COURT OF APPEALS
DECISION
DATED AND FILED

June 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0953-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE MATTER OF THE MENTAL COMMITMENT OF JOYCE A.R.:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JOYCE A.R.,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Manitowoc County: EUGENE F. MC ESSEY, Judge. *Affirmed.*

BROWN, J. Joyce A.R. appeals a jury verdict that she is dangerous to herself or others. She argues that the evidence adduced at trial was insufficient for the jury to find that she engaged in "recent homicidal or other violent behavior, or … placed [others] in reasonable fear of violent behavior and

serious physical harm to them" pursuant to § 51.20(1)(a)2.b, STATS. We disagree and affirm.

We will recite only those facts favorable to the verdict. A police officer responded to a call that Joyce, a tenant of the residence in question, had damaged a pay phone at a Sentry store two blocks from the residence, had returned to the residence carrying a claw hammer around the outside of the building and was threatening to do harm to the downstairs neighbor. When the officer confronted Joyce, she complained that the downstairs neighbor had been "zapping her through the floor, sending [an] electric shock of some kind through the floor and walls by using some sort of laser device." She said that she was "going to take matters into her own hands and take care of the problem." When asked what she meant by that, Joyce responded that "when the downstairs neighbor walked outside of her apartment she would be history." When the officer asked her if she planned on doing bodily harm to the downstairs neighbor, Joyce replied that "the second the downstairs neighbor would leave the apartment she would take her out, she would be history."

Joseph H., Joyce's son, testified that he came home from work and found his mother in an agitated state, screaming and pounding on the doors. Joyce stated to him that "the downstairs neighbors were zapping her and if they don't knock it off she [was] going to go downstairs and take care of it." She made threats about the neighbors, though Joseph did not know if the neighbors were actually home when the threats were made. Joyce said, "If you don't knock it off I'll kill you. You can't stay in your house all the time. I'll get you sooner or later." He further testified that he observed his mother banging on the neighbors' door with a claw hammer.

In addition to Joseph's testimony, the State read into evidence a written statement made by Joseph to the police about what Joyce said on the date in question. The statement read as follows:

> If those bitches downstairs won't knock it off I'll kill them. I've been thinking about doing it, killing them, all day. She, the downstairs lady, has been out all day but I don't worry, I'll get them.

As this was going on, Joyce was using a hammer to slam on the floor and slammed a broom stick against the walls.

A psychiatrist testified that Joyce was mentally ill, had chronic schizophrenia with fixed delusions of persecution and presented a "relative danger" to others because "people who believe they are being persecuted often times can do things against the alleged perpetrators of the persecution." The psychiatrist identified the police report of the threat to the neighbors as "one of the things" that eventually led him to the conclusion that she was dangerous to other people as a result of her delusions.

The issue is whether the above facts show dangerousness for purposes of civil commitment. "Dangerous" is defined in § 51.20(1)(a)2, STATS. Under § 51.20(1)(a)2.b, an individual is dangerous to others if she or he:

> [e]vidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.

Thus, we see that dangerousness is defined in the disjunctive. It can be proved by showing either a recent violent act or, alternatively, by showing that others are placed in reasonable fear of a violent act due to, inter alia, a threat to do serious physical harm.

Joyce attacks the evidence as lacking sufficiency as to both parts of the disjunctive statute. First, she argues that there is absolutely no evidence showing how she acted out on her perceived threats or even attempted to act out. Joyce contends that there is no inference of homicidal behavior, i.e., that she ever wielded her hammer, her broom or anything else in a manner that could have caused the death of any person, whether intentionally, recklessly or negligently. Second, she claims that since there is no evidence that the perceived targets of her threats were even home, it is difficult if not impossible to show how the perceived targets were placed in reasonable fear that she would do them physical harm by violent behavior.

The State responds that there is evidence of both parts of the disjunctive statute. The evidence that Joyce's son observed her pounding with a claw hammer on the neighbors' door, coupled with threats to kill the neighbor, allowed the jury to arrive at the conclusion that Joyce's conduct constituted "violent behavior." The State further contends that the evidence of threats was substantial.

We agree with the State. Addressing the second part of the disjunctive statute first, our decision in ***R.J. v. Winnebago County***, 146 Wis.2d 516, 431 N.W.2d 708 (Ct. App. 1988), squarely governs. In that case, R.J. was alleged to be dangerous because she made a threat to stab and kill an emergency room nurse. *See* ***id.*** at 518, 431 N.W.2d at 709. There, R.J. asserted, as Joyce does here, that a finding of dangerousness requires that a threat to do serious harm must be made in the presence of the person threatened. *See* ***id.*** at 521, 431 N.W.2d at 710. Because the threat was not made to the nurse, but to other hospital personnel, R.J. contended that the evidence was insufficient to find dangerousness. After conducting a statutory interpretation analysis, we concluded that it is

sufficient to show that others are placed in a fearsome position by a disturbed person's actions even if the person targeted by the threats has no subjective awareness of the threats or actions. *See* ***id.*** at 523, 431 N.W.2d at 711. The analysis in that case dooms Joyce's argument here that because there was no evidence that the downstairs neighbors were aware of her threats, the second part of the disjunctive statute has not been satisfied. In this case, whether the neighbors knew of the threats or not, Joyce's unabashed threat to kill would create reasonable fear on the part of her son and on the part of the police officer of eventual harm to the neighbors. So, just as we rejected R.J.'s contentions, we reject Joyce's.

We address now the first part of the disjunctive statute. The fact that Joyce had a claw hammer in her hands and was using it to pound on the door of her targets was violent behavior. She was acting out her stated desire to kill. A jury could well infer from her actions a substantial probability of physical harm.

For the above reasons, we are satisfied that there is clear and convincing evidence of dangerousness in the record and affirm the judgment and order based on the jury verdict.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.