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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RODOLFO CHAVEZ,

Defendant and Appellant.

2d Crim. No. B276157  
(Super. Ct. No. 16PT-00232)  
(San Luis Obispo County)

Rodolfo Chavez appeals an order committing him to the State Department of Mental Health for treatment as a mentally disordered offender (MDO) pursuant to Penal Code sections 2962 and 2966, subdivision (b).<sup>1</sup> He contends he did not meet the criteria for commitment because he did not use force or violence in the underlying crime. (§ 2962, subd. (e)(2)(P).) We affirm.

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<sup>1</sup> All further statutory references are to the Penal Code.

## BACKGROUND

In 2013, Chavez was convicted of felony child endangerment after he tried to remove his medically unstable infant from a hospital. The court sentenced him to four years in state prison. Before his release, the State Department of Mental Health determined Chavez was an MDO. It required him to accept treatment as a condition of parole. Chavez filed a petition for a hearing under section 2966 challenging the requirement.

At the hearing, hospital security guard John Meinken said that he was called to the hospital's fifth floor to deal with a parent who was trying to leave with an infant. He saw Chavez in the hallway with a baby carrier. Staff yelled, "Stop him." The charge nurse said the infant was not medically stable to leave.

Meinken tried to get the carrier out of Chavez's hands, but he "just wasn't letting go." Chavez said, "I'm leaving. 'F' you." Meinken "struggle[ed,] trying to get the carrier away." Meinken was, "[j]ust trying to pry it out of [Chavez's] hands." Chavez's wife and another security officer joined Meinken, trying to get the carrier from Chavez. They "eventually got his hands pried off" and Chavez's wife took the baby down the hallway, about 40 feet away and around a corner.

After the baby was "out of the area," a third officer put Chavez in a control hold against the wall. Chavez slipped free and "lunged at" Meinken and the second officer. The three officers wrestled Chavez to the ground, after which he stopped resisting.

The trial court found that "the defendant was using force to keep possession of the carrier." It found Chavez, "us[ed] force to grip the carrier in order to take the child out of the hospital against medical advice, and his determined resistance in

struggle causes him to meet the criterion.” It rejected Chavez’s argument that, “[t]he force was actually by the security guards, and he was simply holding on to this child.”

The People presented a psychologist who testified to the remaining commitment criteria, and Chavez presented an expert who disagreed. The trial court found that Chavez met all the MDO criteria.

### DISCUSSION

The MDO law applies to prisoners serving sentences for the crimes enumerated in section 2962, subdivision (e). Child endangerment is not specifically enumerated, but it falls within a catchall provision if, “the prisoner used force or violence.” (§ 2962, subd. (e)(2)(P).) “Force or violence” as used in subdivision (e)(2)(P) are words of ordinary meaning and require no further definition. (*People v. Collins* (1992) 10 Cal.App.4th 690, 698.) Proof of intent to harm is not necessary. (*People v. Labelle* (2010) 190 Cal.App.4th 149, 153.)

We determine whether a rational trier of fact could have found that Chavez used force or violence beyond a reasonable doubt, based on all the evidence in the light most favorable to its determination and drawing all inferences it could reasonably have made to support its finding. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082 (*Clark*).) The evidence here supports a finding beyond a reasonable doubt that Chavez used force or violence. As the trial court explained, Chavez forcibly resisted the efforts of three people to pry his fingers from the carrier as he tried to remove the medically unstable infant from the hospital.

Chavez argues the officers initiated the force. But whether or not they initiated the force, Chavez responded with

force when he resisted. He is like the defendant in *Clark*, who held onto stolen money while her victim tried to grab it back. (*Clark, supra*, 82 Cal.App.4th 1072.)

Chavez argues his lunging at officers cannot support the finding of force because the child was no longer in danger and Chavez was not charged with assault. He points out that “other crimes the prisoner may have committed in perpetrating the commitment offense are irrelevant to the determination whether that offense meets the criteria for MDO treatment.” (*People v. Kortesmaki* (2007) 156 Cal.App.4th 922, 926-927; see also *People v. Green* (2006) 142 Cal.App.4th 907, 913.)

But the trial court here relied only on the commitment offense: “[W]hat Mr. Chavez was doing was taking the child out of the hospital without the medical leave to do so violat[ing] that statute. [¶] But in the course of doing that, in trying to get the child out of the hospital[,] [h]e had hold of the carrier. The child was in it. He was holding onto it . . . [a]nd they had to pry his hands off of it. And seemed to me that is the use of force. He was using . . . force to cause the endangerment of the child by taking him out of the hospital.”

Moreover, a reasonable trier of fact could have found the endangerment continued while Chavez lunged at the officers and until he was restrained on the ground. Meinken said they may have restrained him to stop him from running down the hallway to retrieve the baby: “I think the concern was him running back to get the baby again. I don’t know that for sure. I mean, he was very -- not irrational, just hyped . . . .” The trial court could reasonably have determined the child was endangered until Chavez was restrained on the ground. We do

not reweigh the evidence or substitute our judgment for that of the trier of fact. (*Clark, supra*, 82 Cal.App.4th at p. 1083.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Donald G. Umhofer, Judge

Superior Court County of San Luis Obispo

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