

January 31, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Detention of,

J.R.P.,

Appellant.

No. 48300-9-II

UNPUBLISHED OPINION

MAXA, A.C.J. – JRP appeals the trial court’s 180-day involuntary civil commitment order following a jury trial. A person may be involuntarily committed if he or she is “gravely disabled” under one of two definitions in RCW 71.05.020(17)(a) and (b)¹. We hold that the State presented sufficient evidence under both subsections (a) and (b) to support the jury’s finding that JRP was gravely disabled.² Accordingly, we affirm the trial court’s 180-day involuntary civil commitment order.

¹ RCW 71.05.020 has been amended since the events of this case transpired. However, these amendments do not impact the statutory language relied on by this court. Accordingly, we do not include the word “former” before RCW 71.05.020.

² The general verdict did not specify whether its finding was based on subsection (a), subsection (b), or both subsections. JRP argues that if the evidence is sufficient under only one of the subsections of RCW 71.05.020(17), we must reverse because we cannot determine the basis of the jury’s verdict. Because we hold that the evidence was sufficient under both subsections, we do not address this argument.

FACTS

JRP has been diagnosed with schizoaffective disorder, bipolar type. He has been hospitalized eight times at Western State Hospital since 2006 and several times at other facilities since 2003.

Petitions for Involuntary Commitment

At some time in 2014, JRP was charged with third degree assault after allegedly assaulting a nurse in a treatment center. The charge was dismissed in January 2015 after the trial court concluded that JRP lacked legal competency. In February 2015, JRP stipulated to a civil order committing him to Western State Hospital for 180 days.

In August 2015, Antonio Gutierrez, M.D. and Mallory McBride, Ph.D. filed a second petition and declaration in support of committing JRP to an additional 180 days of continued involuntary treatment. The petition alleged that JRP was gravely disabled and that less restrictive treatments were unavailable. JRP requested that his case be heard by a 12-member jury. A jury trial was held in October 2015.

Gutierrez Testimony

Gutierrez's diagnosis of JRP's mental disorder was schizoaffective disorder, bipolar type. This disorder manifested itself in destructive hostility, a disproportionate emotional response to external events, psychomotor agitation with verbalized threats, elements of paranoia and delusions. Gutierrez also diagnosed JRP with an antisocial personality disorder. Finally, the diagnosis included his history of "polysubstance abuse, such as cannabis, alcohol, [and] methamphetamine." Report of Proceedings (RP) at 19.

Gutierrez noted that JRP's most pronounced symptom was episodic hostility, which had led to his multiple hospitalizations. Gutierrez explained that as a result of his mental disorder, JRP experienced violent reactions – involving screaming, demanding, pushing, banging, or kicking – that had required hospital staff to respond to control his behavior. Gutierrez stated that members of his treatment team had felt intimidated by JRP's behavior “quite often,” and that twice since June 2015 he had to run from JRP and hide behind a locked door because he was convinced JRP would not be able to control his actions. RP at 63. JRP's most recent incident had been on October 5, 2015. Gutierrez testified that if JRP was released and was not supervised, JRP's interactions within the community would bring him into conflict with community members, including law enforcement.

Gutierrez further testified that JRP's participation in his treatment was inconsistent and that he failed to participate in setting goals for himself regarding his release. JRP's medications were crushed and mixed into his food up until September 21, 2015. Following that time, JRP was placed under a medication watch, which required hospital staff to watch him to ensure that he actually took his medication. JRP did not permit medical staff to take blood draws to monitor the medicine level in his system. Gutierrez testified that JRP believed that he did not have a mental illness, did not need medication, and did not connect his medication to managing his mental illness. Gutierrez testified that he believed JRP would immediately stop taking his medication without hospital staff supervision. Without medicine, Gutierrez testified that JRP's symptoms would become more volatile.

