action planning and anger management and develop a plan for the community. It would . . . help him talk on a logical level with staff members and create a plan so he doesn't go out in the community and perpetrate the same kind of crime he did in the past." Dr. Nastasi further stated that defendant's attendance at group sessions was not the "problem." Rather, the "problem" was that "he goes to the groups and he isn't able to understand nor is he able to participate in any kind of meaningful way." Thus, the group facilitators for two groups—wellness and recovery and anger management— "dropped" defendant from the groups "until he was more coherent and more able to participate."

Dr. Nastasi believed that defendant currently posed a substantial risk of physical harm to others if he was not recommitted. Dr. Nastasi's opinion was based in part on

defendant's prior offense, which Dr. Nastasi characterized as "very violent" and "directly related" to defendant's mental illness. Dr. Nastasi's main source of information for the offense was the probation officer's report. According to Dr. Nastasi, defendant was on a bus and yelling at passengers. He "centered in on a 77-year-old passenger who was attempting to ignore" him. He continued to yell at this passenger even after the bus driver asked him to stop. After the passenger indicated that he wanted to get off, the bus driver immediately pulled over and stopped the bus. As the passenger was exiting the bus, defendant kicked him hard from behind. The passenger fell off the bus and hit his head on the cement. Defendant jumped on him and continued to assault him in a vicious manner until other passengers stopped him. The victim needed emergency brain surgery for internal bleeding of the brain. Thereafter the victim was not able to communicate in the same way or take care of himself.

Dr. Nastasi explained that, at the time of the offense, defendant was psychotic and not on medication. Since then, he had been in secure treatment facilities and had continued to be psychotic, but he had not been violent since arriving at Atascadero. Dr. Nastasi believed that the "main reason" defendant had not engaged in ongoing violence since the offense was because he was "in these secured facilities where the staff members know him" and "can redirect him; his needs are taken care of." Dr. Nastasi believed that if defendant was "out in the community with the level of disorganization that he has and the refusal to go to any kind of outpatient clinic and receive medications and try to stay in order, he's very likely to engage in the same kind of violent behavior he did before because he's still psychotic and because he would have no structure."

At the conclusion of the trial, the court found the allegations of the petition true beyond a reasonable doubt and ordered defendant committed for one year, from January 28, 2012, to January 28, 2013, pursuant to section 2970.

DISCUSSION

I. Personal Waiver of a Jury

On appeal, defendant contends that the trial court erred by failing to obtain a jury waiver from him, rather than from his counsel, and that the error violated his statutory right and denied him due process.

The Attorney General argues that a personal waiver is not constitutionally required. The Attorney General also contends that defendant forfeited his statutory claim by failing to request a jury trial or by failing to object to a court trial, that the claim further lacks substantive merit, and that any error was harmless.

A. The MDO Act

“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 during and after the termination of their parole until their mental disorder can be kept in remission. (Pen. Code, § 2960 et seq.)” (*In re Qawi* (2004) 32 Cal.4th 1, 9 (*Qawi*).)

“The MDO Act is not penal or punitive, but is instead designed to ‘protect the public’ from offenders with severe mental illness and ‘provide mental health treatment until the severe mental disorder which was one of the causes of or was an aggravating factor in the person’s prior criminal behavior is in remission and can be kept in remission.’ (§ 2960.)

The MDO Act has the dual purpose of protecting the public while treating severely mentally ill offenders. (*Ibid.*)” (*Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1061 (*Lopez*).)

“The MDO Act provides for treatment of certified MDO’s at three stages of commitment: as a condition of parole, in conjunction with the extension of parole, and following release from parole.” (*Lopez, supra*, 50 Cal.4th at p. 1061.) “Section 2962 governs the first of the three commitment phases, setting forth the six criteria necessary to establish MDO status; these criteria must be present at the time of the State

Department of Mental Health's and Department of Correction and Rehabilitation's determination that an offender, as a condition of parole, must be treated by the State Department of Mental Health." (*Lopez, supra*, at pp. 1061-1062; see § 2962, subd. (a).) Among the criteria is a requirement of "proof that an offender suffers from a severe mental disorder, that the illness is not or cannot be kept in remission, and that the offender poses a risk of danger to others. (§ 2962, subd. (a).)" (*Lopez, supra*, at p. 1062.) Relevant to this appeal, "[s]ections 2970 and 2972 govern the third and final commitment phase, once parole is terminated. If continued treatment is sought, the district attorney must file a petition in the superior court alleging that the individual suffers from a severe mental disorder that is not in remission, and that he or she poses a substantial risk of harm. (§ 2970.) 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.' [Citation.]" (*Lopez, supra*, at p. 1063.)

