

NOTICE

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FILED

December 14, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 150735-U

NO. 4-15-0735

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
ROCHELLE LEA POE-FREEHILL,)	No. 14CF891
Defendant-Appellant.)	
)	Honorable
)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was in custody for the purpose of presentence credit during her time spent in the hospital after arrest on July 31, 2014.

¶ 2 Following a May 2015 jury trial, defendant, Rochelle Lea Poe-Freehill, was convicted of aggravated battery, a Class 3 felony. 720 ILCS 5/12-3.05(d)(11), (h) (West 2014). In June 2015, the trial court sentenced her to four years' imprisonment. On appeal, defendant argues she is entitled to an additional day of presentence credit, beginning July 31, 2014, following her time spent in the hospital after her arrest. The State concedes this court should award defendant presentence credit for July 31, 2014. We affirm the trial court's judgment, as modified to award defendant an additional day of presentence credit, from July 31, 2014, to August 7, 2014.

¶ 3 I. BACKGROUND

¶ 4 In August 2014, the State charged defendant with aggravated battery, a Class 3 felony (720 ILCS 5/12-3.05(d)(11), (h) (West 2014)), for scratching a nurse at St. Joseph's medical center, while attempting to leave the hospital, where defendant had been brought in by ambulance on the night of July 30, 2014.

¶ 5 Defendant's medical records, People's exhibit No. 1, show at 1:10 a.m. on July 31, 2014, law enforcement was called to the hospital because of defendant's behavior. At 1:15 a.m., the Bloomington police department arrived on scene. The Bloomington police department was at defendant's bedside while she was placed in four-point restraints. The restraints were later removed, but law enforcement remained by defendant's beside. Upon discharge from the hospital, on August 1, 2014, defendant left with law enforcement.

¶ 6 In May 2015, a jury found defendant guilty of the charged offense. On June 26, 2015, the trial court denied defense counsel's motion for judgment notwithstanding the verdict or for a new trial. The court sentenced defendant to four years' imprisonment, with credit for seven days served from August 1, 2014, through August 7, 2014. In August 2015, the trial court denied defense counsel's motion to reconsider.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues she is entitled to an additional day of presentence credit because she was "in custody" on July 31, 2014. The State concedes defendant is entitled to credit for July 31, 2014, where she had been in custody, at some point that day, because of the offense. We agree and review *de novo*. *People v. Robinson*, 172 Ill. 2d 452, 457, 667 N.E.2d 1305, 1307 (1996).

¶ 10 Pursuant to section 5-4.5-100(b) of the Unified Code of Corrections, a criminal defendant is to receive credit against his sentence for time spent “in custody” as a result of the offense for which sentence is imposed. 730 ILCS 5/5-4.5-100(b) (West 2014). A defendant is entitled to one day of credit for each day, or partial day, spent in custody. *People v. Compton*, 193 Ill. App. 3d 896, 903-04, 550 N.E.2d 640, 644-45 (1990).

¶ 11 In determining whether a defendant outside a penal institution is “in custody” as intended by section 5-4.5-100(b), courts consider whether the defendant “experienced the same surveillance, lack of privacy, and regimentation as he would in a penal institution.” *People v. Hollister*, 394 Ill. App. 3d 380, 381, 916 N.E.2d 592, 594 (2009).

¶ 12 Here, defendant was placed in four-point restraints following the aggravated battery against the nurse. Defendant was monitored by law enforcement until her transfer from the hospital to jail. Defendant experienced the same surveillance, lack of privacy, and regimentation as she would have in a penal institution where she was confined to a bed and monitored by law enforcement.

¶ 13 This case is distinguishable from *Hollister*, 394 Ill. App. 3d at 381, 916 N.E.2d at 594, where defendant was transported to the hospital because of an automobile accident. Defendant was arrested after he was released from the hospital. *Id.* This defendant was placed under arrest after she scratched the nurse in the early morning hours of July 31, 2014. Defendant spent the rest of July 31, 2014, in the hospital, under law enforcement monitoring. Therefore, defendant is entitled to an additional day of presentence credit for her time spent in custody on July 31, 2014.

¶ 14 III. CONCLUSION

¶ 15 We affirm the trial court's judgment as modified to award defendant an additional day of presentence credit, from July 31, 2014, to August 7, 2014.

¶ 16 Affirmed as modified.