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NO. 53965-9-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of:

A.M.,

Appellant.

BRIEF OF RESPONDENT

ROBERT W. FERGUSON
Attorney General

Robert Antanaitis
Assistant Attorney General
WSBA No. 31071
PO Box 40124
Olympia, WA 98504
(360) 586-6531
robert.antanaitis@atg.wa.gov
OID No. 91021

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I. INTRODUCTION

A.M. suffers from a mental disorder and an alcohol use disorder. He was involuntarily committed to Western State Hospital in 2019 after a charge of felony harassment was dismissed due to his incompetency to stand trial. Doctors at Western State Hospital petitioned for A.M.'s further detention under the Involuntary Treatment Act on the grounds that, as a result of a mental disorder, he was (1) substantially likely to repeat similar acts, and (2) gravely disabled. After holding a hearing in which one of the petitioning doctors, A.M.'s victim, and A.M. all testified, a mental health commissioner granted the petition on both grounds. A.M. then sought revision to the Pierce County Superior Court, which denied his motion to revise.

A.M. now challenges the sufficiency of the evidence supporting the superior court's finding that he committed felony harassment and determination that he is gravely disabled. Substantial evidence supports the superior court's findings and conclusions that A.M. committed felony harassment and is gravely disabled as a result of his mental disorder. Therefore, the civil commitment order should be affirmed.

II. COUNTERSTATEMENT OF THE ISSUES

A. Does Sufficient Evidence Support the Superior Court's Finding that A.M. Committed Felony Harassment?

B. Does Sufficient Evidence Support the Superior Court's Conclusion that A.M. is Gravely Disabled?¹

III. COUNTERSTATEMENT OF THE FACTS

On March 1, 2018, A.M. threatened to kill Courtney Kiehn-Sanford, the night checker at the Sehome Haggen in Bellingham. Verbatim Report of Proceedings 1 (VRP1) 5-7, July 15, 2019; Clerk's Papers (CP) 41-43.² He threatened to get a gun and shoot her in the face after she had bagged his groceries and told him the amount he owed. VRP1 6; CP 42. A.M. was charged with felony harassment, but was found incompetent to stand trial and the charge were dismissed. CP 20-21. A.M. was then committed to Western State Hospital. *Id.*

In June 2019, the hospital petitioned to have A.M. involuntarily civilly committed on two bases. CP 1-19. First, under RCW 71.05.280(3), the hospital alleged that A.M. had committed acts constituting a felony and that he presented a substantial likelihood of repeating similar acts as a result of a mental disorder. CP 2. Second, under RCW 71.05.280(4), the hospital alleged that A.M. was gravely disabled as the result of a mental disorder.

¹ A.M. also raises mootness as a concern because the commitment period has expired. Brief of Appellant at 4-5. This is not an issue. This Court has previously ruled that the appeal of an involuntary commitment order is not moot because the order may have adverse consequences on future involuntary commitment determinations. *In re Det. of M.K.*, 168 Wn. App. 621, 625, 279 P.3d 897 (2012).

² The verbatim report of proceedings for the July 15, 2019, 180-day commitment hearing was designated as Clerk's Papers 36-68. References to VRP1 in this brief will also include a reference to the appropriate Clerk's Papers.

Id. The petition was supported by the declaration of Dr. Rogelio Zaragoza, M.D., and Dr. Jenna Tomei, Ph.D. CP 4-19.

A hearing on the petition was held on July 15, 2019. Two witnesses testified on behalf of the petitioners. The first was Ms. Kiehn-Sanford, who testified about being harassed. The second was one of the petitioners, Dr. Tomei.

Ms. Kiehn-Sanford testified that she was working as the night checker at the Sehome Haggen in Bellingham on March 1, 2018 when she encountered A.M. VRP1 5-6; CP 41-42. She was processing his transaction when she asked him if he had a card or phone number she could use to see if he qualified for a price discount. VRP1 6; CP 42. She said it is the same question she asks every customer in order to see if she can save him or her money. *Id.* She stated that A.M. responded by saying, “You don’t deserve to know my phone number.” *Id.* Then, after she bagged his items and told him his total, he leaned all the way over the monitor and said to her “I’m going to get a gun and shoot you in the face.” *Id.* Ms. Kiehn-Sanford testified that she was immediately taken aback and “moderately scared.” *Id.* She asked A.M. if he had just threatened her with physical violence, and he said “Yes.” VRP1 7; CP 43. She immediately called her manager who told A.M. that he needed to leave the store immediately and was not welcome back. VRP1 8; CP 44.

