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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0943**

In the Matter of the Civil Commitment of:
Maxim Kenneth Rhone.

**Filed November 26, 2018
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-MH-PR-16-588

Rick E. Mattox, Prior Lake, Minnesota (for appellant)

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St. Paul, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and
Smith, John, Judge.*

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

Appellant Maxim Rhone challenges her civil commitment as mentally ill and dangerous, arguing that the district court erred in finding that she had engaged in overt acts demonstrating that she presents a clear danger to the safety of others. Rhone contends that her killing of her former roommate was not an overt act within the meaning of the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

commitment statute because it was a justifiable taking of life and that the other acts relied upon by the district court were insufficient to satisfy the overt-act requirement. Because the district court found that the killing was not justifiable, and because that finding was supported by clear and convincing evidence, we conclude that the district court did not err in determining that the killing was an overt act. We also conclude that the killing alone was sufficient to satisfy the overt-act criterion of the statute. We therefore affirm.

FACTS

Rhone has a history of serious psychiatric disorders which have resulted in multiple hospitalizations. She has also twice been in treatment for chemical dependency. Several acts engaged in by Rhone were considered in this case.

One act occurred in approximately 2008, when Rhone was 17 years old. Rhone bit her father on the stomach during a fight.

The other acts took place in 2016. Rhone was living in an apartment, and for several weeks, two other people, S.Q. and G.J.M., were living with her, although they were not authorized to do so under Rhone's lease. On September 20, 2016, Rhone and G.J.M. argued, and Rhone, holding a knife, threatened to stab G.J.M. The police were called. Upon arrival, they found Rhone holding a knife. Rhone told the police that she was God and that someone in the apartment was raping and stabbing a baby. Police searched Rhone's apartment but did not find evidence of the latter claim. Another tenant told the police that Rhone had been going in and out of the apartment through a broken window, instead of using the door. The police transported Rhone to a hospital, where she remained overnight until her discharge on September 21.

Around this same time, S.Q. and G.J.M. were evicted from the apartment. In the early morning of September 23, G.J.M. returned to Rhone's apartment in an attempt to recover some of his personal property. G.J.M. and Rhone argued, and Rhone stabbed G.J.M. with a kitchen knife, killing him.

Following her arrest, Rhone spoke with the police. She acknowledged stabbing G.J.M. She provided multiple explanations of how G.J.M. got into the apartment, saying that he had broken in through a window, that he had a key, and that she had let him in. In describing what happened in the apartment, Rhone said she "was just trying to get [G.J.M.] out of her apartment"; that "it was really scary to wake up and have [him] there"; that G.J.M. "screamed at [her] and spat in [her] face"; and that she "was not going to let it happen again." Rhone also told police that she knew G.J.M. wanted to get his property back; that, immediately prior to the stabbing, she was repeatedly telling G.J.M. to leave and G.J.M. was saying that he was trying; and that G.J.M. tried to punch her but then bent over to look for "stuff" and that was when she stabbed him. Rhone also said that she "could . . . have walked away from the situation" but was "not . . . sure."

Rhone was charged with second-degree murder, but her trial was suspended after she was found incompetent. *See* Minn. R. Crim. P. 20.01, subd. 6(b). Respondent Ramsey County (the county) then filed a petition to have Rhone committed as mentally ill and dangerous. *See id.* At the initial-commitment hearing, Rhone was found to be mentally ill and dangerous. The district court pointed to both the threats of September 20 and the stabbing of September 23 as overt acts demonstrating that Rhone presented a clear threat to the safety of others because of her mental illness. The court also noted that Rhone's 2008

biting of her father was her first act of violence, discussing the incident under the heading “History of Violence and Overt Acts” but not explicitly identifying it as an overt act within the meaning of the commitment statute.

After the initial-commitment hearing, but before the final-determination hearing, Rhone was found competent to stand trial in the murder case. Following a jury trial, Rhone was acquitted based on a special-verdict finding that the state had not proved beyond a reasonable doubt that she did not act in defense of her dwelling. *See* Minn. Stat. §§ 609.06, .065 (2016).

At the final-determination hearing, the district court concluded that Rhone continued to be mentally ill and dangerous. It characterized the threats, the stabbing, and also the biting incident as overt acts within the meaning of the statute.

Rhone appeals from the district court’s initial-commitment and final-determination orders.