Relevant to this appeal, section 2972, subdivision (a) states: "The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable. [¶] The standard of proof under this section shall be proof beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. *The trial shall be by jury unless waived by both the person and the district attorney. . . .*" (Italics added.)

The interpretation and application of section 2972 are questions of law. (See *Amdahl Corp. v. County of Santa Clara* (2004) 116 Cal.App.4th 604, 611.) Questions of law are reviewed under the de novo standard of review. (*Ibid.*)

B. *People v. Otis* (1999) 70 Cal.App.4th 1174

The appellate courts have concluded that the reference to “person” in the context of a jury waiver under the MDO Act permits defense counsel to waive a jury on behalf of defendant. For example, in *People v. Otis* (1999) 70 Cal.App.4th 1174 (*Otis*), the Court of Appeal addressed whether identical language in section 2966, subdivision (b),² which sets forth the procedure for challenging the initial commitment as an MDO, requires the defendant to personally waive a jury. (*Otis, supra*, at pp. 1176-1177.) The trial court accepted defense counsel’s waiver of a jury over the defendant’s objection. The Court of Appeal concluded that the defendant need not personally waive a jury and that counsel may act on behalf of the defendant. (*Id.* at p. 1175.)

In reaching this conclusion, the Court of Appeal observed that “[g]enerally in civil cases, an attorney has ‘complete charge and supervision’ to waive a jury. [Citations.]” (*Otis, supra*, 70 Cal.App.4th at p. 1176.) Although the defendant did not dispute that an MDO proceeding is a civil matter, he argued that the reference to “person” in section 2966, subdivision (b) required that a jury waiver be by “the person himself” or herself. (*Otis, supra*, at p. 1176.) The Court of Appeal pointed out, however, that “nothing in the requirement that the waiver must be by ‘the person’ precludes the person’s attorney from acting on his [or her] behalf. The Legislature did not say the waiver had to be made ‘personally.’” (*Ibid.*) Further, “[h]ad the Legislature intended that waiver could only be made personally by the [defendant], the Legislature would have made its intent clear. For example, the California Constitution, article I, section 16 states that waiver of a jury in a criminal case must be by ‘the defendant and the defendant’s counsel.’ No similar language appears in section 2966, subdivision (b).” (*Ibid.*)

² Section 2966, subdivision (b) states, “The trial shall be by jury unless waived by both the person and the district attorney.”

The Court of Appeal was not persuaded by the defendant's attempt to rely on other language in section 2966, subdivision (b) to support his argument that the reference to a waiver of a jury by a "person" means by the person himself or herself. For example, section 2966, subdivision (b) refers to a waiver of time by "petitioner or his or her counsel." The defendant contended that "construing the word 'person' to include counsel makes the words 'or his or her counsel' surplus." (*Otis, supra*, 70 Cal.App.4th at p. 1176.) The Court of Appeal explained that the rules of statutory construction, including the rule that surplusage should be avoided, cannot be "mechanically appl[ied] . . . to reach a result that is at odds with the intention of the Legislature." (*Id.* at p. 1177.) In considering the "context and purpose" of section 2966, the Court of Appeal reasoned: "Section 2966 concerns persons who have been found by the Board of Prison Terms^[3] to be mentally disordered. The Legislature must have contemplated that many persons, such as Otis, might not be sufficiently competent to determine their own best interests. There is no reason to believe the Legislature intended to leave the decision on whether trial should be before the court or a jury in the hands of such a person." (*Otis, supra*, at p. 1177; see *People v. Fisher* (2006) 136 Cal.App.4th 76, 81 ["We decline the invitation to overrule *Otis* and continue to believe that it was correctly decided"].)

C. *People v. Montoya* (2001) 86 Cal.App.4th 825

In *People v. Montoya* (2001) 86 Cal.App.4th 825 (*Montoya*), the Court of Appeal reached a similar conclusion that defense counsel may waive jury trial on behalf of the defendant under the same statute at issue in the present case. (*Id.* at p. 830.) In *Montoya*, defense counsel waived a jury and the defendant did not protest the waiver in court. (*Id.* at pp. 827-828, 831, fn. 4.) Following a court trial, the defendant was recommitted as an

³ As of July 1, 2005, the Board of Prison Terms was abolished, the Board of Parole Hearings was created, and any reference to the former in the California codes was deemed a reference to the latter. (§ 5075, subd. (a).)