Ms. Kiehn-Sanford testified that, after A.M. left the store, she helped the customer who was next in line, and then started shaking. *Id.* She went home after that, even though she had been working for less than an hour when this incident occurred at 7:45 p.m. and she was scheduled to work until 3:30 a.m. the next morning. VRP1 6, 8; CP 42, 44. She testified that this incident upset her and that she “definitely” feared for her safety. VRP1 8; CP 44. She also testified that she had never had any prior contact with A.M. and did nothing to provoke him. VRP1 8-9; CP 44-45. She had no idea who he was at the time; he was just a customer that she had tried to save some money. VRP1 9; CP 45.

Dr. Tomei testified next. She testified that A.M. suffers from Unspecified Schizophrenia Spectrum and Other Psychotic Disorder, along with Alcohol Use Disorder that is currently in remission in a controlled environment. VRP1 12; CP 48. She explained that he presents with disorganized and perseverative thought processes, paranoid and delusional ideation, mood liability, agitation, and anger. *Id.* She testified that he has impaired judgment and insight, as well as some difficulty remembering information and remaining focused and attentive. *Id.* She also testified that he does not believe that he has a mental illness or that he needs medication. VRP1 16; CP 52.

Dr. Tomei testified that A.M.'s disorder interferes with his ability to provide for his basic health and safety needs. VRP1 12-13; CP 48-49. She stated that he needs a lot of support to get his activities of daily living met, and that he presents as very disheveled and unkempt. VRP1 13; CP 49. Her recommendation was that he needs a structured secure environment where he can get "whole assistance" with his needs. *Id.* She also described how A.M. currently voices a delusional belief that he has some sort of intestinal problem, which had resulted in him refusing meals, saying he is on a hunger strike, and only eating items such as Ensure shakes on an intermittent basis. VRP1 12-13, 20; CP 48-49, 56. He also expressed the paranoid belief that individuals at the hospital are trying to kill him. VRP1 12; CP 48.

Dr. Tomei also testified that A.M. presents a likelihood of repeating acts similar to the incident Ms. Kiehn-Sanford described. VRP1 14; CP 50. She stated that A.M. is presenting in a very similar fashion to how he presented during the time of the incident. *Id.* Specifically, A.M. has been consistently observed to be very agitated and angry on the ward, and voicing paranoid delusional beliefs that seem to be driving that agitation. *Id.* She testified that, in her professional opinion, she believed that this type of behavior would continue or worsen because A.M. is not currently taking medication and has a history of noncompliance with medication in the community as well. *Id.* She went on to describe how A.M. has a prior history

of hospitalizations, including Highline West Seattle in 2006, twice to St. Joseph's Medical Center in 2017, Fairfax Behavioral Health in 2018, and most recently to Western State Hospital for competency restoration. VRP1 16; CP 52. She also stated that his records indicate that he likely discontinued his medication once he was released back into the community after his hospitalizations at St. Joseph and Fairfax. VRP1 15; CP 51.

Finally, Dr. Tomei testified that she did not believe A.M. was ready for a less restrictive treatment environment other than hospitalization. VRP1 16; CP 52. She stated that medication compliance was crucial to determining when he was ready, and that she would also like to see a reduction in symptoms. *Id.* Examples she gave were that A.M. would need to stop voicing delusional thought content and reduce his agitation so that he could begin to engage in appropriate coping skills and manage his emotions. VRP1 16-17; CP 52-53. She also stated that A.M. needs a gradual transition to the community with housing and financial assistance, but that neither she nor the treatment team have been able to get him to engage in a discussion about his discharge plan. VRP1 17; CP 53. Instead, she described how she was unable to discuss this with him at his interview because A.M. continued to perseverate on his criminal charges being dismissed, which led to increased agitation until he finally stormed out of the room and slammed

the door when he found out that the charges had been dismissed without prejudice. *Id.*

A.M. testified on his own behalf. After first reading a statement to the court about his dismissed charges, he described his discharge plan, which was to stay at a homeless shelter in Seattle. VRP1 23-24; CP 59-60. He testified that he does not have a doctor, but would find one for “the medical problems that I must address.” VRP1 25-26; CP 61-62.

