**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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| In the Matter of the Detention of<br>ROBERT DANFORTH,<br>Petitioner. | No. 84152-7<br>En Banc<br>Filed November 10, 2011 |

J.M. JOHNSON, J.— In October 2006, Robert Danforth went to the King County Sheriff's Office, described his history of sex offenses, and made explicit descriptions of his plans to molest boys and have intercourse with a child. He repeatedly said that he would act on his plan if he was not committed as a sex offender.

Under the authority of former RCW 71.09.030(5) (1995), the King County prosecuting attorney filed a petition to civilly commit Danforth as a sexually violent predator. Danforth moved for summary judgment, arguing

that his actions did not constitute a "recent overt act" to qualify him for commitment proceedings under former RCW 71.09.020(10) (2006), *recodified as* RCW 71.09.020(12). He also argued that chapter 71.09 RCW was unconstitutionally vague as applied to him. The trial court denied his motion for summary judgment. The Court of Appeals affirmed. *In re Det. of Danforth*, 153 Wn. App. 833, 223 P.3d 1241 (2009). Danforth petitioned this court for discretionary review, which was granted. *In re Det. of Danforth*, 168 Wn.2d 1036 (2010). We affirm the Court of Appeals.

## Facts and Procedural History

### 1. *Danforth's History of Sex Offenses*

Danforth has a long record of criminal behavior and sex offenses. In 1970, he was arrested for sexually abusing four boys between the ages of 7 and 13. Representative of his abuse of the other boys, Danforth put one boy on a bed, moved on top of him, kissed him, touched the boy's private area, and rubbed the boy's arm against Danforth's private area. Danforth was prosecuted for these offenses, but the case was dismissed for a speedy trial violation.

In 1971, Danforth approached a group of young boys at a ballpark and

asked them if they wanted to have "sex play." *Danforth*, 153 Wn. App. at 837. Danforth was convicted of indecent liberties for this incident. The court ordered that he be sent for treatment at Western State Hospital. After a short time at Western State Hospital, Danforth was found to be not amenable to treatment and was sent to prison.

In August 1987, Danforth asked a 16-year-old boy and his friend to participate in sexual activity. For this incident, he was charged and convicted of two counts of communication with a minor for immoral purposes. The Court of Appeals later reversed the convictions because it held that former RCW 9.68A.090 (1986) was unconstitutionally vague.[1] This court overruled that holding in *State v. McNallie*, 120 Wn.2d 925, 933, 846 P.2d 1358 (1993) and affirmed the constitutionality of the statute.

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[1] *State v. Danforth*, 56 Wn. App. 133, 782 P.2d 1091 (1989), *overruled by State v. McNallie*, 120 Wn.2d 925, 933, 846 P.2d 1358 (1993). Former RCW 9.68A.090(1) stated:

> A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

Finally, in the summer of 1987, Danforth hit a 12-year-old boy over the head with a rock, forcibly pulled down the boy's pants and anally raped him, leaving the boy crying behind a theatre. For this, Danforth was convicted of second degree rape and served prison time. He was released in 1996.

2. *Danforth's Admissions to the King County Sheriff*

On October 25, 2006, Danforth went to the King County Sheriff's Office and asked to speak to a detective. He told the detective that he had come to "turn himself in" because he "[felt] like re-offending." Clerk's Papers (CP) at 66. Danforth then told the detective that he was sexually interested in young boys. Danforth said he needed to be in a facility permanently and told the detective that his desire was "dangerous." *Id.* The detective called mental health professionals (MHPs) to interview Danforth.

Danforth explained to the MHPs that he "desires, needs, wants to have sex with children." *Id.* He told them, "I have impulses that I want to [have sex with children]. If I'm not locked up – I could reoffend." *Id.* at 66-67. Among other statements, Danforth said that he would walk to a bus stop with young boys (or wait for young boys to arrive) and then try to have sex with them. He also said he would go to a specific video arcade, find a boy playing

a video game, and rub against the boy, saying, "[I]f they like it I might pursue more." *Id.* at 67. The detective advised Danforth of his *Miranda*[2] rights and booked him into the King County Jail. Danforth thanked him and stated that he understood his rights.

