



01/05/94 MATTER PATRICK RYAN GRANDE.

1994 | Cited 0 times | Court of Appeals of Minnesota | January 5, 1994

AMUNDSON, Judge

Patrick Ryan Grande was committed to the Minnesota Security Hospital as mentally ill and dangerous. He appeals, and we affirm.

FACTS

On March 29, 1993, at approximately 2:00 a.m., appellant approached a man and asked him for bus fare. The man refused and turned away. Suddenly, appellant grabbed him around the chest and held a knife to his neck, threatening to cut him unless he gave appellant his jacket. Appellant was charged with aggravated robbery. The district court referred appellant to the mental health division for commitment proceedings pursuant to Minn. R. Crim. P. 20.01.

After a hearing, the court found that appellant had schizophrenia, disorganized type versus schizoaffective disorder, manic. It determined appellant engaged in an overt act causing or attempting to cause serious physical harm to another in the March 29 incident in which appellant held a knife against the man's neck. It found a substantial likelihood he would engage in acts capable of inflicting serious physical harm on another, as demonstrated by the March 29 incident, and appellant's continuing bizarre behavior, including physical and verbal aggressiveness. The court committed appellant to the Minnesota Security Hospital as a mentally ill and dangerous person.

Patrick Ryan Grande appeals.

DECISION

The state has the burden of proving by clear and convincing evidence that the proposed patient meets the standards for commitment as mentally ill and dangerous. Minn. Stat. § 253B.18, subd. 1 (1992). The findings of the trial court may not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01.

A person who is mentally ill and dangerous is:

person (a) who is mentally ill; and (b) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial



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likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Minn. Stat. § 253B.02, subd. 17 (1992) (emphasis added).

Appellant argues that the March 29 incident does not meet the statutory requirement of an overt act because his victim did not suffer physical harm. Further, appellant contends he did not cause or attempt to cause serious physical harm.

A person may engage in an action which meets the "overt act" requirement regardless of the person's intent or the outcome of the action. In *re Jasmer*, 447 N.W.2d 192, 195 (Minn. 1989). The term "serious" as used in the definition of mentally ill and dangerous is limited to the common understanding of the word. See *In re Lufsky*, 388 N.W.2d 763, 766 (Minn. App. 1986). This interpretation does not allow the physical consequences of any affront to be labeled as serious. In *re Kottke*, 433 N.W.2d 881, 884 (Minn. 1988).

Unlike the use of fists causing minor injuries in *Kottke*, 433 N.W.2d at 882, which the supreme court deemed insufficient to meet the requirement of serious physical harm, the use of a weapon such as a knife pressed against the victim's neck could have caused the victim serious physical harm. See *Jasmer*, 447 N.W.2d at 195. The district court had clear and convincing evidence to show that the overt act requirement of Minn. Stat. § 253B.02, subd. 17(b)(i) was met.

Affirmed.

Dated: January 5, 1994

Judge Roland C. Amundson

PARKER, Judge (dissenting)

I respectfully dissent and believe this to be a very close case which fails to meet the "clear and convincing evidence" test. The evidence for commitment of Grande as "mentally ill and dangerous" consists of a single act, described in the majority opinion.

A finding of dangerousness requires a showing that the person "has engaged in an overt act causing or attempting to cause serious physical harm to another." There is no evidence that he caused serious physical harm to the victim, and so the question is simply whether he attempted to cause physical harm to the victim.

In *In re Lufsky*, 388 N.W.2d 763 (Minn. App. 1986), cited in the majority opinion, this court rejected the asserted parallel between the criminal law term "great bodily harm" and the civil commitment term "serious bodily harm." The court recognized that when words within a statute are not explicitly



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defined, they must be construed "according to their common and approved usage." Id. at 766 (citing Minn. Stat. § 645.08 (1984)). The supreme court, in *In re Matter of Jasmer*, 447 N.W.2d 192 (Minn. 1989), held that commitment as mentally ill and dangerous does not require that an overt act attempting to cause serious physical harm to another constitute an "attempt" within the meaning of the criminal code. Id. at 195. The court held that the state need only prove that, as a result of mental illness, a person presents a clear danger to others as demonstrated by clear and convincing evidence that the person has engaged in "an overt dangerous act capable of causing serious physical harm to another." Id. at 195-96. The illustrations cited were those of one who fires a shotgun at another person and of one who drives an automobile at high speed into a crowd of people. Thus, regardless of intent or the outcome of the action, the actor may be determined dangerous.

The definition of "attempt" adopted by the supreme court in *Jasmer* does not, it seems to me, cover a threat, even where accompanied by the means to carry it out. There is no evidence that Grande lunged at the victim or performed any act capable of causing serious physical harm to him or to anyone else. Criminal law definitions of assaults or aggravated robberies are inapplicable and thus of no help. Grande did not perform an act imminently dangerous to others and heedless of the consequences, as in *Jasmer*.

The American Heritage Dictionary (3d ed. 1992) defines the verb "attempt" as "to make an effort; endeavor; (b) to try to perform, make, or achieve." Webster's New Universal Unabridged Dictionary (2d ed. 1983) defines "attempt" as

(1) to try to do; to try to get; to try; to endeavor; to undertake; as, to attempt to sing; to attempt a bold flight.

(2) to attack; to try to take by force; as, to attempt the enemy's camp.

(3) to make a trial or experiment of; to venture upon; as, to attempt the wilderness.

I would reverse the finding of dangerousness, because I do not believe it has been shown by clear and convincing evidence that Grande's act of holding a knife to the throat of the victim, accompanied by a threat to cut him, constitutes an attempt to cause serious physical harm to another. He should have been committed as mentally ill only.

Edward J. Parker

1-5-94