In the court’s Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment, the commissioner made a finding that A.M. was determined to be incompetent and felony charged were dismissed. CP 23. He found that A.M. committed felony harassment, and that he presents a substantial likelihood of repeating similar acts as a result of a mental disorder. *Id.* He also found that, as a result of a mental disorder, A.M. is in danger of serious physical harm resulting from the failure to provide for his essential needs of health or safety, and that A.M. manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, and is not receiving such care as is essential for health and safety. CP 24. The commissioner then concluded that A.M. presents a substantial likelihood of repeating acts similar to the charged criminal behavior of assault, and is

gravely disabled, and ordered up to 180 days of involuntary treatment at Western State Hospital. CP 24-25.

A.M. sought revision of the court commissioner's order before the Pierce County Superior Court. CP 26-35. The superior court judge denied the motion to revise. Verbatim Report of Proceedings 2 (VRP2) 4, Aug. 9, 2019; CP 80-81. A.M. timely appealed. CP 84.

IV. ARGUMENT

A. Standard of Review

This case was subject to revision below, therefore on appeal the Court reviews the superior court's decision, not the court commissioner's decision. The record is reviewed for evidence sufficient to support the superior court's findings. *State v. Ramer*, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). "Under RCW 2.24.050, the findings and orders of a court commissioner not successfully revised become the orders and findings of the superior court. A revision denial constitutes an adoption of the commissioner's decision, and the court is not required to enter separate findings and conclusions." *Maldonado v. Maldonado*, 197 Wn. App. 779, 789, 391 P.3d 546 (2017).

A trial court's finding of grave disability will generally not be overturned at the appellate level if it is supported by substantial evidence that the trial court could have reasonably found to be clear, cogent, and

convincing – i.e., that the issue in question was shown to be “highly probable.” *In re LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). Put another way, a sufficiency of the evidence challenge to a finding of grave disability will not prevail if the finding is supported by substantial evidence “in light of the ‘highly probable’ test.” *Id.*

Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Matter of Det. of A.S.*, 91 Wn. App. 146, 162, 955 P.2d 836 (1998). Additionally, when sufficiency of the evidence is challenged, the appellate court must ask whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). The appellate court must defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *In re Knight*, 178 Wn. App. 929, 937, 317 P.3d 1068 (2014).

B. Petitioners Proved by Clear, Cogent, and Convincing Evidence That A.M. Committed Felony Harassment

Under RCW 71.05.280(3), if an individual has been determined to be incompetent to stand trial and their criminal charges have been dismissed pursuant to RCW 10.77.086(4), he or she can be involuntary committed if they committed acts constituting a felony and, as a result of a mental

disorder, present a substantial likelihood of repeating similar acts. The petition can be directly filed for 180 days of treatment. RCW 71.05.290(3). The Petitioners bear the burden of proof by clear, cogent, and convincing evidence. RCW 71.05.310. It is not necessary to show intent, willfulness, or state of mind as an element of the crime. RCW 71.05.280(3)(a).

The dismissed charge in this case is felony harassment. A person is guilty of felony harassment if, without lawful authority, the person knowingly threatens to kill the person threatened and the person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020(1), (2)(b)(ii). Additionally, the threat needs to be a true threat, which is “a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of intention to inflict bodily harm upon or to take the life of another person.” *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004) (internal quotation marks omitted).

The Petitioners presented sufficient evidence here to justify the court’s finding that A.M. committed an act constituting felony harassment. The uncontested testimony from Ms. Kiehn-Sanford was that she was just doing her job as the night checker when A.M., a complete stranger, first told her that she did not deserve to know his phone number, and then leaned over

and told her that he was going to get a gun and shoot her in the face. VRP1 6, 8; CP 42, 44. Already moderately scared, Ms. Kiehn-Sanford confirmed that this was a serious threat and not a joke by asking A.M. if he had just threatened her with physical violence, to which he replied “Yes.” VRP1 6-7; CP 42-43. After having A.M. removed from the store, Ms. Kiehn-Sanford testified that she starting shaking and left work only an hour into her eight and a half hour shift. VRP1 6, 8; CP 42, 44. She testified that this incident upset her and that she “definitely” feared for her safety. VRP1 8; CP 44.

Based on this evidence, the court correctly found that the Petitioners had proven by clear, cogent, and convincing evidence that A.M, without lawful authority, threatened to kill Ms. Kiehn-Sanford and placed her in reasonable fear that the threat would be carried out. Additionally, the evidence demonstrated that the threat to shoot Ms. Kiehn-Sanford in the face was made under such circumstances wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention to take the life of another person.

