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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1733**

In re the Matter of the Civil Commitment of: Ahmed Kadir

**Filed February 18, 2020
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-MH-PR-18-485

Kathleen K. Rauenhorst, Rauenhorst & Associates, P.A., Roseville, Minnesota (for appellant Ahmed Kadir)

John J. Choi, Ramsey County Attorney, Margaret C. Galvin, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Connolly, Presiding Judge; Reilly, Judge; and Kirk, Judge.*

UNPUBLISHED OPINION

REILLY, Judge

On appeal from the district court's order committing him as mentally ill and dangerous, appellant argues that because the record does not show that he intended to cause harm or that he is a danger to himself or others, his commitment petition should be dismissed outright or that his confinement should be less restrictive than was ordered by

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

the district court. Because the record supports the district court's determination that appellant is mentally ill and dangerous, we affirm.

FACTS

Appellant Ahmed Kadir has been under commitment as a mentally ill person in Ramsey County since 2014 and has received case management services since that time. Appellant has been diagnosed with schizophrenia, multiple episodes, severe, and with an unspecified personality disorder with antisocial features.

Appellant has been hospitalized nine times for various reasons, including medication non-compliance, paranoia, homicidal ideations, and as a result of two incidents in which appellant was wielding a knife and/or hammer on the light rail and threatening community members and the police. During his hospitalizations, appellant has been aggressive, paranoid and delusional, and has made "vague threats." He has also been combative and refused medication. Appellant has a history of being "fixated on genocide" and having thoughts of "killing many people." Appellant's case managers have found books about nuclear bombs in his apartment and have twice found knives and "booby traps" in his apartment. Appellant has, on at least two occasions, threatened to kill his case manager.

On July 10, 2018, while civilly committed as mentally ill and court-ordered to take neuroleptic medication,¹ appellant drove his vehicle on I-94, swerved through multiple

¹ He was living in the community, receiving services and oversight through the intensive services of Assertive Community Treatment (ACT) team case management, which monitored his neuroleptic medications and offered support within the community.

lanes of traffic at a high rate of speed, and collided with another vehicle occupied by two women.² Appellant then exited his vehicle and jumped off a bridge to avoid arrest, falling approximately 40-50 feet. While at the hospital after the incident, appellant made comments to hospital staff related to committing “a terroristic act.” Due to these comments, an FBI agent was dispatched to the hospital to speak with appellant. Appellant admitted to the agent that he got into his vehicle, drove on I-94, selected a vehicle to strike, and drove his vehicle into the selected vehicle with the intent to cause an accident that would harm or kill others.³

Regions Hospital filed a petition for the commitment of appellant as a mentally ill and dangerous person. The petition was approved and filed by the Ramsey County Attorney’s Office in September 2018. In December 2018, appellant waived his initial commitment hearing and agreed to be committed to the Minnesota Security Hospital for a sixty-day evaluation. On December 12, 2018, the district court ordered an initial commitment as a person who is mentally ill and dangerous. According to the terms of his waiver document, appellant returned to the district court in July 2019 for a trial de novo.

Following the trial, the district court issued findings of fact, conclusions of law and an order. The district court, finding appellant mentally ill and dangerous, committed appellant indeterminately to the custody of the commissioner of human services and the Minnesota Security Hospital in St. Peter. This appeal followed.

² The passenger sustained unspecified injuries and was transported to the hospital while the driver reported being “very stiff and sore” but refused to be transported to the hospital.

³ Appellant was charged with second-degree assault in Hennepin County as a result of the incident.

DECISION

Appellant contends that he does not meet the statutory criteria to be held for an indeterminate period of time as mentally ill and dangerous, and that the record does not support the district court's finding that he is a danger to himself or others. Under Minn. Stat. § 253B.02, subd. 17(a) (2018), a person who is mentally ill and dangerous to the public is defined as 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.

A person may be committed as mentally ill and dangerous if the district court finds by clear and convincing evidence that the person meets the requirements of Minn. Stat. § 253B.02, subd. 17. On appeal, review is “limited to an examination of the [district] court’s compliance with the statute, and the commitment must be justified by findings based upon evidence at the hearing.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). This court will not reverse a district court’s findings of fact unless clearly erroneous. *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). And “[t]he record is viewed in the light most favorable to the [district] court’s decision.” *Knops*, 536 N.W.2d at 620.