The next day, a detective took a recorded statement from Danforth.[3] Danforth reiterated his prior statements and asked to be committed as a sex offender. After explicitly describing how he would have sexual intercourse with a young boy, Danforth said, "I feel I'd be a serious danger to society if I was turned loose," and "if it wasn't for the police that I can turn to, I'm about ready to offend." *Id.* at 398, 400, 406. The detective and Danforth also discussed his history of sex offenses.

3. *The Petition to Civilly Commit Danforth*

The State filed a petition to civilly commit Danforth as a sexually violent predator under former RCW 71.09.030(5) on October 26, 2006. The petition was supported by a declaration from licensed psychologist Dr. Charles A. Lund, who stated, "Danforth made explicit and specific

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[3] Before the statement, the detective again advised Danforth of his *Miranda* rights, and Danforth stated that he understood and that his statements were voluntary. CP at 397.

statements of intent to commit sexual offenses against young boys . . . [t]he specificity of the threat is[,] professionally speaking, quite alarming and there is imminently a high risk of sexual reoffending, given the threat." *Danforth*, 153 Wn. App. at 839 (second alteration in original).

4. *Danforth's Motion for Summary Judgment*

Danforth filed for summary judgment. He claimed that he had not committed a "recent overt act" because (1) his "threat to rub against the back of 13 to 15 year old boys, for sexual pleasure," did not "[rise] to the level of a threat of sexually violent offense that satisfies . . . 71.09.020(10) . . ." and (2) "RCW 71.09 is unconstitutionally vague as applied [to Danforth], as speech alone is alleged as the recent overt act." CP at 61-62.

Danforth's motion also maintained that the following facts were *not* in controversy: (1) he "made the threats set out in the State's Petition," (2) he "went to the Sheriff's Office [and said] 'I feel like re-offending,'" (3) he said he would go to a specific video arcade and "find a boy playing a video game and rub himself against the back of them," and (4) he had said "yes [this was for his pleasure], and 'if they liked it I might pursue more.'" *Id.* at 61.

Danforth also acknowledged that Dr. Lund, who had known Danforth

since at least 2002,[4] "rendered an opinion that Mr. Danforth's threat was a basis for apprehension of harm of a sexually violent nature." *Id.*; s*ee also* former RCW 71.09.020(10).

The trial court heard the motion for summary judgment to dismiss the petition. The motion was denied. The court indicated that it found there was "sufficient evidence to survive a motion for summary judgment based on the true threat concept as being a . . . recent overt act."[5] Tr. of Trial Proceedings (June 12, 2008) at 85. In its order, dated July 10, 2008, the court ruled that "a reasonable jury could find that [Danforth's] acts as outlined in the evidence before the court constituted a Recent Overt Act." CP at 420-21.

5. *Danforth Stipulates to Civil Commitment Just Before Trial*

As trial was set to begin, the State introduced a stipulation agreed to when Danforth's motion for summary judgment was denied. The stipulation reads, in pertinent part:

The Respondent and the State enter into this Stipulation for the

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[4] CP at 324, 370; *Danforth*, 153 Wn. App. at 838.

[5] The court was evidently persuaded by the State's argument at trial that a "threat" under former RCW 71.09.020(10), if it implicates the First Amendment, only encompasses "true threats" under United States Supreme Court First Amendment jurisprudence. *E.g.*, Tr. of Trial Proceedings (June 12, 2008) at 80-85. The State now argues that Danforth incorrectly examines this case under the "true threat" doctrine. State's Resp. Br. at 19-26.

> purpose of resolving the commitment trial currently in progress.
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> . . . .
>
> By entering into this stipulation, respondent retains the right to appeal the Respondent's Motion for Summary Judgment argued before the trial court on June 12, 2008. If Mr. Danforth prevails on appeal, he will have the right to withdraw this stipulation.
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> . . . .
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> Respondent has committed a recent overt act as that term is defined in RCW 71.09.020, namely through statements Mr. Danforth made to the [MHPs] on October 25, 2006 [and] to the King County Sheriff on October 25, 2006 and October 26, 2006.
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> . . . .
>
> The Respondent understands that if the Court accepts this Stipulation[,] . . . commitment shall last until Respondent's condition has so changed that he no longer meets the definition of a sexually violent predator or he is conditionally released to a [Less Restrictive Alternative] pursuant to RCW 71.09.090.

CP at 286-90. The court accepted the stipulation and found all the statutory elements necessary to commit Danforth on June 16, 2008.