A.M. argues that the evidence presented was not sufficient because Ms. Kiehn-Sanford did not explicitly state that she feared A.M. would kill her. Brief of Appellant at 5-9. However, this is not required in order to establish subjective fear or demonstrate that the threat feared is the same as

the threat made. Subjective fear can be established through testimony that the threatened person was “scared” or felt “a little frightened.” *See, e.g., State v. Trey M.*, 186 Wn.2d 884, 905, 383 P.3d 474 (2016) (holding statements that threatened persons were “scared” was sufficient); *State v. E.J.Y.*, 113 Wn. App. 940, 953, 55 P.3d 673 (2002) (statement that threatened person felt “a little frightened” was sufficient).

In this case, Ms. Kiehn-Sanford testified that she was moderately scared when A.M. first threatened to get a gun and shoot her in the face, and that after he confirmed that he was threatening her with physical violence, she called her manager to have A.M. removed from the store. She then left shortly thereafter herself, even though she was expected to work for seven and a half more hours, because she was shaking, upset, and feared for her safety.

A.M. argues that Ms. Kiehn-Sanford’s actions do not support this conclusion because she did not act as if she believed she was going to die. Brief of Appellant at 8-9. A.M. claims that Ms. Kiehn-Sanford should have instead ducked under her station for protection, screamed for help, or run away. Brief of Appellant at 9. But this argument mischaracterizes the nature of the threat made in order to cast doubt on the reasonableness of her fear. A.M. did not claim that he was going to shoot Ms. Kiehn-Sanford right then and there. Instead, he threatened that he was “going to get a gun and shoot

[her] in the face.” As the threat was in future, there was no need for Ms. Kiehn-Sanford to react in the manner suggested by A.M. Furthermore, Ms. Kiehn-Sanford’s actions after A.M. was removed is further evidence that she feared that A.M. would carry out his threat of getting a gun and shooting her in the face. Ms. Kiehn-Sanford testified that, after A.M. was removed from the store, she was shaking, upset, and feared for her safety, which is why she left even though she was scheduled to work for several more hours.

Viewing the evidence, including all reasonable inferences, in the light most favorable to the State, it is clear that there is sufficient evidence to conclude that Ms. Kiehn-Sanford feared that A.M. would carry out his threat to kill her by getting a gun and shooting her in the face. The superior court’s ruling should be upheld.

C. Sufficient Evidence Supports the Superior Court’s Determination that A.M. is Gravely Disabled

The petitioners presented sufficient evidence to justify the superior court’s finding that A.M. is gravely disabled. “Gravely disabled” is defined as:

[A] condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by

repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety[.]

RCW 71.05.020(21).

Either definition of grave disability provides a basis for involuntary commitment. *LaBelle*, 107 Wn.2d at 202. The petitioners bear the burden of proof by clear, cogent, and convincing evidence. RCW 71.05.310.

Additionally, RCW 71.05.245 provides that:

(1) In making a determination of whether a person is gravely disabled . . . the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability . . . when . . . [s]uch symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts.

Further, under RCW 71.05.285, evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) repeated hospitalizations, or (2) repeated peace officer interventions resulting in criminal charges, may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety.

1. A.M. is gravely disabled under the prong (a) definition of gravely disabled

To establish grave disability under RCW 71.05.020(21)(a), the evidence must show that A.M. faces “a substantial risk of danger of serious physical harm resulting from failure to provide for [his] essential health and safety needs.” *LaBelle*, 107 Wn.2d at 204. “[E]ssential health and safety needs” under RCW 71.05.020(21)(a) includes “such essential human needs as food, clothing, shelter, and medical treatment.” *LaBelle*, 107 Wn.2d at 204-05. Here, the evidence presented by Dr. Tomei supports the court’s findings on prong (a) of grave disability.

The State need not prove that the risk of harm is “imminent,” or substantiate the risk with evidence of “recent, overt acts.” *Id.* at 203-04. To justify the massive curtailment of liberty implicit in civil commitment, however, the State must provide “recent, tangible evidence of failure or inability to provide for . . . essential human needs” leading to “a high probability of serious physical harm within the near future unless adequate treatment is afforded.” *Id.* at 204-05. The failure to meet these essential needs must be linked to the person’s mental illness, and not be due to other factors. *Id.* at 205.