MDO. (*Id.* at pp. 827-828.) On appeal, the defendant contended that his constitutional rights were violated because he did not personally waive his right to a jury trial.

The Court of Appeal in *Montoya* first considered the general rules governing waiver of a jury. It explained that “in a criminal proceeding the right to a jury trial on the underlying charges is a federal and state constitutional right that must be waived by the defendant personally. [Citations.]” (*Montoya, supra*, 86 Cal.App.4th at p. 829.) Regarding civil cases, although the California Constitution establishes the right to a jury trial in such cases, “a jury may be waived by the consent of the parties expressed as prescribed by statute.” (Cal. Const., art. I, § 16.) This generally means that “an attorney or the client may waive jury trial in a civil case. [Citations.]” (*Montoya, supra*, at p. 829.) As for “proceedings that are neither civil nor criminal, but ‘special proceedings,’ such as a competency hearing, the right to a jury trial may be waived by counsel, even over defendant’s express objection. ([*People v.*] *Masterson* [(1994) Cal.4th 965], at p. 969.)” (*Ibid.*)

The *Montoya* court next considered the nature of an MDO proceeding and the applicable rules concerning waiver of a jury. It observed that “[a]lthough [an MDO] hearing, like a competency hearing, is something of a hybrid, a civil hearing with criminal procedural protections, it is nonetheless, as the statute clearly states and California courts have consistently agreed, a civil hearing. (§ 2972, subd. (a); . . .) As a civil hearing, jury trial may thus be waived ‘as prescribed by statute.’ (Cal. Const., art. I, § 16.)” (*Montoya, supra*, 86 Cal.App.4th at p. 830, fns. omitted.) The Court of Appeal determined that the words in section 2972, subdivision (a) that “ ‘[t]he trial shall be by jury unless waived by both the person and the district attorney’ ” “mean defense counsel may waive jury trial on behalf of his [or her] client” (*Montoya, supra*, at p. 830).

In making this determination, the *Montoya* court rejected the defendant’s argument that, “since the word ‘person’ as used in other parts of section 2972 refers to the defendant personally, it must do the same in this sentence of subdivision (a).”

(*Montoya, supra*, 86 Cal.App.4th at p. 830.) The Court of Appeal reiterated the reasoning of *Otis, supra*, 70 Cal.App.4th at page 1177, that the rules of statutory construction may not be applied to reach a conclusion that conflicts with legislative intent, and there is no reason to believe that the Legislature intended to leave the decision about a jury trial in the hands of a defendant who might not be sufficiently competent to determine what is in the defendant's best interest. (*Montoya, supra*, at pp. 830-831.) The *Montoya* court observed that the defendant in the case before it "did not contest that he was an MDO not in remission," and "[t]he fact that the Legislature gave him other personal rights within the statute [did] not lead [it] to conclude that he had to personally waive his right to a jury trial in a civil proceeding." (*Id.* at p. 831.) Moreover, "the Legislature knows how to make clear when a personal jury waiver is required," and "[n]o such language is present in the disputed sentence of section 2972." (*Ibid.*)

D. Analysis

Defendant acknowledges that *Otis* and *Montoya* are adverse to his position but he nevertheless argues that the language of section 2972 supports him. We disagree.

For example, we are not persuaded, based on the reasoning of *Montoya* and *Otis*, by defendant's contention that, because the word "person" as used in other parts of section 2972, subdivision (a) refers to defendant personally, the reference in that subdivision to a jury waiver by the "person" must be similarly construed. (*Montoya, supra*, 86 Cal.App.4th at pp. 830-831; *Otis, supra*, 70 Cal.App.4th at pp. 1176-1177.) We also disagree with defendant's contention that the statutory requirement that the court advise the person of "the right to a jury trial" (§ 2972, subd. (a)) "becomes meaningless" if the person "does not have the power to personally exercise" that right. Although there is no reason to believe that the Legislature intended to leave the decision about a jury trial in the hands of a defendant who might not be sufficiently competent to determine what is in the defendant's best interest (*Montoya, supra*, at pp. 830-831; *Otis, supra*, at p. 1177), an advisement about the right to a jury trial would not be meaningless to the extent the

person is able to understand that right or confer with counsel about the issue. (See *Qawi, supra*, 32 Cal.4th at p. 24 [“commitment for a mental disorder does not by itself mean that individuals are incompetent to participate in their own medical decisions”]; *Montoya, supra*, at p. 831 [although “it is certainly conceivable . . . that a patient might be mentally disordered for some purposes and not for others, it is particularly difficult to sort those categories out in a case of schizophrenia”].)