6. *Appeal*

Danforth appealed the trial court's decision on his motion for summary judgment. He claimed that his actions did not constitute a threat under the plain meaning of former RCW 71.09.020(10).[6] The Court of Appeals

[6] Both parties cited to the same definition of "threat" on appeal: that it is "**a :** an expression of an intention to inflict evil, injury, or damage on another; [or] **b :** an

disagreed, holding that when viewed in the light most favorable to the nonmoving party (the State), "the evidence is sufficient to establish that Danforth expressed an intent to inflict harm" and "[t]he trial court therefore properly denied the summary judgment motion and concluded that there was sufficient evidence to submit to the jury on the issue of whether he committed a recent overt act." *Danforth*, 153 Wn. App. at 842.

Danforth also argued that unless the statute's definition of "recent overt act" is limited to true threats, it is unconstitutionally overbroad because it encompasses constitutionally protected speech. He argued his statements were only conditional statements (that he would harm others if he did not receive help). The Court of Appeals held that the true threat analysis does not apply because additional proof of conduct is required to establish a recent overt act under former RCW 71.09.030(5). *Id.* at 844 ("the threats must be evaluated in the context of the offender's conduct, i.e., the offender's history and mental condition"). Therefore, the Court of Appeals reasoned, the statute does not regulate pure speech. *Id.* Alternatively, the Court of Appeals held

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expression of an intention to inflict loss or harm on another . . . ." Webster's Third New International Dictionary 2382 (2002); *Danforth*, 153 Wn. App. at 842 & n.8; Appellant's Opening Br. at 17; State's Response Br. at 16 (citing Appellant's Opening Br. at 17).

that there was sufficient evidence to submit to the jury even under a true threat analysis. *Id.* at 844-45.

Finally, Danforth argued that the definition of "recent overt act" is unconstitutionally vague because it does not give sufficient notice that "requests for help" can amount to a "threat" that will support a petition to commit someone as a sexually violent predator. *Id.* at 845. The Court of Appeals again disagreed, holding that Danforth's actions "unquestionably fall within [the] definition" of a recent overt act, and that he had "fail[ed] to demonstrate that reasonable minds could differ on the use of the term 'threat' in the 'recent overt act definition.'" *Id.* at 846. We affirm the Court of Appeals' opinion in its entirety.

## Analysis

### I. Danforth's Motion for Summary Judgment Was Properly Denied

#### A. A "threat" under former RCW 71.09.020(10) (2006) Is an Expression of Intention To Inflict Loss or Harm on Another

The meaning of a statute is a question of law reviewed de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court's fundamental objective is to ascertain and carry out the

legislature's intent. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). To carry out the legislature's intent, we look first to the statute's plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). If the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction. *Id.*

The plain language of former RCW 71.09.030(5) permits a prosecuting attorney to file a petition to civilly commit an individual as a sexually violent predator if that person has previously been convicted of a sexually violent offense, has since been released from total confinement, has committed a recent overt act, and it appears that the person may be a sexually violent predator.[7] The only issue in this case is whether a jury could have found that Danforth committed a "threat" within the statutory definition of a recent overt act. Former RCW 71.09.020(10) supplies the definition of "recent overt act:"

> "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable

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[7] Former RCW 71.09.030(5) states:

> When it appears that . . . a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged . . . may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation.

> apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

The word "threat" is not further defined. Thus, to determine its plain meaning, we may look to the dictionary. *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976) ("Words in a statute should be given their ordinary meaning absent ambiguity and/or a statutory definition.").

*Webster's Third New International Dictionary* 2382 (2002) defines "threat" as "**a :** an expression of an intention to inflict evil, injury, or damage on another; [or] **b :** expression of an intention to inflict loss or harm on another . . . ." We adopt this definition and hold that, by including the common and ordinary meaning of the word "threat" within the definition of "recent overt act," the legislature intended to civilly commit sexually violent offenders *before* harm to another victim occurs. *See* Laws of 2001, ch. 286, § 4; Laws of 1995, ch. 216, § 1; *J.M.*, 144 Wn.2d at 480 ("If the statute's meaning is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislative intended.").