The weight of the evidence supports the inference that A.M. would be at risk of serious physical harm. Dr. Tomei testified that A.M.’s disorder

interferes with his ability to provide for his basic health and safety needs, and that he needs a lot of support to get his activities of daily living met. VRP1 12-13; CP 48-49. She also described how he currently voices a delusional belief that he has some sort of intestinal problem, which had resulted in him refusing meals, saying he is on a hunger strike, and only eating items such as Ensure shakes on an intermittent basis. VRP1 12-13, 20; CP 48-49, 56. Since A.M. does not believe that he has a mental illness or that he needs medication, and has a history of noncompliance with medication in the community as well, there is no indication that he would receive the treatment necessary to have his needs met in the community. VRP1 14, 16; CP 50, 52. The structure of involuntary treatment is necessary to ensure his safe transition to community living. The court's findings and conclusions regarding his need for treatment were correct. This Court should affirm the superior court's ruling on this point.

2. A.M. is gravely disabled under the prong (b) definition of gravely disabled

The evidence and the superior court's findings also support the conclusion that A.M. meets the second definition of grave disability by manifesting severe deterioration in his routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his actions, and is not receiving such care as is essential for his health or safety.

The Washington Supreme Court in *LaBelle* rejected a strict, literal reading of “repeated and escalating loss of cognitive or volitional control,” finding that requiring the release of a person whose condition had stabilized or improved minimally, but who would decompensate in the community and be rehospitalized, would lead to “absurd and potentially harmful consequences.” 107 Wn.2d at 207. Instead, the key question for the trial court is whether the person is showing severe deterioration of routine functioning, evidenced by recent proof of loss of cognitive or volitional control, and whether they would receive the care they need to maintain their health and safety if released. *Id.* at 208. Under the standard articulated in *LaBelle*, the evidence must show that the person is unable to make a rational choice about his or her need for treatment, creating a “causal nexus” between the person’s severe deterioration in routine functioning and evidence that they would not receive essential care if they were released. *Id.*

Committing mentally ill persons under this definition of grave disability allows the State to intervene “before a mentally ill person’s condition reaches crisis proportions” and to “provide the kind of continuous care and treatment that could break the cycle and restore the individual to satisfactory functioning.” *Id.* at 206. As the *LaBelle* court noted, the express intent of the statute is to “provide continuity of care for persons with serious mental disorders.” *Id.* at 207 (quoting RCW 71.05.010[(1)(e)]).

Here, the evidence at trial supports a civil commitment under definition (b) because A.M. does not appear able to make a rational choice about the need for continued psychiatric treatment in the community. A.M. has a prior history of hospitalizations, including four in the last three years. VRP1 16; CP 52. He also has a pattern of decompensation and discontinuation of treatment resulting in repeated hospitalizations, which demonstrates that he would not receive, if released, such care as is essential for his or her health or safety. VRP1 15; CP 51. This conclusion is also supported by the evidence that A.M. does not believe that he has a mental illness or that he needs medication. VRP1 16; CP 52.

The evidence presented at trial supports an inference that A.M. does not fully understand how to properly manage his mental illness to the extent that he could avoid rehospitalization. Continued court-ordered treatment is essential to his safe transition to community living. The testimony supports the superior court's finding that A.M. continues to be gravely disabled under prong (b).

Construed in the light most favorable to the petitioners, the evidence presented, and the reasonable inferences therefrom, provide a factual basis to sustain the finding that A.M. is gravely disabled under RCW 71.05.020(21)(a) and (b). The superior court's order should be affirmed.

V. CONCLUSION

This Court should affirm the superior court's order because the evidence elicited at trial is sufficient to support the finding that A.M. committed acts constituting felony harassment, as well as the conclusion that he is gravely disabled as a result of his mental disorder.

RESPECTFULLY SUBMITTED this 27th day of July 2020.

ROBERT W. FERGUSON
Attorney General



ROBERT A. ANTANAITIS, WSBA No. 31071
Assistant Attorney General
Attorneys for Respondent
PO Box 40124
Olympia, WA 98504-0124
(360) 586-6565

PROOF OF SERVICE

I, *Holly McClure*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. On July 27, 2020, I served a true and correct copy of this **BRIEF OF RESPONDENT** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

Counsel for Appellant

Lisa E. Tabbut
P.O. Box 1319
Winthrop, WA 98862

PDF Via COA Portal - ltabbutlaw@gmail.com

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 27th day of July 2020, at Tumwater, Washington.



HOLLY MCCLURE
Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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