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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. HUBERT HAYDEN, Defendant and Appellant.	D052805 (Super. Ct. No. MH102234)

APPEAL from an order of the Superior Court of San Diego County, Albert T. Hartunian III, Judge. Reversed.

Hubert Hayden appeals an order prohibiting him from owning or possessing a firearm for a period of five years after he was detained in a mental health facility for

treatment and evaluation. (Welf. & Inst. Code, § 8103, subd. (f)(1) & (f)(5).)[1] He contends the evidence is insufficient to support the trial court's ruling, or alternatively, the case should be remanded because the court misunderstood the evidence upon which it relied. We reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

On January 6, 2008, Hayden was diagnosed with testicular cancer. He underwent immediate surgery to remove one of his testicles. After the doctor advised Hayden that he would need additional surgeries and chemotherapy, Hayden refused further treatment and left the hospital before being discharged.

Once Hayden left the hospital, he called his girlfriend and told her he planned to let the cancer kill him. He turned his telephone off and remained isolated for a few days. Hayden's doctor called his parents and told them that Hayden had cancelled his future follow-up appointments and surgeries, prompting them to call the police to transport Hayden to the hospital for treatment.

Hayden's father arrived at Hayden's apartment while the police were en route. He found Hayden in bed with a gun to his head.[2] Once the police arrived, Deputy Alan

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1 Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code. Section 8103, subdivision (f)(1) provides in part that a person taken into custody for mental health treatment and evaluation, after it is determined he is a danger to himself or others or is gravely disabled, may not own or possess a firearm for a period of five years after leaving the facility. Subdivision (f)(5) states that the person may petition the superior court for an order to allow him to own or possess a firearm.

2 Hayden admits he was in bed with a gun, but he denies having the gun pointed to his head.

Walbridge, Jr., finding probable cause that Hayden was a danger to himself or others, transported Hayden against his will to a facility for 72-hour mental health treatment and evaluation. (§ 5150.)

Dr. Stephen Signer assessed Hayden as angry, irritable and unresponsive to questions. At the end of the 72-hour period, Dr. Signer found that Hayden remained a danger to himself and was gravely disabled. On January 11, 2008, another doctor noted in an interim progress report that Hayden was in "complete denial of his condition and suicidal statements prior to admission." Based on this diagnosis, Dr. Signer certified Hayden to 14 additional days of intensive treatment. (§ 5250.) Six days later, Dr. Signer noted that Hayden still suffered from an adjustment disorder.[3] After speaking to Hayden's parents, who stated they did not believe Hayden was suicidal, Dr. Signer released Hayden from psychiatric care.

On March 19, 2008, Hayden petitioned the court to release him from the firearms prohibition. (§ 8103, subd. (f)(5).) The court found by a preponderance of the evidence that Hayden would not likely use a firearm in a safe and lawful manner. It based its decision primarily on the interim progress report dated January 11, 2008, which stated that Hayden continued to be a danger to himself and was gravely disabled. The court believed the hospital report was part of Hayden's discharge paperwork, even though Hayden was not released from the hospital until six days after the report was written.

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[3] There is a discrepancy in Hayden's hospital paperwork as to whether he suffered from major depression at the time of discharge. The "Discharge Summary" indicates that Dr. Signer ruled out major depression, but the "Psychiatrist Discharge Summary Form" indicates that Dr. Signer diagnosed him with the disorder at the time of discharge.

DISCUSSION

The appellate court will uphold the trial court's order if, based on the entire record, it is supported by substantial evidence. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873.) The evidence "must be reasonable in nature, credible, and of solid value." (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.) However, "where fundamental rights are affected, . . . discretion by the trial court . . . can only be truly exercised if there is no misconception by the trial court as to the legal basis for its action." (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 496.)

The trial court appears to have a report it thought was the discharge report. We know, based on our review of the record, the court's assumption is incorrect. The record in this case is very sparse. As a result, we cannot say the trial court would have reached the same conclusion had it been aware the report it based its decision on was not Hayden's discharge report, but rather an interim progress report written six days before Hayden's discharge.

On remand, the court will have the opportunity to weigh the evidence free of any misconceptions. Additionally, the court may have the benefit of updated health records, which will supplement the record and provide further insight into Hayden's current mental condition. With an accurate view of the record, the court will be able to apply the statutory language of section 8103 and exercise its discretion accordingly.

DISPOSITION

The judgment is reversed and remanded for a reconsideration of whether Hayden would not be likely to use a firearm in a safe and lawful manner based on proper and current reports.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.