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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.

QUENNEL RUTLEDGE,

Defendant and Appellant.

2d Crim. No. B277714  
(Super. Ct. No. 16PT-00490)  
(San Luis Obispo County)

Quennel Rutledge appeals an order determining him to be a mentally disordered offender (MDO) and committing him to the Department of Mental Health for involuntary treatment. (Pen. Code, § 2962 et seq.)<sup>1</sup> We affirm.

*FACTUAL AND PROCEDURAL HISTORY*

On December 11, 2015, Rutledge pleaded guilty to battery on a correctional officer. (§ 243.1.) The underlying criminal offense occurred when Rutledge assaulted officers who were confining him inside a jail cell. Officers had arrested Rutledge

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

earlier that day when he brandished a knife against his sister. Following his plea, the trial court sentenced Rutledge to a one-year four-month prison term; he was paroled on April 11, 2016, and then committed as an MDO.

On June 24, 2016, the Board of Parole Hearings (Board) determined that Rutledge was an MDO pursuant to the criteria of section 2962. As a condition of parole, the Board required him to accept treatment from the Department of Mental Health. On July 14, 2016, Rutledge filed a petition pursuant to section 2966, subdivision (b) to contest this decision. After the trial court advised Rutledge of his right to a jury trial, he waived that right. A court trial followed.

*Expert Witness Testimony*

Doctor Brandi Mathews, a forensic psychologist at Atascadero State Hospital, testified that she interviewed Rutledge for 20 to 30 minutes regarding the MDO criteria. She also reviewed Rutledge's medical records, his prior MDO evaluations, the police report regarding the underlying offense, his physicians' progress notes, psychological and psychiatric assessments, and his prison treatment records. Mathews concluded that Rutledge satisfied the MDO requirements of section 2962.

Specifically, Mathews opined that Rutledge suffers from schizophrenia, a severe mental disorder characterized by his psychotic symptoms, auditory hallucinations, paranoid symptoms, and disorganized thinking. She also concluded that his severe mental disorder was a cause of, or an aggravating factor in, the commission of the underlying offense. Mathews relied upon reports that Rutledge was delusional, paranoid, and

suffered from disorganized thinking immediately prior to the underlying offense.

Mathews also concluded that Rutledge's severe mental disorder was not in remission as of the date of the Board hearing and could not be kept in remission without treatment. She noted that he continues to manifest paranoid, disorganized, and delusional thinking. Mathews opined that Rutledge represents a substantial danger of physical harm to others due to his severe mental disorder because he becomes violent when symptomatic, denies at times that he suffers from a severe mental disorder, and has not addressed his substance abuse.

*90-Day Treatment Requirement*  
(§ 2962, subd. (c).)

On January 13, 2016, Rutledge received a limited psychological assessment and was transferred from the general prison population into the Correctional Clinical Case Management System (CCCMS). During the psychological assessment, Rutledge became angry, uncooperative, and agitated, stating: "I can't think right now." He then left the interview before completion. The interviewing psychologist deferred a mental health diagnosis but recommended that Rutledge receive mental health services in part because he reported a history of prescribed psychotropic medications and for reasons of "medical necessity."

Mathews testified that in the CCCMS system, patients receive treatment through psychosocial treatment groups, monthly meetings with a social worker or psychologist, and treatment with a psychiatrist every three months. Rutledge was housed at CCCMS from January 13, 2016, through April 11, 2016, for a total of 90 days. On his parole date of April 11, 2016,

Rutledge received prescribed medications from CCCMS staff. Mathews opined that placement within CCCMS constitutes a level of treatment.

*Findings, Order, and Appeal*

The trial court determined that Rutledge met the requirements of section 2962 beyond a reasonable doubt. Regarding the 90-day treatment requirement, the trial judge stated: “[O]n January 13, [2016,] Mr. Rutledge was, at his own request, given a full psychological assessment. . . . On that date, he changed where he lived; he went to a part of the prison where he was offered this level of mental health care. . . . [B]eing assessed for what care he needs is the beginning of the treatment. And if he’s under the supervision of mental health professionals, and that is available to him, and groups are available to him, I don’t think . . . the People have to prove that he went to a group on every day.”

Rutledge appeals and contends that 1) insufficient evidence establishes that his underlying offense involved force or violence, or resulted in serious bodily injury, and 2) insufficient evidence establishes that he received 90 days of treatment for his severe mental disorder prior to being paroled.

*DISCUSSION*

*I.*

Rutledge argues that insufficient evidence establishes that his underlying offense involved the use of, or threat of, force or violence, or resulted in serious bodily injury. (§ 2962, subds. (b), (e)(P), (e)(Q).) He relies upon our decision in *People v. Collins* (1992) 10 Cal.App.4th 690, 696-697, holding that a slight or rude touching sufficient to constitute a battery is insufficient to

establish application of force or violence within the MDO statutes.

