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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2208**

In the Matter of the Civil Commitment of:
Paul M. Anderson

**Filed April 29, 2008
Affirmed
Toussaint, Chief Judge**

Hennepin County District Court
File No. 27-MH-PR-07-557

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Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Paul M. Anderson challenges his indeterminate commitment as mentally ill and dangerous. Because clear and convincing evidence in the record supports the district court's conclusion that appellant meets the standards for commitment

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

as mentally ill and dangerous and because we see no error in appellant's commitment to the Minnesota Security Hospital instead of being released to live with his sister, we affirm.

DECISION

On appeal, we will examine whether the commitment is justified by findings based on the evidence presented at the hearing. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The record is viewed in the light most favorable to the district court's decision, and due regard is given to the district court's judgment of credibility. *Id.* We will not reverse the district court's factual findings unless they are clearly erroneous. *Id.*; Minn. R. Civ. P. 52.01.

To commit a person as "mentally ill and dangerous," the district court must find by clear and convincing evidence that the person is mentally ill and, as a result, presents a "clear danger to the safety of others" because the person has "engaged in an overt act causing or attempting to cause serious physical harm to another" and "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 (2006) (defining "person who is mentally ill and dangerous to the public"); Minn. Stat. § 253B.18, subd. 1(a) (2006) (applying clear-and-convincing-evidence standard to commitment petition proceedings for persons who are mentally ill and dangerous). "These statutory requirements are interpreted strictly." *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

Appellant concedes that he is as mentally ill but challenges the district court's conclusion that he is mentally ill and dangerous. See *In re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988) (examining difference between less-serious conduct required for commitment as mentally ill and more-serious conduct required for indeterminate commitment as mentally ill and dangerous); see also Minn. Stat. § 253B.02, subd. 13 (2006) (defining "person who is mentally ill"). In support of this contention, appellant argues that he did not engage in an overt act causing or attempting to cause serious physical harm to another. Whether the evidence is sufficient to support a finding that an overt act has occurred is a legal question subject to de novo review. *Knops*, 536 N.W.2d at 620.

Only one overt act causing or attempting to cause serious physical harm to another is required to commit a person as mentally ill and dangerous. *In re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). A person attempts to cause serious physical harm if he or she engages in "an overt dangerous act capable of causing serious physical harm to another." *Id.* at 195-96. "The person's intent or the outcome of the action is not relevant to the determination of whether the conduct meets the overt-act requirement." *Carroll*, 706 N.W.2d at 530.

The legislature has not defined the term "serious physical harm." *Kottke*, 433 N.W.2d at 884. We interpret the term "serious" using a common understanding of the word. *Id.*; *In re Lufsky*, 388 N.W.2d 763, 766 (Minn. App. 1986). "Serious" is not interpreted as "great bodily harm" or "substantial bodily harm" as defined in criminal statutes. *Lufsky*, 388 N.W.2d at 765-66. Likewise, it "is not necessary that mayhem or

murder occur.” *Kottke*, 433 N.W.2d at 884.

Here, appellant’s actions of hijacking a bus and assaulting and kidnapping the bus driver in November 2006 satisfies the overt-act requirement because his actions were capable of causing serious physical harm to the bus driver and to others on the street. The record indicates that appellant choked the bus driver with a bandana and attempted to slam her head against the window. The bus driver testified that appellant had threatened to kill her and had choked her with such force that he actually pulled her hands off the steering wheel and her feet off the pedals of the bus, that she temporarily lost control of the moving bus when appellant banged her head against the window, and that she feared she would hit nearby pedestrians. *Cf. Jasmer*, 447 N.W.2d at 195 (indicating that driving speeding car into crowd of people would satisfy overt-act requirement under mentally ill and dangerous statute). Examiners who testified at the initial commitment and review hearings unanimously agreed that appellant’s assault against the bus driver constituted an overt and dangerous act.