D E C I S I O N

Minnesota law permits the indeterminate commitment of a person who is found to be mentally ill and dangerous to the public. Minn. Stat. § 253B.18, subd. 3 (2016). The county has the burden of proving the facts supporting commitment by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2016). “On appeal, this court applies a clear-error standard of review to the district court’s findings of fact and reviews the record in the light most favorable to the findings of fact.” *In re Civil Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014). “To conclude that findings of fact are clearly erroneous, [the reviewing court] must be ‘left with the definite and firm conviction that a mistake has been

made.”” *LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quoting *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013)).

Under Minn. Stat. § 253B.02, subd. 17 (2016):

(a) A “person who is mentally ill and dangerous to the public” is a person:

(1) who is mentally ill; and

(2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Minn. Stat. § 253B.02, subd. 17. Thus, two elements are required to find a person mentally ill and dangerous: first, mental illness; and, second, clear danger to the safety of others. *Id.* The second element must be supported by two facts: that the person committed an “overt act” seriously harming or attempting to seriously harm another, and that there is a substantial likelihood of future harmful acts. *Id.*

Rhone concedes that she is mentally ill. She bases her appeal only on the second element of the statute—specifically, the findings of overt acts. Rhone first argues that, as a matter of law, a justifiable homicide cannot constitute an overt act for the purposes of commitment. She then contends that the county did not prove by clear and convincing evidence—a lower standard than that required for a criminal conviction—that her killing of G.J.M. was not justifiable and that the district court therefore erred in determining that the homicide constituted an overt act. Second, she argues that the district court erred in relying on her biting of her father and her threat to stab G.J.M. as overt acts. We begin with Rhone’s challenge to the characterization of her killing of G.J.M. as an overt act.

Killing of G.J.M.

Obviously, killing someone causes serious physical harm to that person. *See* Minn. Stat. § 253B.02, subd. 17 (requiring that an overt act “caus[e] or attempt[] to cause serious physical harm to another”). Rhone argues that a justifiable killing cannot constitute an overt act that demonstrates a clear danger to the safety of others. *See id.* (requiring that “clear danger to the safety of others” be demonstrated by an overt act). She contends that to hold otherwise would deprive mentally ill persons of the same right to defend themselves and their dwellings that persons who are not mentally ill have, because a mentally ill person’s exercise of that right could then be evidence supporting commitment.

The county argues that a justifiable homicide can constitute an overt act because a person’s intent is not relevant to determining whether a harmful act meets the overt-act requirement. The county relies on the supreme court’s decision in *In re Jasmer*, which held that a mentally ill person who deliberately shot a gun at a child engaged in an overt act attempting to cause serious harm, regardless of whether he formed or could form the intent required for conviction of an attempted crime. 447 N.W.2d 192, 195 (Minn. 1989). The court reasoned that an “action is equally dangerous to the public whether the actor had an intention to cause harm and whether the actor had the capacity to form an intention to cause harm or even to recognize its potential for causing serious harm.” *Id.*

We need not decide the precise relationship between a justifiable homicide and the overt-act requirement if Rhone’s killing of G.J.M. was not justifiable. *See Lipka v. Minn. Sch. Emps. Ass’n, Local 1980*, 550 N.W.2d 618, 622 (Minn. 1996) (“[J]udicial restraint bids us to refrain from deciding any issue not essential to the disposition of the particular

controversy before us.”). We therefore begin by examining the district court’s finding that the killing was not justifiable and whether that finding is supported by clear and convincing evidence.

Minnesota law permits the use of “reasonable force . . . upon or toward the person of another” in certain situations. Minn. Stat. § 609.06, subd. 1. “Reasonable force” does not include intentional killing, unless the force is used in defense of self or in defense of dwelling. Minn. Stat. § 609.065. There are three elements to each of these justifications.

Killing in defense of self is justified if (1) the killing was “done in the belief that it was necessary to avert death or grievous bodily harm,” (2) the defendant made a judgment “as to the gravity of the peril to which he was exposed” that was “reasonable under the circumstances,” and (3) a reasonable person would have made the same choice to kill “in light of the danger to be apprehended.” *State v. Edwards*, 717 N.W.2d 405, 413 (Minn. 2006).

