

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JEROME KRASKEY,

Petitioner,

v.

N. GROSCHE, ON BEHALF OF MERCY HOSPITAL,

Respondent.

On Petition For Writ of Certiorari
To The Minnesota Court of Appeals

APPENDIX

TO PETITION FOR WRIT OF CERTIORARI

KURT M. ANDERSON

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[All documents reformatted for U.S. Supreme Court Appendix on Petition for Certiorari]

27-MH-PR-17-237

Filed in Fourth Judicial District Court

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Hennepin County, MN

STATE OF MINNESOTA FOURTH JUDICIAL DISTRICT
DISTRICT COURT COUNTY OF HENNEPIN
PROBATE/MENTAL HEALTH DIVISION

In the Matter of the Civil Commitment of File No. 27-MH-PR-17-237
Jerome M. Kraskey,
DOB: 9/6/61
Respondent.

ORDER FOR COMMITMENT AS A PERSON WHO IS MENTALLY ILL

The above-entitled matter came duly on for hearing on March 17, 2017,
before the undersigned Referee of District Court.

Petitioner was represented by Jennifer Inz, Assistant Hennepin County
Attorney. Respondent was present and was represented by Kurt Anderson,
Attorney-at-Law, P.O. Box 15667, Minneapolis MN 55415-0667, 612-333-
3185. Krista Peterson, Psy.D., the Court-appointed Examiner, was also
present.

Upon the evidence received, the Court makes the following:

FINDINGS OF FACT

1. Respondent is ill with a traumatic brain injury with cognitive impairment, which is a substantial psychiatric disorder of his thought, mood, perception, and memory, which grossly impairs his judgment, behavior, capacity to recognize reality and ability to reason or understand.
2. As a consequence of his mental illness, Respondent engages in grossly disturbed behavior or experiences faulty perceptions, and he poses a substantial likelihood of causing physical harm. In July last year, Respondent was struck in the head with a tire iron and suffered severe brain damage. He was comatose for a few weeks. He needed extended therapy.

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However, he cut that short by refusing to cooperate and became homeless. He ended up living in his car at a truck stop and surviving the winter on a few hundred dollars a month in income. There were, however, problems at the truck stop related to Respondent's impaired cognition. They ultimately resulted in his current hospitalization and the Petition for commitment.

3. Since his injury, Respondent has been uncooperative with most of the professional and familial recommendations made to him. He has very poor insight into the nature of his mental deficits. He escalates into angry confrontations with others, some made worse by his overuse of alcohol. In late February this year, Respondent called 911 to complain that people at the truck stop were giving him the finger. The police investigated and found that Respondent seemed not quite normal and was verbally combative. They ended up calling for an ambulance and having him brought to the hospital, where he was noted to be angry, verbally aggressive, and demanding to leave. His BAC registered at .11. He stated he had had one beer that day (he is not a reliable historian). He told staff that he wanted every one of their names because he was going to sue the hospital. He was perceived as having an impaired memory and a reduced ability to control his angry verbal outbursts, both symptoms of his TBI. He did eventually calm down and was discharged with a recommendation that he follow up with his regular doctor. There is no evidence in the record that he ever did that.

4. A few days later, on the evening of March 6th, the police were again called to the truck stop to deal with Respondent's disruptive behavior. He was again brought to the hospital. There, he was yelling, very uncooperative, agitated, and belligerent, calling staff members vulgar names and stating that he was going to kill everyone. He was drunk. He was quickly given an injection of sedatives. He appears to have subsequently slept until early the next morning, at which time he was felt to be sober. He was disorganized and told a doctor that he felt that multiple cars had been driving by him every day at the truck stop and giving him the finger. He said he carried a knife for protection from other persons. He was described as paranoid, impulsive, and very disorganized. He wanted to be discharged immediately. His discharge plan was to return to living in his car at the truck stop.