The district court’s conclusion that appellant’s conduct satisfied the overt-act requirement is amply supported by clear and convincing evidence in the record. Thus, the district court did not err by concluding that appellant had engaged in an overt act causing or attempting to cause serious physical harm to another, as required for commitment as mentally ill and dangerous.

Appellant also challenges the district court’s conclusion that he was still mentally ill and dangerous at the time of the review hearing, contending that there is not a substantial likelihood that he would engage in future acts capable of inflicting serious

physical harm on another. In support of his argument, appellant points out that he has experienced periods of relative stability in the past and that at the time of the review hearing he was medication compliant, not experiencing hallucinations, not behaving aggressively or inappropriately, and had been transferred to a less-restrictive unit at the security hospital.

When evaluating a patient's dangerousness, the district court can also consider a patient's precommitment behavior and the likelihood that the patient will continue to take prescribed medications. See *In re Dirks*, 530 N.W.2d 207, 211 (Minn. App. 1995) (continued taking of medications); *In re Malm*, 375 N.W.2d 888, 891 (Minn. App. 1985) (precommitment behavior). Here, the evidence offered at the review hearing established that appellant has a pattern of failing to take his medication and, as a result, suffers a recurrence of his symptoms and violent behavior. See *Malm*, 375 N.W.2d at 890-91 (affirming determination that symptom-free patient continued to be mentally ill and dangerous based on precommitment behavior indicating that, if released, he would stop taking medication and symptoms would recur); *Dirks*, 530 N.W.2d at 211 (affirming commitment as mentally ill and dangerous where expert testimony predicted that patient would stop taking his medication and return to dangerous behavior if released).

Although appellant was symptom-free and medication compliant at the time of his review hearing, an examiner testified that appellant continued to lack insight into his mental illness and need for treatment. The examiner opined that this lack of insight would lead appellant to stop taking his medications if not closely monitored and his symptoms would then return. The examiner explained that appellant has had a pattern of

doing just that since first being diagnosed with mental illness. The examiner's testimony is corroborated by testimony offered during the initial commitment hearing from appellant's treating psychiatrist and two court-appointed examiners.

Based on appellant's history and the likelihood that he would become medication noncompliant in the future, the district court properly concluded that appellant was substantially likely to engage in future acts capable of inflicting serious physical harm on another, as required for commitment as mentally ill and dangerous.

Appellant also contends that the district court erred by failing to consider releasing him to live with his sister as a less-restrictive option than commitment to the security hospital. "This court has recognized the need for the structure and security provided by the security hospital for mentally ill and dangerous patients." *Dirks*, 530 N.W.2d at 212. Minnesota law requires that a person who is mentally ill and dangerous be committed to a secure treatment facility, such as the security hospital, unless the person proves by clear and convincing evidence that a less-restrictive treatment program is available that is consistent with treatment needs and public safety. Minn. Stat. § 253B.18, subd. 1(a).

In support of his argument, appellant points only to his sister's testimony. At the review hearing, appellant's sister, a registered nurse, testified that appellant lived with her in April and May 2007 without any problems, that he had not harmed her family, that she was not worried he would harm people in the future, and that he was welcome to stay at her home anytime. But appellant's sister's testimony does not establish that living with her would be consistent with his treatment needs or public safety.

Testimony firmly supports appellant's commitment to the security hospital. At the review hearing, an examiner testified that commitment at the security hospital was the most appropriate placement for appellant given his history of failed attempts at rehabilitation and his failure to take his medications on his own. In making this recommendation, the examiner explained that appellant's "previous hospitalizations which were less secure have not worked and it culminated in his actions in November." The examiner testified that appellant "needs to be in a secure environment where he is watched closely, where his medication compliance is monitored on a daily basis . . . I don't believe that a less structured environment would keep the public safe at this time." Because appellant did not establish by clear and convincing evidence that his suggested program, namely residing with his sister, could satisfy the dual concerns for placement in a less-restrictive treatment program, the district court properly committed him to a secure treatment facility.

Affirmed.