Gutierrez concluded that JRP would be unable to meet his basic health and safety needs if released from Western State Hospital. Gutierrez opined that upon being released from the

hospital, JRP would indulge in substance abuse and fail to take his psychiatric medication. Based on JRP's failure to cooperate with treatment at the hospital, Gutierrez opined that JRP would not follow through with his mental health treatment outside the hospital. Gutierrez did not believe that a less restrictive setting would be able to adequately manage JRP's medication or treatment needs.

In addition, Gutierrez testified that JRP suffered from esophageal tears, known as Mallory-Weiss Syndrome. The condition presented itself in May 2015 when JRP began vomiting blood. JRP was uncooperative in receiving treatment for the tear at a nearby hospital and had to be sedated. Once JRP returned to Western State Hospital, JRP did not cooperate with staff attending to his medical needs, which Gutierrez believed was a result of JRP's mental disorder. JRP began treatment for the esophageal tears by taking a stomach acid reducing medication. Gutierrez testified that he was concerned that JRP would not seek medical care if the esophageal tears happened again. Gutierrez testified that JRP's resistance to medical treatment was a result of his lack of adherence to treatment for his mental disorder.

McBride Testimony

McBride echoed Gutierrez's diagnosis of schizoaffective disorder, bipolar type and also believed that JRP's psychotic symptoms likely included auditory hallucinations. She testified that JRP had participated in active treatment groups 25 to 50 percent of the time during the month preceding the hearing. However, when JRP attended groups, he failed to participate in treatment and was frequently preoccupied with internal stimuli. Other times, JRP would lose control, become angry with group leaders, and leave. McBride explained that JRP suffered from

ongoing delusional beliefs, including that his father remained alive and that he had 20 to 80 brothers residing in the community.

In McBride's opinion, JRP would not seek out mental health services or cooperate with treatment if released from the hospital. She based this opinion on her observations that JRP had been uncooperative with treatment, had a pattern of refusing to take medication, failed to consistently attend treatment groups, and stated his belief that he does not have a mental illness or need for treatment or medication. McBride felt that she and her treatment team were unable to develop a rapport with JRP in part due to his paranoid ideation that others were out to get him.

McBride testified that she did not believe that JRP would be able to meet his basic needs of health and safety if released in the community. She based this conclusion, in part, on JRP's ongoing symptoms of mental illness, which included extreme anger and frustration and an inability to meaningfully control those emotions. McBride expressed her opinion that there was a very high likelihood that JRP would discontinue his medications after his release and that JRP would cope with his symptoms by using substances.

Due to JRP's ongoing psychotic symptoms, McBride also believed that JRP's paranoia would cause him "to be so suspicious of the treatment providers that it would be a very high likelihood that he would leave that placement, [whether it be with his mother or in a group home and] that he would go back to the streets." RP at 134. And based on her opinion that JRP would fail to adhere to a medication regime, McBride testified that JRP's symptoms, post release, would "become so overwhelming that it's possible that he could completely lose any type of connection to reality." RP at 153-54.

McBride stated her belief that JRP would have a problem finding both food and shelter because JRP had no internal resources to manage the symptoms of his mental disorder. In McBride's opinion, the high level of structure provided by Western State Hospital, along with JRP's medications, permitted JRP to function "at a most basic level." RP at 135. However, she also noted that JRP had neglected his self-care even in the structured hospital environment. His body odor became so intense that his roommates requested to be moved.

McBride testified that without the structure of the hospital and hospital staff ensuring that he take his medications, upon JRP's release "he would not engage in any hygiene, not eat, [and] not have normal sleeping patterns." RP at 136. McBride expressed her concern that without JRP's medications, he could forget to sleep, forget to eat, forget where he was, and forget to not wander into traffic. She believed that JRP, without the high level of structure in the hospital, would show severe deterioration in routine functioning if released from treatment.

McBride also discussed that JRP experienced a loss of volitional or cognitive control while at the hospital. She explained that JRP became verbally aggressive with staff on an almost daily basis. And she testified that JRP had also become physically aggressive on several occasions.