Appellant argues that the county failed to meet the statutory requirement of showing that he “engaged in an overt act causing or attempting to cause serious physical harm to another” under Minn. Stat. § 253B.02, subd. 17(a), because the county did not prove that

appellant intended to cause harm. Appellant's contention that the county must prove, and the district court must find, intent to cause serious physical harm, is contrary to caselaw. In *In re Jasmer*, the supreme court considered whether Jasmer's act of firing a gun at a fifteen-year-old boy from a distance of approximately 65 to 80 feet constituted an "attempt" within the meaning of the commitment statute, to cause serious physical harm. 447 N.W.2d 192, 194-95 (Minn. 1989). The supreme court concluded that the commitment statute "does not require that an overt act 'attempting to cause serious physical harm to another' constitutes an 'attempt' within the meaning of [the criminal statute]" which requires an "intent to commit a crime." *Id.* at 195 (citation omitted); see Minn. Stat. § 609.17, subd. 1 (2018) (defining the crime of attempt as "[w]hoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime"). The supreme court explained that:

If a mentally ill person deliberately aims and fires a .410 shotgun at another person or drives an automobile at a speed of 100 m.p.h. into a crowd of people on a residential street, that person has 'engaged in an overt act causing or attempting to cause serious physical harm to another' regardless of intent or the outcome of the action.

Id. at 195 (citation omitted). The action is dangerous to the public whether the actor had the intention to cause harm or even recognized its potential for causing serious harm. *Id.* And the statutory requirements have been met if the state proves by clear and convincing evidence that as a result of a mental illness a person presents a clear danger to others

because “the person has engaged in an overt dangerous act capable of causing serious physical harm to another.” *Id.* at 195-96.

Here, the district court found, and the record amply supports the finding, that as a result of his mental illness, appellant presents a clear danger to the safety of others as demonstrated by the fact that he engaged in an overt act causing or attempting to cause serious physical harm to another. The record shows the following: appellant’s most recent diagnoses include schizophrenia, multiple episodes, severe; and unspecified personality disorder with antisocial features. Dr. Andrea Lovett, who examined appellant in October 2018 and April 2019, testified that appellant suffers from mental illness, specifically schizophrenia, and explained that when appellant is experiencing symptoms of his mental illness, he has auditory and visual hallucinations as well as delusional beliefs. Dr. Lovett explained that appellant’s paranoid delusions have caused him to react with “anger, agitation, and threatening and aggressive behavior on numerous occasions.” Dr. Lovett testified that as a result of appellant’s mental illness he presents a clear danger to the safety of others.

Moreover, the district court determined that appellant committed an overt and dangerous act capable of causing serious physical harm, and the record supports the district court’s conclusion. Appellant testified that on July 10, 2018, while driving his vehicle on the highway, he aimed his vehicle at another vehicle because he wanted to create a crash in order to hurt the person in the vehicle he hit. The district court noted that “[i]t is obvious that motor vehicle crashes at highway speeds can and do result in serious physical harm or death” and appellant does not dispute this. Regardless of appellant’s intent—though the

record reflects that he did intend to cause serious harm or death⁴—the record supports the district court’s finding that appellant suffers from a mental illness and that as a result of the mental illness, appellant presents a clear danger to others because he has engaged in an overt and dangerous act capable of causing harm to others. The district court’s findings are not clearly erroneous and the district court complied with the statutory requirements.

Appellant next argues that he does not pose a future risk of inflicting serious physical harm to another. “Dangerousness may be demonstrated by past conduct together with a determination the person is likely to engage in future violent conduct.” *In re Lufsky*, 388 N.W.2d 763, 766 (Minn. App. 1986). “The prediction that ‘there is a substantial likelihood that the person will [in the future] engage in acts capable of inflicting serious physical harm on another’ must be accompanied by evidence that on at least one occasion in the past the person has engaged in an overt dangerous act – that is, an act ‘causing or attempting to cause serious physical harm to another.’” *Jasmer*, 447 N.W.2d at 195. “The question of dangerousness is a factual determination for the [district] court, which should not be disturbed on appeal unless it is clearly erroneous.” *In re Hofmaster*, 434 N.W.2d 279, 282 (Minn. App. 1989).