With this statute, a "recent overt act" includes both the acts and threats

an offender has committed that have either caused harm of a sexually violent nature or have created a reasonable apprehension of sexually violent harm in the mind of an objective person who knows of the offender's history and mental condition. This does not mean that an offender must both act and make a threat to commit a "recent overt act." Rather, it means that an offender's threats must be evaluated in the context of the offender's conduct, history and mental condition. Here, the statements made by Danforth at the King County Sheriff's Office must be evaluated in the context of his actions, his history, and his mental condition.

B. A Reasonable Jury Could Find that Danforth Committed a "threat" in the King County Sheriff's Office in 2006

We review summary judgment rulings de novo, engaging in the same inquiry as the trial court. *Harris v. Ski Park Farms, Inc*., 120 Wn.2d 727, 737, 844 P.2d 1006 (1993); RAP 9.12. A summary judgment will be affirmed if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Wilson v. Steinbach,* 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). All facts and reasonable inferences are reviewed in the light most favorable to the nonmoving party. *Steinbach*, 98 Wn.2d at 437. Judgment as a matter of law is appropriate where there is

no legally sufficient basis for a reasonable jury to find for a party with respect to the issue. CR 50; *see also Schmidt v. Coogan*, 162 Wn.2d 488, 493, 173 P.3d 273 (2007) (per curiam) (an order granting judgment as a matter of law should be limited to circumstances in which there is no doubt as to the proper verdict).

There are no genuine issues of material fact in this case. It is argued that Danforth's actions did *not* constitute a "threat" as a matter of law. However, considering the facts and inferences in the light most favorable to the nonmoving party (the State), there is a legally sufficient basis for a jury to find that Danforth expressed an intention to inflict loss or harm on another, and therefore, it was proper to submit to the jury the issue of whether he committed a recent overt act.[8]

Danforth explicitly described to the detective at the King County Sheriff's Office his specific plan to molest boys and have intercourse with a child. He repeatedly said that he would act on his plan if he was not

[8] Danforth does not contest that his actions created a reasonable apprehension of sexually violent harm in the mind of the prosecutor, an objective person who knew of Danforth's history and mental condition. Appellant's Opening Br.; Pet. for Review; Suppl. Br. of Pet'r; *see also* former RCW 71.09.020(10).

committed as a sex offender. Although Danforth characterizes his actions as a conditional "cry for help," instead of as a "threat," a difference in characterization with respect to Danforth's *motive* for approaching the sheriff's office does not change the objective nature of his actions. *Compare* Pet. for Review at 16-19, *with* State's Resp. Br. at 16-19. More importantly, that there is arguably a difference in characterization means that this is exactly the type of question we submit to juries. We surely cannot hold Danforth's statements were *not* threats as a matter of law.

II. Former RCW 71.09.030(5) Is Constitutional

Statutes are presumed to be constitutional and the party challenging a statute's constitutionality bears the burden of proving its unconstitutionality beyond a reasonable doubt. *State v. Thorne*, 129 Wn.2d 736, 769-70, 921 P.2d 514 (1996). Additionally, wherever possible, "it is the duty of this court to construe a statute so as to uphold its constitutionality." *State v. Reyes*, 104 Wn.2d 35, 41, 700 P.2d 1155 (1985). Having interpreted "threat" to mean an expression of intention to inflict harm or loss on another under the statute's plain meaning, we hold that former RCW 71.09.030(5), as defined by former RCW 71.09.020(10), is neither overbroad nor unconstitutionally vague.

A. Former RCW 71.09.030(5) Is Not Overbroad because it Does

Not Implicate First Amendment Concerns

Under the First Amendment, Congress "shall make no law . . . abridging the freedom of speech."[9] U.S. Const. amend. 1. A statute violates the First Amendment if it is overbroad; that is, if it prohibits a substantial amount of protected speech. *United States v. Williams*, 553 U.S. 285, 292, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008). Former RCW 71.09.030(5) does not implicate First Amendment concerns and therefore cannot be overbroad under the First Amendment.

Former RCW 71.09.030(5) does not implicate First Amendment concerns because it does not criminalize or regulate speech.[1] It is part of a civil commitment statute.[11] We note that criminal statutes that merely use speech to establish the elements of a crime or to prove motive or intent do not implicate First Amendment concerns. *Wisconsin v. Mitchell*, 508 U.S. 476,

[9] The First Amendment was incorporated to the states through the due process clause of the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652, 666, 45 S. Ct. 625, 69 L. Ed. 1138 (1925).