5. Earlier that morning, a licensed professional clinical counselor at the hospital named Karjalahti had called the law enforcement department involved in the incident and spoke to the officer who a few hours earlier had been called to the truck stop. He indicated that they have had ongoing contact with Respondent and that Respondent had recently been brought to the emergency room for a similar presentation (in late February). At that

time, Respondent had had a knife and was making threatening comments at the truck stop. At the time of the current incident, Respondent again had a knife (as he had acknowledged to hospital staff). The officer also indicated that at the time of the February or March incident, Respondent had threatened to kill everyone if the police were called. Respondent was also reported to have been delusional and exhibiting erratic behavior. The Court considers this hearsay reliable. The Court finds that having a brain-damaged individual who is paranoid, delusional, disorganized, and seeing threats where none exist, whose judgment is significantly impaired, who is isolated and living a marginal existence, and who is carrying a knife and threatening to kill people creates a substantial likelihood that he will provoke violence or engage in it himself with the result that someone will suffer physical harm.

6. Respondent's illness cannot be adequately treated by dismissal of the Petition, voluntary inpatient or outpatient care, the appointment of a guardian or conservator, or a conditional release.

7. The least restrictive, appropriate, available placement is a commitment to permit forced treatment compliance. The Court considered nursing homes/care facilities, but there is no evidence that an appropriate facility (probably locked) is available and that it can cope with Respondent's refusals to cooperate.

8. There was no evidence in the record of the nature and extent of the property of the patient or of the persons who are liable for the patient's care.

9. Respondent is currently under guardianship issued by this Court on November 18, 2016. The co-guardians are his mother and his brother. The guardians have attempted to find a suitable placement for Respondent, but have been thwarted in their efforts by Respondent, who refuses to cooperate with arranging funding for any placement. Respondent is not under a conservatorship. As a result, his guardians have no control over his finances, and therefore cannot place him in an appropriate placement. He had been placed in a care center, but he refused to cooperate with their policies and behavior restrictions, so he was asked to leave. He knows that he currently can sabotage any placement he does not approve of.

CONCLUSIONS OF LAW

1. The record before the Court establishes by clear and convincing evidence that Respondent is a person who is mentally ill as defined in Minn. Stat. §253B.02, Subd. 13, and is in need of commitment.

2. At the hearing in this matter, Respondent argued that there was no need for a commitment because Respondent was already under a guardianship. However, the record establishes that that authority has been insufficient to provide the treatment Respondent needs. It is therefore not a suitable alternative to commitment.

ORDER

1. Respondent is committed as a person who is mentally ill to the head of the Unity Hospital and to the Commissioner of Human Services. This commitment will terminate without further Order of the Court on September 27, 2017, unless prior thereto it has been terminated or continued.

2. Respondent may be responsible for all or a portion of the cost of treatment and/or board and lodging based on a sliding fee scale and the eligibility requirements set forth in Minn. Stat. 246.50-.55. Transportation will be provided by the Sheriff of Hennepin County.

3. The Rights of Patients provided at Minn. Stat. §253B.03 are incorporated herein by reference.

4. The treatment facility shall file with this Court timely reports as required by Minn. Stat. §253B.12.

Order Recommended By:
/s/ Anthony A. Schumacher
Referee of District Court
Dated: March 27, 2017

BY THE COURT:
/s/ Elizabeth V. Cutter
Judge of District Court
Mental Health Division

27-MH-PR-17-237

Filed in Fourth Judicial District Court

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Hennepin County, MN

STATE OF MINNESOTA COUNTY OF HENNEPIN DISTRICT COURT

Probate / Mental Health Division

FOURTH JUDICIAL DISTRICT Case type: Civil Commitment

In the matter of the Civil Commitment of Jerome Kraskey, Respondent. Ct.
File No. 27-MH-PR-17-237

(1) REQUEST FOR DISTRICT COURT REVIEW OF REFEREE
DECISION;

(2) MOTION OF RESPONDENT FOR AMENDED FINDINGS AND
DISMISSAL OF CASE, OR ALTERNATIVELY FOR NEW TRIAL, ON
COMMITMENT ISSUES; and

(3) NOTICE TO ATTORNEY GENERAL OF CONSTITUTIONAL
CHALLENGE TO STATUTE

To Petitioner N. Groschen (Mercy Hospital) by and through her/his attorneys,
Office of the Hennepin County Attorney, Adult Services – Mental Health
Section:

THE RESPONDENT HEREBY:

1. Under Minn. Stat. § 484.70 subd. 7(d), requests District Court review of
the referee's recommended "Order for Commitment as a Person Who Is
Mentally Ill," signed by the referee and filed in this case on March 27, 2017.