JRP Testimony

JRP also testified. He recognized that he "might have certain problems I might need help with," including "maybe" hearing voices. RP at 167. He testified that his medication helped him a lot. He also stated that if he was released, he would go back to a prior mental health service provider in Seattle and take his medication.

While testifying, JRP expressed beliefs of having been shot by police while at Harborview, a denial that he had ever vomited blood in relation to his esophageal tear, and a denial that his father had passed away. JRP testified that he did not believe he was gravely disabled.

Verdict and Commitment Order

The jury was instructed on both definitions of gravely disabled under RCW 71.05.020(17). The verdict form asked whether JRP was “gravely disabled as a result of his mental disorder.” Clerk’s Papers (CP) at 52. The verdict form did not ask the jury to specify whether JRP was gravely disabled under subsection (a) or (b) of RCW 71.05.020(17) or under both subsections.

The jury returned a verdict finding that JRP was gravely disabled and that further detention at Western State Hospital for evaluation and treatment was in JRP’s best interest. The trial court entered an order detaining JRP at Western State Hospital for a period not to exceed 180 days.

JRP appeals the trial court’s commitment order.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

JRP argues that the State failed to present sufficient evidence that he was gravely disabled under either of the two alternative definitions of RCW 71.05.020(17).³ We hold that the

³ Initially, JRP argues that his appeal is not moot even though he now has been released because he will suffer collateral consequences as a result of the 180-day involuntary commitment order. The State does not address this argument. We have recognized that because an involuntary commitment order may have adverse consequences on future involuntary commitment determinations that an appeal of an involuntary commitment order is not moot. *See In re Det. of*

State presented sufficient evidence that a reasonable jury could find clear, cogent, and convincing under both subsections of RCW 71.05.020(17).

1. Legal Principles

The State sought JRP's involuntary commitment based on former RCW 71.05.320(4)(d) (2013). Under that statute, a person who currently is involuntarily committed for 90 days can be recommitted involuntarily at the end of the commitment period for up to 180 days if he or she continues to be "gravely disabled." Former RCW 71.05.320(4)(d), (6).

RCW 71.05.020(17) defines "gravely disabled" as a condition in which a person, because of a "mental disorder":

(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.

This statute provides two alternative definitions of "gravely disabled," and either provides a basis for involuntary commitment. *In re Det. of LaBelle*, 107 Wn.2d 196, 202, 728 P.2d 138 (1986).

In a voluntary commitment proceeding, the State has the burden of proving that a person is gravely disabled by clear, cogent, and convincing evidence. RCW 71.05.310; *Labelle*, 107 Wn.2d at 209. This standard means that the State must show that it is "highly probable" that the person is gravely disabled. *Labelle*, 107 Wn.2d at 209.

After a trial, our review is limited to determining whether the jury's verdict is supported by substantial evidence, considered in light of the highly probable test. *Id.* In other words, we

M.K., 168 Wn. App. 621, 625, 279 P.3d 897 (2012). Accordingly, we exercise our discretion and address the merits of JRP's appeal.

will not disturb a finding of grave disability if supported by substantial evidence that the jury could have reasonably found to be clear, cogent, and convincing.⁴ *Id.*

2. Subsection (a) – Failure to Provide for Essential Human Needs

JRP argues that the State failed to provide clear, cogent, and convincing evidence that as a result of his mental disorder he was gravely disabled under subsection (a) of RCW 71.05.020(17). We disagree.

a. Scope of Definition

RCW 71.05.020(17)(a) states that a person is gravely disabled if because of a mental disorder he or she “[i]s in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety.” The risk of danger of serious physical harm must be “substantial.” *LaBelle*, 107 Wn.2d at 204. But there is no requirement that the danger of harm be “imminent” because the effect of care and treatment received in a hospital usually will eliminate the imminence of the danger. *Id.* at 203.

Under subsection (a), danger of harm need not be evidenced by recent, overt acts. *Id.* at 204. Instead, the danger usually arises from passive behavior, such as when a person fails or is unable to provide for his or her essential needs. *Id.*

[T]he State must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded. Furthermore, the failure or inability to provide for these essential needs must be shown to arise as a result of mental disorder and not because of other factors.