Defendant further argues that *Montoya* was wrongly decided. We are not persuaded by defendant’s contentions.

First, defendant contends that the *Montoya* court’s characterization of an MDO hearing as a civil hearing (see § 2972, subd. (a) [the hearing regarding continued treatment “shall be a civil hearing”]) “focused on the wrong aspect of the hearing,” and that there are “important distinctions between an involuntary commitment and other civil proceedings.” According to defendant, whereas the MDO Act “actively requires a waiver,” in other civil cases a jury may be waived by, for example, failing to announce that a jury is required at the time the case is first set for trial (Code Civ. Proc., § 631, subd. (f)(4)). Defendant also observes that an MDO proceeding, as contrasted with some other civil proceedings, involves the issue of whether an individual should be involuntarily committed. However, to the extent these are distinguishing characteristics of an MDO proceeding as compared to other civil proceedings, defendant fails to articulate a persuasive basis for therefore concluding that the waiver of a jury trial in an MDO proceeding must be made personally by the individual and not by counsel.

Second, we understand defendant to contend that the decision in *Montoya* was flawed because some defendants may be competent to determine whether a jury should be waived in an MDO proceeding, and therefore the trial court should not defer to defense counsel’s judgment over the defendant’s judgment in every MDO proceeding. Defendant primarily relies on *Qawi, supra*, 32 Cal.4th 1, to support his contention that an MDO “retains [the] right to make decisions.”

In *Qawi*, the California Supreme Court addressed an MDO's right to refuse antipsychotic medication. Under the MDO Act, "MDO's who have been civilly committed after their parole period has expired are granted the same rights that are afforded involuntary mental patients" under certain provisions of the Lanterman-Petris-Short Act (LPS Act; Welf. & Inst. Code, § 5000 et seq.). (*Qawi, supra*, 32 Cal.4th at p. 9, fn. omitted; see § 2972, subd. (g).) Our Supreme Court determined in *Qawi* that "in order to give MDO's the same rights as LPS patients, an MDO can be compelled to take antipsychotic medication in a nonemergency situation only if a court . . . makes one of two findings: (1) that the MDO is incompetent or incapable of making decisions about his medical treatment; or (2) that the MDO is dangerous within the meaning of Welfare and Institutions Code section 5300." (*Qawi, supra*, 32 Cal.4th at pp. 9-10.) In making this determination, the *Qawi* court observed that "someone committed or recommitted as an MDO may not necessarily fit in either of these categories" and that "such MDO's would have the right to refuse medication in nonemergency circumstances." (*Id.* at p. 10.)

In this case, defendant argues that "[i]f MDOs are competent to participate in their medical decisions despite a commitment for a mental disorder, it follows that they are also competent to participate in legal decisions, such as whether to have a jury trial." We are not persuaded by defendant's argument. First, *Qawi* concerned an MDO's right to refuse antipsychotic medication and not whether a jury must be personally waived by the defendant. (See *Qawi, supra*, 32 Cal.4th at p. 15, fn. 4.) The different rights implicate different legal considerations. For example, the forced administration of medication implicates "[t]he basic constitutional and common law right to privacy and bodily integrity." (*Qawi, supra*, 32 Cal.4th at p. 15.) Second, neither *Montoya* nor *Otis* was based on the assumption that *all* individuals subject to the MDO Act are incompetent to determine whether a jury trial or a court trial should be had. Rather, those opinions relied on the premise that the Legislature presumably recognized that many defendants subject to the MDO Act might not be sufficiently competent to determine their own best

interests, and there is no reason to believe the Legislature intended to leave the decision of a jury trial in the hands of such a defendant and require that a jury be waived personally by the defendant. (*Otis, supra*, 70 Cal.App.4th at p. 1177; *Montoya, supra*, 86 Cal.App.4th at p. 831.) This legislative intent, combined with the fact that an MDO hearing is a civil hearing, and the absence of an explicit requirement in section 2972, subdivision (a) that the defendant must personally waive a jury, led the appellate courts in *Otis* and *Montoya* to conclude that defense counsel may act on the defendant's behalf. *Qawi* does not compel a contrary conclusion.

