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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CARL RAY NEWBILL, Defendant and Appellant.	H042495 (Santa Clara County Super. Ct. No. C1497387)

Defendant Carl Ray Newbill challenges the trial court's order authorizing the involuntary administration of antipsychotic medication. He argues that the order was not supported by substantial evidence.

STATEMENT OF THE FACTS AND CASE

Defendant was riding a bus when he noticed a woman with a cell phone. He believed she was scanning his head with it, and trying to read his mind, because he was feeling and hearing strange sounds near his head. He became upset with the woman, showed her a knife, and threatened to cut her with it. When officers attempted to arrest him, defendant resisted.

On November 13, 2014, defendant was charged with making criminal threats (Pen. Code[1], § 422), possession of a dagger (§ 21310), exhibiting a deadly weapon (§ 417,

[1] All further statutory references are to the Penal Code.

subd. (a)(1)), and resisting an officer (§ 148, subd, (a)(1)). On December 16, 2014, the trial court declared a doubt as to defendant's competency and suspended criminal proceedings pursuant section 1368.

Dr. D. Ashley Cohen, a licensed psychologist, interviewed defendant in jail. She reported that defendant was agitated, disoriented, and confused, and appeared to be having active auditory hallucinations. He exhibited poor judgment and memory, and could not reliably state historical facts. She stated that "[H]is primary problem was that almost everything reminded him of something in his fantasy life or delusions." (CT 28.) Dr. Cohen described his speech as "word salad," because he was illogical and incoherent. In addition, defendant spoke so fast that he would run out of breath while speaking and would gasp for air as he talked. Defendant was easily distracted during the interview.

Dr. Cohen further noted that defendant denied having a public defender representing him, and said that he had a secret private attorney who could not actually appear in court to preserve his identity. Defendant told Dr. Cohen that "everybody knows what's going on, the chemicals on the Peninsula and all." Based on her interview, Dr. Cohen preliminarily diagnosed defendant as "probably [having] schizophrenia, possibly exacerbated by substance abuse." Dr. Cohen opined that defendant was not competent to stand trial, because he did not understand the nature of the charges against him and would not be able to assist counsel in his defense.

It was Dr. Cohen's opinion that defendant was a candidate for a trial of antipsychotic medication. She stated: "Given the defendant's highly limited reasoning capacity and inability to act in his own best interests, he is not believed to have the capacity to make decisions about taking medication at this time."

Dr. Terrance Riley, also a licensed psychologist interviewed defendant to assess his competence to stand trial. Dr. Riley stated that defendant "was floridly delusional." Dr. Riley observed that defendant had poor judgment and performance on memory tests. He further noted that the mental health professionals at the jail had prescribed

antipsychotic medication for appellant, but that defendant refused to take it. Dr. Riley reached a similar preliminary diagnosis as Dr. Cohen, believing that defendant suffered from schizoaffective disorder. Dr. Riley concluded that defendant was incapable of making a decision about whether or not to take psychotropic medication. Dr. Riley also opined that defendant was not competent to stand trial.

On February 25, 2015, defendant's attorney waived defendant's right to a jury trial and submitted the question of appellant's competency based upon the reports of Doctors Cohen and Riley. The court found that defendant was not competent to stand trial.

The court appointed Dr. John M. Greene, a licensed psychologist to evaluate defendant's ability to make decisions about medications. At the hearing on treatment, Dr. Greene was qualified as an expert in forensic psychology and testified that defendant had a history of delusions, and hallucinations. Dr. Greene opined that defendant suffered from psychosis, had poor judgment, and demonstrated disorganized thinking. Dr. Greene identified three antipsychotic medications that could be used to treat defendant's psychosis and help to alleviate his delusions and hallucinations: Seroquel, Abilify, and Risperdal. Dr. Greene further opined that without medication, defendant would be mentally and physically harmed, and his condition would worsen, eventually leading to defendant being unable to provide food, clothing and shelter for himself. Dr. Greene stated medication would be necessary to prevent defendant from becoming gravely disabled.

Dr. Greene stated that defendant denied that he suffers from any mental illness and that he would refuse to take medication prescribed for him if he were diagnosed with a mental illness. Dr. Greene further noted that antipsychotic medication would not impair defendant's ability to understand criminal proceedings, and in fact, would be the least intrusive means to restore defendant to competency. Dr. Greene opined that defendant would continue to suffer from psychosis without medication and that he was not competent to make decisions about whether to take medication.

Dr. Cohen testified at the hearing on medication and stated that defendant has a psychotic spectrum disorder that is characterized by delusions, hallucinations, disconnecting from reality, and misinterpreting what is said to him. Dr. Cohen stated that a disorder such as the one afflicting defendant is typically treated with antipsychotic medication. Dr. Cohen further stated that defendant has a fear of ingesting toxins and poisons, and is not competent to make a decision as to whether or not he will take antipsychotic medication.

