

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-028

JULY TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 2, Addison Circuit
	}	
R.A.-S.	}	DOCKET NO. 378-8-09 Ancr

Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Defendant appeals from the district court’s order involuntarily hospitalizing him for ninety days after he was found incompetent to stand trial on a stalking charge. Defendant argues that the State failed to produce clear and convincing evidence that, because of his mental illness, he posed a danger of harm to others or himself. We affirm.

In August 2009, based upon the affidavit of probable cause of Vermont State Trooper Todd Conway, defendant was charged with misdemeanor stalking in violation of 13 V.S.A. § 1062. The charge was based on the allegations of defendant’s neighbors of four separate incidents for which the Trooper was called to their home, as referred to in his affidavit, occurring from March 31, 2009, to August 11, 2009, and that included threats to kill them. At his arraignment, a competency and sanity evaluation was ordered. Dr. Bolton performed an evaluation and submitted a report on October 22, 2009, determining that defendant was not competent to stand trial. At a competency hearing on October 26, 2009, defendant’s attorney stipulated to the report of Dr. Bolton and to a finding of incompetence. Following this hearing, defendant was sent to the Vermont State Hospital. In November 2009, the court appointed a Guardian Ad Litem (GAL) for defendant and ordered a second competency evaluation based on a letter written by Dr. Munson, defendant’s treating physician at the Vermont State Hospital, expressing his opinion that defendant might be competent. Dr. Linder performed the second evaluation and filed his report with the Court on November 30, 2009. In his report Dr. Linder concluded that defendant was not competent to stand trial.

On December 15, 2009, the court held a hearing on defendant’s competence and whether defendant should be involuntarily committed to the state hospital. Dr. Bolton and Dr. Munson testified at the hearing. Dr. Bolton testified that she diagnosed defendant with paranoid schizophrenia, based upon a “growing body of information about . . . symptoms of [defendant] talking to himself, having ideas that something had been implanted in his head, that he was being followed, . . . that his birth heritage was of a much higher status.” She also noted that defendant denies that he has a mental illness. On examination by the court, Dr. Bolton further expressed doubt as to whether defendant has the capability of meeting his material needs if he remains

untreated. She described that defendant's home lacks running water and electricity and he has no income to obtain food. In response to the question of whether defendant has exhibited any violent behavior, Dr. Bolton described how while defendant was housed in a state correctional facility defendant had entered another inmate's cell and began hitting the inmate. As a result, defendant had to be placed alone in a cell. Dr. Munson also testified at the hearing and concurred in the diagnosis of defendant. He testified that defendant is in denial of his illness and refuses to take medication. Dr. Munson testified that defendant had a violent altercation with another male while incarcerated and again while at the Vermont State Hospital.

The State then proffered additional testimony from defendant's neighbors as to the multiple incidents of yelling obscenities at them, peering through the windows of their house, and other forms of threatening and obsessive behavior towards them that occurred over a period of months. The proffer included testimony of defendant's threats to kill the neighbors, husband and wife, all of which was consistent with the probable-cause affidavit of Trooper Conway. The state also offered to introduce evidence from defendant's step-mother, who the State explained would offer testimony regarding the history of defendant's illness and its effects on defendant. The court stated that the State had presented a prima facie case. The State rested, reserving the right to call rebuttal evidence as necessary. The defense offered no witnesses, except defendant, who made a long rambling statement to the court, explaining his opinion that the stalking charge lacked probable cause. In his statement, defendant offered no specific fact or facts to dispute those facts alleged in the Trooper's affidavit of probable cause.

Following a recess, the court issued its findings and conclusions on the record. Based upon the filings in the case, the evidence presented at the hearing, the arguments of the attorneys, and the statement from defendant, the court found defendant incompetent to stand trial. The court also concluded that defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17) and that defendant suffers from paranoid schizophrenia and poses a danger to himself and others. Therefore, the court issued a ninety-day involuntary-commitment order and dismissed the underlying criminal charge.

Defendant appeals. On appeal, defendant argues that the State failed to demonstrate that he posed a danger of harm to himself or others.

When an individual charged with a crime is found incompetent to stand trial pursuant to 13 V.S.A. § 4817, the district court is directed to determine "whether such person should be committed to the custody of the commissioner of mental health." *Id.* § 4820(4). The standard for determining whether defendant is a person in need of treatment is incorporated from Title 18. 13 V.S.A. § 4822. This requires that the State demonstrate the individual is suffering from a mental illness and that as a result of that mental illness the individual presents a risk of harm to himself or others. 18 V.S.A. § 7101(17).

The trial court found that defendant was both a danger to himself and others, and on appeal defendant challenges both of these findings. "We view the evidence in the light most favorable to the State and will affirm the commitment order if the trial court could have reasonably concluded that the required factual predicate was highly probable." *State v. J.S.*, 174 Vt. 619, 619-20 (2002) (mem.)

We first examine the court's finding that defendant posed a danger to others. Pursuant to the statute, this requires the State to demonstrate that defendant made threats or attempted to

inflict bodily harm or placed others in reasonable fear of physical harm. See 18 V.S.A. § 7101(17)(A). The district court relied on the report from Dr. Bolton that defendant had hit another inmate while at the state correctional facility and as a result had to be housed separately from the other inmates, and from Dr. Munson that defendant was in a violent altercation with another man at the Vermont State Hospital. We conclude that the evidence of defendant's violent conflicts with individuals at both the state hospital and the correctional facility was sufficient to demonstrate that defendant presents a danger of harm to others.* Defendant contends that this was not enough because the State failed to demonstrate that these altercations were a direct result of defendant's mental illness. We conclude, however, that given the context of these altercations the record adequately supports the court's finding on this issue. Dr. Bolton testified that individuals, like defendant, with paranoid schizophrenia can be violent, and then in answer to the State's question of whether defendant in particular had exhibited violent behavior, she described how defendant had entered another inmate's cell and hit the inmate. The context of her testimony indicates that she was describing violence related to defendant's diagnosis.

We also conclude that there was sufficient evidence to support the court's finding that defendant presents a risk of harm to himself. A person is a danger to himself if he is unable, without assistance, to obtain necessary nourishment, personal or medical care, shelter, and safety such that it is probable that serious physical injury or disease will ensue. 18 V.S.A. § 7101(17)(B)(ii). The court found that without medication defendant is unable to meet his needs for "nourishment, personal or medical care, shelter, self-protection and safety." The court based its finding on Dr. Bolton's testimony that defendant continues to deny he has a mental illness and refuses treatment for such. Further, defendant has no income and has only very basic living conditions without running water or electricity. Thus, there was sufficient evidence to show that defendant's unwillingness to receive treatment puts him in danger of physical harm from lack of proper nourishment and continued medical care.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice

* The State also argues that the court's finding that defendant presents a risk of harm to others is supported by the State's proffer that defendant's neighbors could testify concerning defendant's obsessive behavior and threats to kill. Because this information was merely proffered by the State, and not entered as evidence, we do not consider it in our decision.