According to the abstract of judgment regarding Rutledge's underlying conviction, he was convicted by plea of battery on a custodial officer. (§ 243.1.) Mathews testified at trial that "Rutledge had reported to me that he assaulted the officers because the officers had placed him in a cell and were beating him." Rutledge did not object to this testimony.

An MDO finding requires that the underlying offense is an enumerated offense, or an offense involving the use of force or violence, or an offense that threatens force or violence likely to produce substantial physical harm. (§ 2962, subd. (e)(2).) Section 243.1 is not an enumerated offense within section 2962, subdivision (e)(2)(A)-(O).

It is a reasonable inference, however, from Rutledge's admission to Mathews that he "assaulted" officers by use of "force or violence." (§ 2962, subd. (e)(2)(P).) Such reasonable inference rests upon the legal definition of assault set forth in section 240 ["a unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another"] or a common-sense definition as Rutledge may have understood when he made his admission to Mathews. An inference that Rutledge only slightly or rudely touched the officers in his resistance effort is unreasonable and speculative.

The same inferential reasoning applies to the underlying criminal offense of battery. Section 242 defines simple battery as "any willful and unlawful use of force or violence upon the person of another." (§ 242; *People v. Chenelle* (2016) 4 Cal.App.5th 1255, 1263 [the elements of simple battery are 1) the defendant willfully and unlawfully touched a person and 2) the touching

was done in a harmful or offensive manner].) Viewed in the context of the factual circumstances of his underlying crime, Rutledge's attack on the officers who "were beating him" involved more than an offensive, slight, or rude touching. As such, this particular MDO requirement is satisfied.

## II.

Rutledge contends that there is insufficient evidence that he received treatment for his severe mental disorder for 90 days or more within the year prior to his parole or release. (§ 2962, subd. (c).) He concedes that the period of January 13, 2016 through April 11, 2016, is 90 days, but argues that the day of his parole may not be considered in the calculation.

Rutledge also asserts that his treatment for schizophrenia did not commence until January 25, 2016, when his severe mental disorder was diagnosed as schizophrenia. He also points out that on February 11, 2016, he began treatment for a depressive disorder, not schizophrenia. (*People v. Sheek* (2004) 122 Cal.App.4th 1606, 1611 [defendant suffered from pedophilia and depressive disorder; prosecutor did not establish 90 days of treatment for pedophilia].)

In reviewing the sufficiency of evidence to support an order made in MDO proceedings, we review the entire record to determine if reasonable and credible evidence supports the decision of the trier of fact. (*People v. Hannibal* (2006) 143 Cal.App.4th 1087, 1096; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) We view the evidence and draw all reasonable inferences therefrom in favor of the order. (*Hannibal*, at p. 1096; *Clark*, at p. 1082.) We do not reweigh the evidence nor do we substitute our decision for that of the trier of fact. (*Clark*, at p. 1083.)

On January 13, 2016, Rutledge was placed in CCCMS and fell under the care of mental health professionals. He was housed with other mentally ill inmates and had access to group treatment. Rutledge was housed continuously in CCCMS until April 11, 2016, for a total of 90 days. Mathews opined that based upon her experience, it was likely that Rutledge received his prescribed antipsychotic medication on April 11, 2016, the 90th day just prior to his transfer to Atascadero State Hospital.

Section 2962, subdivision (c) concerns the 90-day treatment requirement and provides: “The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner’s parole or release.” The statute does not preclude encompassing the day of parole or release within the 90-day treatment period. It is well settled that the law considers a fraction of a day as one day. (*Municipal Imp. Co. v. Thompson* (1927) 201 Cal. 629, 632 [“[a]ny fraction of a day is deemed a day unless in a particular case it is necessary to ascertain the relative order of occurrences on the same day”].) Indeed, Mathews opined that Rutledge received his antipsychotic medication on April 11, 2016, prior to his release on parole and transfer to the state hospital.

We also reject the contention that Rutledge did not receive 90 days of treatment specifically for schizophrenia. On January 2, 2016, Rutledge requested mental health services. On January 13, 2016, the mental health evaluator noted that Rutledge reported an antipsychotic medication history. The psychiatric notes of January 25, 2016, state that Risperdal was prescribed for Rutledge’s “psychosis.” Psychiatric notes dated in February and March 2016, also recommend the continuation of Risperdal for “psychosis.” Although at one time Rutledge may have received a

diagnosis of a depressive disorder, his medication regime remained the same. Thus, he received treatment in January through April for psychotic symptoms, regardless of when schizophrenia was diagnosed.

The trial court heard, considered, and accepted Mathew's expert opinions. We do not substitute our views for those of the trier of fact. (*People v. Pace* (1994) 27 Cal.App.4th 795, 798.)

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.



Craig B. Van Rooyen, Judge  
Superior Court County of San Luis Obispo

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