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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-488**

In the Matter of the Civil Commitment of: Philip Horswell

**Filed August 17, 2010  
Affirmed  
Toussaint, Chief Judge**

Martin County District Court  
File No. 46-PR-09-1036

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Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Minge, Judge.

**UNPUBLISHED OPINION**

**TOUSSAINT**, Chief Judge

Appellant Philip Horswell challenges his indeterminate commitment as mentally ill and dangerous, arguing that his conduct of discharging a firearm in the direction of police officers was not an overt act causing or attempting to cause serious physical harm to another. Because clear and convincing evidence supports the determination that the

statutory requirements for indeterminate commitment as mentally ill and dangerous were met, we affirm.

## D E C I S I O N

The district court may order a person committed as mentally ill and dangerous if the court finds, by clear and convincing evidence, that (1) the person is mentally ill, and (2) that, as a result of the mental illness, the person presents a clear danger to the safety of others. Minn. Stat. §§ 253B.18, subd. 1(a), .02, subd. 17(a) (2008). The clear danger to the safety of others must be demonstrated by the person engaging “in an overt act causing or attempting to cause serious physical harm to another,” and the existence of “a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.” Minn. Stat. § 253B.02, subd. 17(a).

After the initial commitment of a person as mentally ill and dangerous, the district court holds a second hearing to review the written treatment report of the treatment facility. Minn. Stat. § 253B.18, subd. 2(a) (2008). If the district court finds that the patient continues to be mentally ill and dangerous, it must order commitment for an indeterminate period of time. *Id.*, subd. 3 (2008).

On review, this court examines whether the commitment is justified by the evidence produced at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). This court views the record in the light most favorable to the district court’s decision and will not set aside a finding of fact unless it is clearly erroneous. *Id.* This court reviews de novo the legal question of whether clear and convincing evidence supports the conclusion that the statutory requirements were met. *See id.*

In ordering appellant's indeterminate commitment, the district court found that appellant was mentally ill, based on his diagnosis of schizophrenia, paranoid type, with polysubstance abuse. The court also concluded that there was clear and convincing evidence that, as a result of his mental illness, appellant presented a clear danger to the safety of others because he had engaged in an overt act attempting to cause serious harm to others by discharging a firearm in the direction of police officers located in a cornfield near his home. The court also determined that there was a substantial likelihood that appellant would engage in future acts that were capable of inflicting serious physical harm to others.

Appellant does not contest the district court's determination that he was mentally ill, based on a psychologist's opinion that he suffers from schizophrenia, with symptoms of paranoia, agitation, and delusional thoughts. Nor does he dispute the determination of a substantial likelihood that he would commit future acts capable of inflicting serious physical harm. But he maintains that his conduct of discharging the firearm does not provide clear and convincing evidence of dangerousness because he did not know the officers were in the cornfield, he fired only one shot, which was deliberately aimed over the cornfield, and he was only firing the gun to test it, not to injure a person.

In determining whether a person's act was intended to inflict "serious physical harm" so as to support that person's commitment as mentally ill and dangerous, the word "serious" is given its common understanding. *In re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988); *see* Minn. Stat. § 253B.02, subd. 17(a). Thus, an act that results in a physical affront does not necessarily meet the requirement of attempting to cause serious physical

harm to another. *Kottke*, 433 N.W.2d at 884. A “person’s intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt-act requirement” for dangerousness. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005); *see, e.g., In re Jasmer*, 447 N.W.2d 192, 195-96 (Minn. 1989) (concluding that evidence supported finding of overt act attempting to cause serious physical harm to another when, without justification, person aimed and fired shotgun at a neighbor without caring whether neighbor was hit).

Evidence presented at the initial-commitment hearing showed that, after police were dispatched to a disturbance at appellant’s residence and could not reach anyone inside, they set up a perimeter in an adjoining cornfield. An officer, who was lying down in the cornfield, testified that he saw appellant exit the residence carrying a shotgun, scan the cornfield where the officers were located, and fire the gun in their direction, aiming at a height of six or seven feet. The officer testified that he felt threatened by appellant’s actions and that a person standing up in the cornfield could have been hit in the head by appellant’s shot. Appellant testified that he was not shooting the firearm at a person but was only testing it for a broken pin.

Appellant argues that his testimony that he was testing the firearm is credible in view of his actions. “It is within the province of the trial court to resolve any conflicting evidence.” *In re Clemons*, 494 N.W. 2d 519, 520 (Minn. App. 1995). The district court was entitled to credit the officer’s testimony that appellant deliberately aimed the firearm at the cornfield, believing that the officers were located there. Therefore, clear and convincing evidence supports the district court’s conclusion that shooting the firearm in

the direction of the officers constituted an overt act attempting to cause serious physical harm to another. *See Jasmer*, 447 N.W.2d at 195-96.

The district court also based its conclusions on its previous findings that appellant had treated his father in a threatening manner and had driven around with a shotgun in his vehicle. These findings are not clearly erroneous, and additional evidence in the confidential portion of the record further supports the district court's determination of a substantial likelihood that appellant will engage in future acts capable of inflicting serious physical harm. Therefore, clear and convincing evidence supports the conclusion that the statutory requirements for appellant's indeterminate commitment as mentally ill and dangerous were met.

**Affirmed.**