Killing in defense of dwelling is justified if (1) “the killing was done to prevent the commission of a felony in the dwelling,” (2) “the defendant’s judgment as to the gravity of the situation was reasonable under the circumstances,” and (3) “the defendant’s election to defend his or her dwelling was such as a reasonable person would have made in light of the danger to be apprehended.” *State v. Carothers*, 594 N.W.2d 897, 904 (Minn. 1999).

Significantly, a person need not fear great bodily harm or death to use deadly force in defense of dwelling. *State v. Pendleton*, 567 N.W.2d 265, 268 (Minn. 1997). Nor is a person required to retreat before using deadly force to defend the dwelling. *Carothers*, 594 N.W.2d at 903-04. However, the absence of these requirements is not a “license to kill”

any person who commits a felony in one's dwelling. *Id.* at 904. The felony must be something against which the use of force is authorized, the lawful possessor of property must still make a reasonable judgment as to the gravity of the situation, and the choice to kill must be one that a reasonable person would make. *See id.* (“[A] person claiming defense of dwelling is still subject to strictures insuring the reasonableness of his or her behavior.”); *State v. McCuiston*, 514 N.W.2d 802, 805-06 (Minn. App. 1994) (suggesting that a person would not be justified in using deadly force to prevent the commission of insurance fraud within their own dwelling), *review denied* (Minn. June 15, 1994). Though there is no duty to flee out the back door when a burglar enters, “it may be more reasonable for a person to . . . retreat from a danger within . . . her home in different circumstances,” and the decision as to what is reasonable should be left to the trier of fact, *Carothers*, 594 N.W.2d at 901, 904.

Once a defendant has produced some evidence to support a claim of justification, it is the state's burden to disprove “one or more of the[] elements beyond a reasonable doubt.” *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Rhone argues that, by analogy, the party seeking civil commitment bears the burden of disproving justification by clear and convincing evidence. Without deciding whether the analogy holds, we reject Rhone's argument because the district court's findings show that the county did disprove justification by clear and convincing evidence.

In its order for initial commitment as mentally ill and dangerous, the district court found that Rhone's killing of G.J.M. was not justifiable. While not always clearly

distinguishing between self-defense and defense of dwelling, the district court's findings negate both defenses.

The district court found that "[t]he evidence . . . does not support a reasonable belief that killing the victim was necessary to prevent death or serious injury" and "a reasonable person would NOT have believed that his life was in such danger that he needed to use physical force against the victim." The district court determined that the county had proved, by clear and convincing evidence, that a reasonable person would not have believed that killing was necessary to prevent death or grievous bodily harm. *See Edwards*, 717 N.W.2d at 413. Therefore, the district court rejected Rhone's self-defense argument.

While the district court specifically rejected self-defense, it did not specifically reject defense of dwelling. However, the district court did find that Rhone had admitted that she was not being threatened by G.J.M. when she stabbed him, that she knew G.J.M., that she knew he was there to recover his belongings, that she stabbed G.J.M. because he would not leave, and that she could have walked away. It concluded that "[t]hese admissions foreclosed any valid argument that the killing of the victim was necessary." Taken together, these findings refute that a reasonable person would have killed G.J.M. under the circumstances, whether to prevent a felony in the person's dwelling or in defense of self. The county thus disproved the third element of defense of dwelling by clear and convincing evidence.

The district court's findings are supported by the record. Rhone's argument that the district court erred in finding that her killing of G.J.M. was not justifiable is little more than a repetition of the exculpatory statements she made to the police. Rhone asserts that G.J.M.

was engaged in burglary and that she told police “that she was scared [G.J.M.] would hit her in [the] face again, that [G.J.M.] yelled and spat in her face, and that after [G.J.M.] tried to punch her, she stabbed him.” Rhone also quotes her statement, made to a Minnesota Security Hospital employee for the purposes of the 60-day treatment report: “I was fearing for my life and that’s why I reacted the way I did when he approached me. My actions were in self-defense.”

However, the record also contains statements that Rhone made to police indicating a lack of justification. She said that G.J.M. was not threatening or assaulting her when she stabbed him; that G.J.M. was, in fact, bent over and looking for “stuff” at the time she stabbed him; that she knew G.J.M. was trying to get his own possessions back; and that she likely could have walked away instead of stabbing G.J.M. Finally, Rhone said she stabbed G.J.M. because he would not leave, despite his telling her that he was trying to find his phone and then intended to leave.

