

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Detention of:

G.R.

Petitioner.

No. 42673-1-II

UNPUBLISHED OPINION

Penoyar, J. — GR appeals his 90-day involuntary psychiatric commitment order, arguing that the State failed to show that he posed a likelihood of serious harm to others. We affirm.¹

FACTS

On September 13, 2011, the Seattle Municipal Court dismissed charges against GR after finding him not competent to stand trial. The State then petitioned for a 90-day involuntary psychiatric detention hold, pursuant to chapter 71.05 RCW.

A Pierce County Superior Court Commissioner held a hearing on the contested petition. The State first presented Hodja Kaba's testimony. On the morning of August 2, 2011, Kaba parked her car in downtown Seattle and walked toward her office. GR passed her on his bicycle. GR turned around and said "[y]ou're crowding me b-tch . . . you f-cking b-tch." Report of Proceedings (RP) at 9. GR dismounted and raised his front bike wheel and "started ramming" Kaba. RP at 9. He left tire marks on her clothing. He said "I'm going to kill you . . . I'm going to end your life today." RP at 9. Kaba believed GR was going to harm her and was "pretty shaken up" by the confrontation. RP at 10. Kaba called the police on her cell phone. She

¹ A commissioner of this court initially considered GR's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

identified GR both to the police and in the courtroom during the hearing.

Dr. Greg Gagliardi, a forensic psychologist then testified. He interviewed GR when he arrived at the hospital for evaluation. Gagliardi diagnosed GR with paranoid schizophrenia manifested with grandiose and paranoid delusions. GR refused medication. Gagliardi opined that GR continued to present a likelihood of serious harm. Gagliardi formed this opinion, in part, based on GR's history of seven prior felony and multiple misdemeanor convictions.

Gagliardi also based his conclusion on the nature of GR's expressed paranoid and delusional beliefs. For example, during GR's intake evaluation, he expressed that he was "supposed to have different security. Microsoft is supposed to be providing better security than this. . . . If I had security with me, this wouldn't have happened at all." RP at 18. GR later denied to Gagliardi that the alleged incident with Kaba ever occurred. Finally, Gagliardi took into account GR's "past history" and interaction with Kaba when making his determination that GR required hospitalization. RP at 17.

Gagliardi added that GR will not take medication because "he believes he does not [have] a mental disorder" and he believes the drugs are poisonous. RP at 19. He concluded that

[T[here is a high risk that [there] would be future [dangerous] acts given the nature of his mental disorders, the fact that he doesn't take medication, and doesn't have any insight into it and the history.

RP at 22.

GR also testified. He stated that he does not pose a risk of harm to someone else. He recollected the incident with Kaba and recognized that he "yelled something nasty" but denied threatening to kill her. RP at 24. GR denied hitting Kaba with the bicycle and stated instead that she grabbed the bicycle. He then cycled away from her. When the State asked if he believed he

had a mental disorder, GR answered “[p]ossibly. I don’t really think so. Maybe. Nothing serious.” RP at 26. He admitted he had history of prior felonies, including a robbery.

The court concluded “there [is] no question that there was an assault” on Kaba, and that GR was delusional and lacked insight into his medical condition. RP at 31. It authorized 90 days of involuntary hospitalization on the basis that GR presented a likely harm to others. *See* CP at 15 (court’s written findings that GR assaulted Kaba, continues to express delusions, shows impaired judgment, has a history of prior convictions, and a demonstrates lack of insight regarding medication).

ANALYSIS

The State and GR both take the position that this appeal is not moot, despite the fact that GR is no longer confined. Our recent decision in *M.K.*, counsels that due to the collateral consequences of an involuntary commitment order, we should entertain this appeal. *In the Detention of M.K.*, ___ Wn. App. ___, 279 P.3d 897, 900-01 (2012) (recognizing significant role that prior civil commitments play in a subsequent commitment determination); *cf.* Resp’t’s Br. at 8 (acknowledging that findings related to GR’s assault on Kaba “could be used against him in a subsequent commitment proceeding”).

On the merits of the commitment order, GR argues that the trial court lacked substantial evidence that GR presented a likelihood of serious harm to others because he lacks a history of violence. In addition, GR never exhibited violent behavior in the hospital. The State responds that it demonstrated GR engaged in a violent overt act (the assault on Kaba). It contends that the assault, combined with findings regarding GR’s delusions, his impaired insight into his health status and medications, and his multiple prior convictions, including one for robbery, support the

court's commitment order. Resp't's Br. at 15 n.4 (quoting RCW 9A.56.190) (noting that robbery requires taking property from another "against his or her will by the use or threatened use of immediate force, violence, or fear of injury").

The State bears the burden of proving that someone requires involuntary commitment by clear, cogent, and convincing evidence, "which means the ultimate fact in issue must be shown by evidence to be 'highly probable.'" *In the Detention of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). Under this standard:

the evidence must be more substantial than in the ordinary civil case in which proof need only be by a preponderance of the evidence, in other words, the findings must be supported by substantial evidence in light of the "highly probable" test. Accordingly, we will not disturb the trial court's findings . . . if supported by substantial evidence which the lower court could reasonably have found to be clear, cogent and convincing.

LaBelle, 107 Wn.2d at 209 (citations omitted).

RCW 71.05.280(2) provides that after an initial 14-day treatment period, a person may be confined for additional treatment if: "Such person was taken into custody as a result of conduct in which he or she . . . inflicted physical harm upon the person of another . . . and continues to present, as a result of mental disorder, a likelihood of serious harm."

"Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts[.]

Former RCW 71.05.020(25) (2011).

GR relies on *In the Detention of Meistrell*, 47 Wn. App. 100, 107, 733 P.2d 1004 (1987), to argue that the State failed to present sufficient evidence that GR posed a likelihood of serious harm. In *Meistrell*, the court rejected the detainee's argument that he was not harmful because the State presented evidence that Meistrell deliberately tried to injure his children on playground equipment and also had an extensive history of past violent acts and threats against family members. 47 Wn. App. at 103-04, 107. GR argues because his case only involved a single "incident of harassment," as opposed to the violent history relied on in *Meistrell*, the State does not meet its burden. Appellant's Br. at 7-8.

GR's argument that his matter involved only a single harassing incident, however, ignores the full spectrum of relevant evidence relied on by the trial court when determining to commit GR. Specifically, substantial evidence supports the trial court's finding that GR assaulted Kaba with his bicycle, as well as threatened to kill her; Kaba credibly testified as to contact with the tires and her fear during the encounter. Substantial evidence also supports that GR is an unmedicated paranoid schizophrenic who neither recognizes the severity of his illness nor acknowledges that he requires medication for treatment; Gagliardi testified as to these facts. In addition, substantial evidence supports that GR has an extensive criminal history; he, in fact, admitted to multiple convictions. And, at least one of GR's past convictions, the robbery conviction, is classified as a "violent offense." Former RCW 9.94A.030(54) (2011). In light of this, we cannot say that the trial court erred when it concluded that the State met its burden of showing by "clear, cogent and convincing evidence," that GR continued to pose a likelihood of serious harm. *LaBelle*, 107 Wn.2d at 209; *see also* RCW 71.05.280(2).

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We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Hunt, J.

Van Deren, J.