Id. at 204-205.

⁴ *LaBelle* involved a trial court’s findings of fact and conclusions of law. But there is no reason that a different standard of review should apply to a jury verdict. *Labelle*, 107 Wn.2d at 209.

“[U]ncertainty of living arrangements or lack of financial resources will not alone justify continued confinement in a mental hospital.” *Id.* at 210. The State must show that the person’s mental condition “render[s] him unable *to make a rational choice* with respect to his ability to care for his essential needs.” *Id.* (emphasis added). A key question is whether the person is able to “form realistic plans for taking care of himself outside the hospital setting.” *Id.*

b. Analysis

The State presented evidence that if released, JRP would fail to provide for the essential human need of medical treatment.

Both Gutierrez and McBride testified that their professional opinion was that because of his mental disorder, JRP would discontinue taking his medication and receiving mental health treatment upon his release. These opinions are supported by evidence that (1) JRP did not necessarily believe that he has a mental disorder, that he needed medication, or that the medication helped manage his symptoms; (2) JRP had failed to engage in meaningful treatment while hospitalized; (3) JRP was suspicious of treatment providers and believes that they are trying to harm him; (4) JRP had refused to cooperate with attempts at psychological and medical care, including his hospitalization for the esophageal tear; and (5) JRP had developed no resources during his treatment to manage the symptoms of his mental disorder. Gutierrez and McBride also expressed their beliefs that it was highly likely that JRP would self-medicate through substance abuse upon his release from the hospital.

The State also was required to produce evidence that JRP’s failure to seek medical care caused a substantial risk of danger of serious physical harm. The State provided such evidence regarding JRP’s mental disorder. Both Gutierrez and McBride testified that JRP would be

unable to meet his basic health and safety needs if released. Further, Gutierrez expressed concern that, because of JRP's medical disorder, JRP would not seek medical care if JRP's substance abuse caused additional esophageal tears.

JRP argues that concerns regarding his potential failure to seek medical treatment were too speculative and insubstantial to support the jury's determination of grave disability. In support of this argument, JRP cites to the Richardson case in *LaBelle*. 107 Wn.2d at 213. The trial court held that appellant Richardson was at a substantial risk for serious physical harm based on three factors: (1) he initially presented with a case of impetigo that he refused to get treated, (2) he had tooth pain and had not seen a dentist in 12 years, and (3) he had not been eating well prior to hospitalization but was unwilling to seek medical help regarding the issue. *Id.* at 213-14. The Supreme Court held that this evidence was too speculative and insubstantial to support the trial court's finding of grave disability, reasoning that the impetigo no longer required medical attention, no evidence was presented that the dental problem involved any risk of harm to Richardson, and there was no evidence that Richard's poor eating habits caused him danger or resulted from his mental disorder. *Id.* at 214.

The facts here are different. While JRP's Mallory-Weiss Syndrome was being treated through medication, both of JRP's medical providers believed that he would discontinue taking all medication upon his release. Further, JRP would be at a substantial risk of harm upon his release because evidence was presented that JRP would use drugs or alcohol to cope with the symptoms of his mental disorder. Gutierrez testified that JRP's "Superman complex," and other symptoms of his mental disorder, would cause JRP to fail to seek medical care for any resulting esophageal tears caused by his substance abuse. RP at 88.

We hold that the State presented substantial evidence of grave disability under subsection (a) that a reasonable jury could find was clear, cogent, and convincing.

3. Subsection (b) – Failure to Receive Care Essential to Health or Safety

JRP argues that the State failed to provide clear, cogent, and convincing evidence that as a result of his mental disorder he was gravely disabled under subsection (b) of RCW 71.05.020(17). We disagree.

a. Scope of Definition

RCW 71.05.020(17)(b) states that a person is gravely disabled if, because of a mental disorder, he or she “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.” This definition has two separate requirements: (1) a severe deterioration in routine functioning and (2) failure to receive treatment that is essential for health or safety. *LaBelle*, 107 Wn.2d at 205. The legislature added this subsection in 1979 to broaden the scope of the involuntary commitment standards. *Id.* at 205-206.