On April 27, 2015, following the evidentiary hearing, the trial court ordered defendant to submit to involuntary treatment with psychotropic medication. The court ordered defendant committed to the state hospital and awarded no custody credits. Defendant filed a timely notice of appeal on May 8, 2015.

DISCUSSION

Defendant argues that the trial court erred in ordering involuntary administration of psychotropic medication.

The trial court made its order under section 1370, subdivision (a)(2)(B)(i)(I)), which allows involuntarily medication when "[t]he defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result." "Probability of serious harm" to the defendant's health requires evidence that "the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating." (*Ibid*.) The fact that the defendant has been diagnosed with a mental disorder is insufficient alone to establish probability of serious harm to the defendant's health. (*Ibid*.)

"We review a trial court's order authorizing a state hospital to involuntarily administer antipsychotic medication to defendant for substantial evidence. [Citation.]" (*People v. O'Dell* (2005) 126 Cal.App.4th 562, 570.) Substantial evidence is "evidence which is reasonable, credible, and of solid value." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Here, in ordering the involuntary medication for defendant, the court found: "[I]t's medically appropriate to treat the defendant's psychiatric condition with medication, that medication is likely to be effective and that without medication it's probable the defendant will suffer serious harm to his physical or mental health, and that the defendant presently lacks the capacity in order to make a decision about such medication."

Defendant asserts that although the court purported to cite section 1370, subdivision (a)(2)(B)(i)(I) as the basis for the order, it was actually an "end run around the more stringent requirements underlying an order to involuntarily medicate a criminal defendant in order to restore him to competency to stand trial," pursuant to section 1370, subdivision (a)(2)(B)(i)(III). He bases this argument in part on the district attorney's argument in the trial court stating "And, certainly, he's been found not competent to stand trial. Medication would restore that competence, as Dr. Greene testified." He also argues that Doctors Cohen and Greene testified that medication would be necessary to restore defendant to competence for trial, demonstrating that competence was the true focus of involuntary medication in this case, not the health and welfare of defendant.

While the evidence showed that medication could restore defendant to competence, competence to stand trial was not the basis upon which the trial court made its order. Moreover, the district attorney's comments about medication affecting defendant's competence as well as the testimony of Doctors Cohen and Greene does not change the fact that the court ordered medication pursuant to section 1370,

subdivision (a)(2)(B)(i)(I), finding that it was medically necessary to prevent harm to defendant's physical or mental health.

Here, there was substantial evidence to support the trial court's findings as to the three requirements of section 1370, subdivision (a)(2)(B)(i)(I). First, there was substantial evidence that "defendant lack[ed] capacity to make decisions regarding antipsychotic medication." (§ 1370, subd. (a)(2)(B)(i)(I).) Doctors Cohen and Riley testified that defendant likely suffers from schizophrenia or schizoaffective disorder that causes him to suffer hallucinations and delusions. Defendant's mental condition leaves him agitated, disoriented and confused. He is unable to remember events, including his use of a deadly weapon, making threats and resisting arrest that precipitated the criminal charges in this case. Further, Dr. Greene opined that defendant lacked the capacity to make his own decision about medication because he does not understand that he actually suffers from a mental illness, and that he needs medication for treatment of that illness. Defendant told Dr. Greene that he would not take medication if he were diagnosed with a mental illness.

Second, substantial evidence supported the trial court's finding that "defendant's mental disorder requires medical treatment with antipsychotic medication." (§ 1370, subd. (a)(2)(B)(i)(I).) All three of the doctors recommended antipsychotic medication to treat defendant's mental illness. Dr. Greene opined that antipsychotic medication would benefit defendant, because the drugs could slow the progression of his mental illness, and potentially reverse his symptoms. He specifically mentioned the drugs Seroquel, Abilify and Risperdal as potential antipsychotic medications that could help defendant.

Third, there was substantial evidence that if "defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result." (§ 1370, subd. (a)(2)(B)(i)(I).) Section 1370, subdivision (a)(2)(B)(i)(I) states: "Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse

effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant." Here, the evidence shows that in his current state without medication, defendant committed a violent act with a deadly weapon, which demonstrates that he is suffering adverse effects to his physical and mental health. Dr. Greene noted that without medication and treatment, defendant's mental health would deteriorate to the point that he would be unable to meet his needs for food, clothing and shelter, and would be gravely disabled.

Here, the trial court and the district attorney did not use section 1370, subdivision (a)(2)(B)(i)(I) as an "end run" around the more stringent requirements for restoring a defendant to competence to stand trial under section 1370, subdivision (a)(2)(B)(i)(III). The trial court's finding that defendant "will suffer serious harm to his physical or mental health," if he continues in his unmedicated psychotic state was supported by substantial evidence.

DISPOSITION

The order is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

GROVER, J.

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