In sum, we conclude that defense counsel may waive a jury on behalf of the defendant under section 2972, subdivision (a).⁴

II. Advisement of Right to Jury Trial

As stated above, section 2972, subdivision (a) also provides that the “court shall advise the person . . . of the right to a jury trial.” In this case, there is no indication in the record that the trial court gave this advisement.

On appeal, we understand defendant to contend that the trial court was required to comply with section 2972 before he was “deprived” of a jury trial. We understand defendant to argue that the court's failure to comply with the statutory procedure denied him due process.

The Attorney General contends that any failure of the trial court to advise defendant of his right to a jury trial was harmless under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*).

The trial court's failure to provide the statutory advisement in this case did not constitute a denial of due process. “[The United States Supreme Court has] long

⁴ In light of this conclusion, we need not resolve the Attorney General's contention that defendant has forfeited his appellate challenge by failing to request a jury trial or by failing to object to a court trial.

recognized that a ‘mere error of state law’ is not a denial of due process. [Citation.] If the contrary were true, then ‘every erroneous decision by a state court on state law would come [to this Court] as a federal constitutional question.’ [Citations.]” (*Engle v. Isaac* (1982) 456 U.S. 107, 121, fn. 21.) Due process does not safeguard “the meticulous observance of state procedural prescriptions” (*Rivera v. Illinois* (2009) 556 U.S. 148, 158 [“Because peremptory challenges are within the States’ province to grant or withhold, the mistaken denial of a state-provided peremptory challenge does not, without more, violate the Federal Constitution”].) Further, there is no state-created liberty interest, protected by procedural due process, at stake in this case. (See *Swarthout v. Cooke* (2011) 562 U.S. ____ , ____ [131 S.Ct. 859, 862] [“When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication--and federal courts will review the application of those constitutionally required procedures”].) Under the MDO Act, “[a] jury sitting in a civil hearing pursuant to sections 2970 and 2972 does not impose criminal punishment and has no power to determine the extent to which the defendant will be deprived of his liberty. Defendant’s jury trial interest thus is, in this case, ‘merely a matter of state procedural law’ and does not implicate the Fourteenth Amendment. [Citations.]” (*Montoya, supra*, 86 Cal.App.4th at p. 832.)

Defendant further contends that reversal per se is required because the purported constitutional error is structural. We disagree.

Since the only possible error we have found is the lack of advisement of defendant’s right to a jury pursuant to section 2972, subdivision (a), reversal is not required unless it is reasonably probable a result more favorable to defendant would have been reached if the court had advised him. (*People v. Cosgrove* (2002) 100 Cal.App.4th 1266, 1268, 1275-1276 (*Cosgrove*) [determining that trial court’s error in an MDO proceeding in granting the People’s motion for a directed verdict was harmless under

Watson]; see Cal. Const., art. VI, § 13; *Watson, supra*, 46 Cal.2d at p. 836.) We find any such error to be harmless in this case.

In *Cosgrove*, the appellate court found the denial of a jury trial harmless, where the expert testimony in support of an MDO finding was “overwhelming” and the attempt to discredit the experts on cross-examination had “minimal” effect. (*Cosgrove, supra*, 100 Cal.App.4th at p. 1276.) In this case, without deciding whether the testimony by Dr. Nastasi, who was the sole witness to testify at trial, may be characterized as overwhelming, we believe his testimony certainly can be described as reliable regarding defendant’s need for continued involuntary treatment. Dr. Nastasi testified that defendant had a severe mental disorder, schizophrenia disorganized type; that the disorder was not in remission; and that by reason of the disorder, defendant posed a substantial danger of physical harm to others. (See § 2972, subd. (c).) Dr. Nastasi also testified that defendant did not believe he had a mental disorder, that he had refused medication, and that he had not participated in group sessions “in any kind of meaningful way.” Defendant presented no evidence at trial, let alone any evidence that contradicted Dr. Nastasi’s opinions. We conclude that it is not reasonably probable that a jury would have evaluated the trial testimony any differently than did the trial judge. (*Cosgrove, supra*, at pp. 1275-1276; see Cal. Const., art. VI, § 13; *Watson, supra*, 46 Cal.2d at p. 836.)

DISPOSITION

The November 29, 2011 order for commitment pursuant to section 2970 is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.