Here, the district court concluded that “there is a substantial likelihood that the [appellant] will engage in acts capable of inflicting serious physical harm on another.” This

⁴ Following appellant’s actions on July 10, 2018, in which he used his vehicle to strike another vehicle, appellant made numerous statements regarding that incident. Appellant stated that he crashed his car on purpose, and that he was trying to crash into people and kill them. Appellant also explained that when he chose the car he wanted to hit, he accelerated into the car with the intention of making the car roll over or explode, and killing people.

conclusion is supported by evidence in the record. As discussed previously, the record supports the district court's finding that appellant, on a prior occasion, engaged in an overt and dangerous act when he attempted to cause serious physical harm to another by driving his car into an occupied vehicle at a high rate of speed. Furthermore, the district court's finding that there is a substantial risk that appellant will engage in acts capable of inflicting serious physical harm on another is supported by the record. Dr. Lovett testified that she believes appellant presents a clear danger to the safety of others and that there is a substantial likelihood that he is capable of inflicting serious physical harm on others. Her opinion was based on a violence risk assessment. She explained that the "greatest or the strongest predictor of future violence is the presence of past violent behavior." Dr. Lovett used the HCR-20 V3 to assess appellant's risk of future violence.⁵ Based on the assessment, Dr. Lovett concluded that appellant poses a risk of harm to himself or others given his "history of threatening and aggressive behavior over time," his "homicidal threats," and the increase in "frequency and severity" of these threats and behaviors beginning in 2016 and 2017 and while under a court hold for the instant proceedings.

The record also indicates that appellant has repeatedly threatened to kill his case managers, wielded a hammer and knife on the light rail, and threatened police officers and others in public with a hammer. These events all demonstrate appellant's dangerousness. *See Lufsky*, 388 N.W.2d at 766 (affirming the district court's commitment of Lufsky as

⁵ The Historical Clinical Risk Management 20, version three (HCR-20 V3) is a violence risk assessment used by mental health professionals to measure risk factors associated with future violent behavior.

mentally ill and dangerous based on his “past outbursts and threats to kill his parents, the assault at Country Meadows, threats to burn and strangle elderly residents, and invitations to ‘shoot it out’ with police”). Furthermore, Dr. Lovett noted that “even when [appellant] is relatively stable from a psychiatric standpoint . . . he views violence as an acceptable behavior” and that when “[he] is not psychiatrically stable . . . he believes that he is in danger, and he believes that he is entitled to and, in fact, must defend himself against others” even though he is not actually physically in danger. Dr. Lovett also expressed concerns about appellant’s tendency to “decompensate very quickly” and the difficulty of predicting when appellant may act in a violent manner. She further explained her concerns about appellant’s “utter lack of insight” into his mental illness. The district court’s finding that there is a substantial likelihood that appellant will engage in acts capable of inflicting serious harm on another is not clearly erroneous.

Finally, appellant argues that the county erroneously relied on the presumption that appellant’s mental illness will not be treated or supervised by case management, to suggest that when treated and supervised he doesn’t pose a risk to others. As an initial matter, appellant cites to no legal authority to support his contention that the county or the court must consider the effect of ongoing supervision or treatment in determining whether a person is mentally ill and dangerous. Moreover, even if the district court was required to consider it, the record indicates that appellant poses a risk to the safety of others even when being treated and supervised. The record shows that the incident on July 10, 2018, in which appellant drove his vehicle into another occupied vehicle on the highway, occurred while he was civilly committed, court-ordered to take neuroleptic medication, and receiving

intensive community services. Dr. Lovett testified that even though appellant is in secured facilities and receiving psychiatric care, he has not improved and continues to experience symptoms of psychosis. She testified that despite receiving the top level of care, she still believes there is a substantial likelihood that appellant will engage in acts capable of causing serious physical harm to others. Contrary to appellant's contention that the county erroneously relied on the presumption that appellant's mental illness will not be treated or supervised, the record shows that appellant still poses a risk to the safety of others even while being treated and supervised.

Affirmed.