We cannot say that the district court clearly erred by crediting Rhone’s statements indicating that the killing was unjustifiable or by rejecting Rhone’s other statements. *See State v. Vasko*, 889 N.W.2d 551, 559 (Minn. 2017) (“The district court, however, rejected [certain] evidence, and we defer to that credibility determination.”); *see also* Minn. R. Civ. P. 52.01 (“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous . . .”). The record is sufficient to support the district court’s finding that a reasonable person would not have stabbed G.J.M. in the circumstances and its resulting conclusion that Rhone’s killing of G.J.M. was not

justifiable.¹ The district court therefore did not err in determining the killing to be an overt act in its initial-commitment order.

Rhone argues, however, that the district court erred by not reconsidering whether the killing was an overt act after Rhone was acquitted of murder based on defense of dwelling. Apart from the fact of the acquittal, Rhone submitted no new evidence regarding the killing. In its order for final commitment, the district court rejected Rhone's legal argument that an act of self-defense could not be an overt act and also stated that "[c]onviction of a crime is not a prerequisite to commitment as mentally ill and dangerous to the public." However, the court did not specifically address whether the killing of G.J.M. was justifiable or not.

As Rhone concedes, a jury verdict in a criminal case is not binding on the commitment court because the standards of proof differ. *Beaulieu v. Minn. Dep't Human Servs.*, 825 N.W.2d 716, 724 (Minn. 2013). Rhone bases her reconsideration argument on *In re Verhelst*, 350 N.W.2d 494, 495 (Minn. App. 1984), and *In re Bobo*, 376 N.W.2d 429, 432 (Minn. App. 1985). Both cases are distinguishable. *Verhelst* holds that it is error to order final commitment based on a finding that a patient was mentally ill and dangerous at

¹ The district court also made findings that touch on the second element of defense of dwelling—that "the defendant's judgment as to the gravity of the situation was reasonable under the circumstances." See *Carothers*, 594 N.W.2d at 904. The court found that, at the time of the stabbing, Rhone was "floridly psychotic," that her "severe psychosis prevented [her] from properly perceiving reality and making reasonable judgments," and that Rhone could not "exercis[e] reasonable judgment concerning the assessment of a threat and the use of lethal force." Because we conclude that the district court found, and the record supports the finding, that a reasonable person would not have made the decision to kill G.J.M., i.e., that the third element of defense of dwelling was lacking, see *id.*, we need not further analyze the second element.

the time of initial commitment, rather than a finding the patient continues to be mentally ill and dangerous. The patient in that case voluntarily took her medication and ceased aggressive behaviors between the initial-commitment hearing and the final-determination hearing. 350 N.W.2d at 495-96. The case says nothing about reconsidering whether the patient did, in fact, perform the overt acts in the first place or about recharacterizing behaviors initially classified as overt acts.

In *Bobo*, we considered whether a patient's compliance with his treatment regimen, abstention from chemical abuse, and lack of violence while hospitalized made the final-commitment court's finding—that he was likely to engage in dangerous conduct in the future—improper. 376 N.W.2d at 432. But neither the final-determination court nor this court on appeal reconsidered whether the patient's overt acts happened or whether they were properly classified as overt acts.

Thus, neither *Verhelst* nor *Bobo* supports Rhone's argument that the district court at a final-determination hearing must reconsider the findings of fact made at the initial-commitment hearing.

In sum, we conclude that the district court's findings support the determination that Rhone's killing of G.J.M. was not justifiable and that the record supports the district court's findings. The district court thus did not err in finding that Rhone engaged in an overt act causing serious harm to another.

Other overt acts

Rhone also argues that the district court erred in holding that her threats against G.J.M. and her biting of her father were overt acts. To be mentally ill and dangerous, a

person must “engage[] in an overt act causing or attempting to cause serious physical harm to another.” Minn. Stat. § 253B.02, subd. 17. Only one such act is required. *See In re Welfare of Hofmaster*, 434 N.W.2d 279, 280 (Minn. App. 1989) (affirming commitment where the district court found only one overt act). Because Rhone’s killing of G.J.M. was an overt act within the meaning of the mentally-ill-and-dangerous statute, it is unnecessary to determine whether she has engaged in any other overt acts.

Affirmed.