Subsection (b) is designed permit the State to “treat involuntarily those discharged patients who, after a period of time in the community, drop out of therapy or stop taking their prescribed medication and exhibit ‘rapid deterioration in their ability to function independently.’ ” *Id.* at 206 (quoting Durham & LaFond, *The Empirical Consequences and Policy Implications of Broadening the Statutory Criteria for Civil Commitment*, 3 YALE L. & POL’Y REV. 395 (1985)). However, people cannot be involuntarily committed “solely because they are suffering from mental illness and may benefit from treatment.” *Id.* at 207.

Regarding the first requirement, the State must provide recent proof of “significant” loss of cognitive or volitional control. *Id.* at 208. Regarding the second requirement,

the evidence must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety. It is not enough to show that care and treatment of an individual’s mental illness would be preferred or beneficial or even in his best interests. To justify commitment, such care must be shown to be *essential* to an individual’s health or safety and the evidence should indicate the harmful consequences likely to follow if involuntary treatment is not ordered.

LaBelle, 107 Wn.2d at 208. The person must be “unable, because of severe deterioration of mental functioning, to make a rational decision with respect to his need for treatment.” *Id.*

b. Analysis

Here, the State presented evidence of JRP’s severe deterioration in routine functioning as demonstrated by repeated and escalating loss of volitional and cognitive control during his stay in the hospital.

Gutierrez testified that JRP’s mental disorder manifested such that he reacted to situations with hostility, a disproportionate emotional response, verbalized threats, and paranoia. Even in the hospital setting, there had been several instances of JRP losing cognitive and volitional control that required hospital staff to call for assistance to control JRP’s behavior. Gutierrez described how he twice had to run from JRP and hide behind a locked door because JRP could not control his actions, and that the most recent event had occurred approximately two weeks before the hearing.

McBride gave more specific examples of what she characterized as a loss of cognitive and volitional control, which involved JRP growing angry and yelling or swearing at his treatment group or the hospital staff. She further explained that JRP would grow physically

aggressive and take such actions as punching the window at the nurse station or throwing his medication or food at hospital staff.

In addition, the State presented evidence that JRP would not receive treatment that was essential for his health or safety if he was released. McBride testified that the highly structured environment the hospital provided, along with JRP's medications, permitted him to function "at a most basic level." RP at 135. As discussed above, both Gutierrez and McBride believed that because of his mental disorder, JRP would discontinue taking his medication and receiving mental health treatment upon his release. Without the hospital structure, and premised on the informed belief that JRP would discontinue taking his medications, McBride believed that JRP's functioning would severely deteriorate such that he would forget to eat, sleep, or engage in hygiene.

JRP emphasizes that he possessed an awareness of his medical issues, that he was taking medication and believed that it was helpful, and emphasizes that he planned to live with his mother. However, JRP's own testimony indicated that he did not believe that his medication was particularly helpful. And despite JRP's claims on appeal, the evidence discussed above indicates that upon his release, he would not be able to make a rational decision regarding his need for treatment.

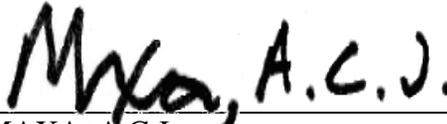
We hold that the State presented substantial evidence of grave disability under subsection (b) that a reasonable jury could find was clear, cogent, and convincing.

CONCLUSION

We affirm the trial court's 180-day involuntary civil commitment order.

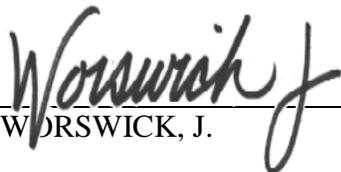
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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, A.C.J.

We concur:



WORSWICK, J.



SUTTON, J.