[1] *See Watts v. United States*, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (holding that statutes that criminalize pure speech "must be interpreted with the commands of the First Amendment clearly in mind").

[11] The United States Supreme Court has already held that Kansas' involuntary civil commitment statute, which was patterned on chapter 71.09 RCW, is civil in nature and does not constitute punishment. *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997).

113 S. Ct. 2194, 124 L. Ed. 2d 436 (1993); *State v. Halstien*, 122 Wn.2d 109, 124-25, 857 P.2d 270 (1993). This civil statute allows the State to establish a "recent overt act" in a civil matter by evaluating an offender's threats in the context of his or her conduct, history, and mental condition. As the Court of Appeals stated:

> [C]hapter 71.09 RCW does not penalize threats to reoffend in a sexually violent manner, nor does it authorize civil commitment based on such threats alone. Rather, the statute's focus is on the impact of the sex offender's conduct on the community, i.e., present dangerousness, which is established by proof of a recent overt act. This requires more than showing a threat to reoffend; the State must also show that the offender's mental condition and history create a reasonable apprehension of such harm from an objective viewpoint. Thus, because the threats must be evaluated in the context of the offender's conduct, i.e., the offender's history and mental condition, the statute does not regulate pure speech. Rather, it allows the State to establish current dangerousness with proof of a threat that would create a reasonable apprehension of harm based on the sex offender's conduct.

*Danforth*, 153 Wn. App. at 843-44 (footnote omitted).

Unlike previous cases in which we analyzed whether a criminal statute's use of the word "threat" violated the First Amendment, chapter 71.09 RCW is not a criminal statute and does not implicate the First Amendment. *E.g.*, *State v. Schaler*, 169 Wn.2d 274, 236 P.3d 858 (2010)

(holding that felony harassment statute proscribes only "true threats"); *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215, (2004) (same); *J.M.*, 144 Wn.2d at 480 (same); *State v. Williams*, 144 Wn.2d 197, 208, 26 P.3d 890 (2001) (holding that misdemeanor harassment statute proscribes only "true threats"). We therefore need not reach a "true threat" analysis in this civil commitment.

B. Chapter 71.09 RCW Is Not Unconstitutionally Vague

A vagueness challenge to a statute not involving First Amendment rights is evaluated as applied to the challenger, using the facts of the particular case. *City of Spokane v. Douglass*, 115 Wn.2d 171, 182, 795 P.2d 693 (1990) (citing *Maynard v. Cartwright*, 486 U.S. 356, 361, 108 S. Ct. 1853, 100 L. Ed. 2d 372 (1988)). The challenged law "is tested for unconstitutional vagueness by inspecting the actual conduct of the party who challenges the ordinance and not by examining hypothetical situations at the periphery of the ordinance's scope." *Douglass*, 115 Wn.2d at 182-83. Applying these principles to the present case, Danforth must challenge that former RCW 71.09.030(5) is unconstitutionally vague as applied to him.

Thus, Danforth must show either that (1) former RCW 71.09.020(10)

does not define "recent overt act" with sufficient definiteness that ordinary people can understand what conduct constitutes a "recent overt act" or (2) that former RCW 71.09.020(10) does not provide an ascertainable standard to protect against arbitrary enforcement. *See Douglass*, 115 Wn.2d at 178 (citing *Rose v. Locke*, 423 U.S. 48, 49, 96 S. Ct. 243, 46 L. Ed. 2d 185 (1975) (defining when a statute is void for vagueness under the due process clause of the Fourteenth Amendment)); *see also Boutilier v. Immigration & Naturalization Serv.*, 387 U.S. 118, 123, 87 S. Ct. 1563, 18 L. Ed. 2d 661 (1967) (void for vagueness doctrine applies to both civil and criminal statutes).

*1. Former RCW 71.09.020(10) Defines "Recent Overt Act" with Sufficient Definiteness*

To determine whether a challenged ordinance is sufficiently definite, the statutory language is afforded a sensible, meaningful, and practical interpretation. *Douglass*, 115 Wn. 2d at 180. As the United States Supreme Court has said, this "does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. The use of common experience as a glossary is necessary to meet the practical demands of legislation." *Sproles v. Binford*, 286 U.S. 374, 393, 52

S. Ct. 581, 76 L. Ed. 1167 (1932) (citations omitted). A statute is not unconstitutionally vague merely because a person cannot predict with precise certainty the exact point at which his or her actions may be classified as a recent overt act. *See City of Seattle v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988).

Here, the common and ordinary meaning of "threat" is an expression of intent to inflict loss or harm on another. This is a sensible, meaningful, and practical interpretation of the statute that is consistent with the legislature's intent to civilly commit sexually violent offenders *before* harm to another victim occurs. Former RCW 71.09.020(10) defines "recent overt act" with sufficient definiteness that ordinary people can understand what conduct amounts to a recent overt act.[12]

*2. Former RCW 71.09.020(10) Provides an Ascertainable Standard To Protect against Arbitrary Enforcement*

The due process clause forbids statutes that contain *no* standards and allow police officers, judges, and juries to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute in any given

[12] Again, the question we address is not whether Danforth's statements to the King County Sheriff's Office were threats, but whether a reasonable jury could find that his statements, evaluated in the context of his conduct, history, and mental condition, constituted a recent overt act.

case. *State v. Maciolek*, 101 Wn.2d 259, 267, 676 P.2d 996 (1984). The statute must instead "provide 'minimal guidelines . . . to guide law enforcement.'" *Douglass*, 115 Wn.2d at 181 (alteration in original) (quoting *State v. Worrell*, 111 Wn.2d 537, 544, 761 P.2d 56 (1988)). These determinations are not made in a vacuum, but rather, the question is whether "[t]he terms are not inherently subjective *in the context in which they are used*." *Worrell*, 111 Wn.2d at 544 (emphasis added). Additionally, the mere fact that a statute may require some degree of subjective evaluation by a police officer to determine whether the statute applies does not mean the statute is unconstitutionally vague. *Am. Dog Owners Ass'n v. City of Yakima*, 113 Wn.2d 213, 216, 777 P.2d 1046 (1989). "Under the due process clause, the enactment is unconstitutional only if it invites an inordinate amount of police discretion." *Douglass*, 115 Wn.2d at 181.

Former RCW 71.09.020(10) requires a person to consider an offender's acts and threats *objectively* in the context of his or her history and mental condition. It also requires that the acts and threats have either caused harm of a sexually violent nature or have created a *reasonable* apprehension of such harm in the mind of an objective person who knows of the offender's history

and mental condition. Former RCW 71.09.020(10) thus provides guidelines to the prosecuting attorney and attorney general, who may file petitions for civil commitment, and does not allow them to consider threats in a vacuum. Although petitioning for civil commitment under RCW 71.09.030 is discretionary, former RCW 71.09.020(10) provides an ascertainable standard to protect against arbitrary enforcement of the involuntary civil commitment statute.

Finally, we again recognize that involuntary civil commitment is a substantial curtailment of individual liberty and therefore requires a showing that the offender is presently dangerous to justify commitment. *In re Det. of Lewis*, 163 Wn.2d 188, 193, 177 P.3d 708 (2008). We have already held that proof of a "recent overt act" satisfies this inquiry. *Id.* at 194 (citing *In re Det. of Albrecht*, 147 Wn.2d 1, 8, 51 P.3d 73 (2002); *In re Pers. Restraint of Young*, 122 Wn.2d 1, 41, 857 P.2d 989 (1993); *In re Det. of Harris*, 98 Wn.2d 276, 284, 654 P.2d 109 (1982)). The consideration of acts and threats that have either caused harm of a sexually violent nature or have created a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act is

consistent with our requirement that the State show the offender is presently dangerous and comports with due process. *Cf. Lewis*, 163 Wn.2d at 203 (Sanders, J., concurring).

## Conclusion

A reasonable jury could find that Danforth committed a threat when he gave explicit descriptions of his plans to molest boys at a bus stop and have intercourse with a child at a mall video arcade. Danforth repeatedly said that he would act on his plan if not committed as a sex offender. Former RCW 71.09.030(5), as defined by former RCW 71.09.020(10), is not unconstitutionally overbroad or vague. Former RCW 71.09.030(5) satisfies our due process requirement that the State show an offender is presently dangerousness before he or she is involuntarily committed. We affirm the summary judgment here.

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Chief Justice Barbara A.

Justice Susan Owens