2. Under Minn.R.Civ.P. 52.02, moves for amended findings of fact and
conclusions of law regarding the Court's March 27, 2017, Order For
Commitment as a Person who is Mentally Ill (the "Commitment Order"),
thereby dismissing this case; or alternatively,

3. Under Minn.R.Civ.P 59.01(f) and (g), moves for a new trial regarding his
civil commitment; and

4. Gives notice to Lori Swanson, Minnesota Attorney General, that he may
challenge the constitutionality of Minn. Stat. § 253B.08 subd. 7.

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The time and date for the hearing of this motion shall be fixed by order of the Court.

Dated: April 6, 2017.

/s/ Kurt M. Anderson

Kurt M. Anderson # 2148 Attorney for Respondent

P.O. Box 15667

Minneapolis, Minnesota 55415

(612) 333-3185

ACKNOWLEDGMENT

The party making the foregoing pleading or other paper, by its undersigned counsel, hereby acknowledges that sanctions may be awarded against it under Minn. Stat. Section 549.211.

Dated: April 6, 2017

/s/ Kurt M. Anderson_____

27-MH-PR-17-237

Filed in Fourth Judicial District Court

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Hennepin County, MN

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT
DISTRICT COURT COUNTY OF HENNEPIN
PROBATE/MENTAL HEALTH DIVISION

In the Matter of the Civil Commitment of File No. 27-MH-PR-17-237
Jerome M. Kraskey,
DOB: 09/06/1961
Respondent.

ORDER DENYING MOTION FOR AMENDED FINDINGS OR NEW TRIAL

The above-entitled matter came before the Honorable Elizabeth V. Cutter, Judge of District Court on June 5, 2017. Jennifer Inz, Assistant Hennepin County Attorney, appeared on behalf of Unity Hospital and the Commissioner of Human Services. Respondent was not present and was represented by Kurt Anderson, Esq.

Based on all the files, records, and proceedings, together with the argument of counsel, the Court makes the following:

FINDINGS OF FACT

1. Referee Anthony Schumacher heard testimony and considered the March 9, 2017, Petition for Judicial Commitment on March 17, 2017. Referee Schumacher recommended a commitment of Respondent as a person who is mentally ill and this Court adopted that recommended on March 27, 2017.
2. On April 6, 2017, Respondent filed a Motion for Judicial Review, Amended Findings, Dismissal of the Case, or Alternatively for a New Trial pursuant to Minn. R. Civ. P. 52.02 and Minn. Stat. § 484.70, subd. 7 (d). Before a hearing could be scheduled, the parties agreed that a transcript should be ordered for this Court to review the matter. The April 6, 2017, motion was stayed pending receipt of the March 9, 2017, transcript and an amended motion for judicial review.
3. On May 17, 2017, Respondent filed an amended Motion for Judicial Review, Amended Findings, Dismissal of the Case, or Alternatively for a New Trial pursuant to Minn. R. Civ. P. 52.02 and Minn. Stat. § 484.70, subd.

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7 (d). Respondent's motion does not specify grounds for review pursuant to Minn. Stat. § 484.70, subd. 7 (d), but Respondent supplemented his motion on the record on June 5, 2017. Respondent's primary argument is that the evidence presented is insufficient to support the commitment findings.

4. A review hearing was conducted on June 2, 2016, pursuant to Minn. Stat. § 484.70, subd. 7(d), and Minn. R. Civ. P. 59.03 and 52.02.

5. A review of a referee Order is based on a clear-error standard. In other words, in order to amend the findings or to order a new trial, this Court must find that Referee Schumacher was clearly erroneous in finding that Respondent met the commitment criteria. In this case, Respondent argues both that the records and other evidence presented at trial contained impermissible hearsay and that the allegations of dangerous behavior relied upon by the Referee do not create a risk of harm to self or others as required by the statute.

6. The Referee's Order finds that Respondent suffers a traumatic brain injury, a substantial psychiatric disorder of his thought, mood, perception, and memory. The Referee also found that the disorder impairs Respondent's judgment, behavior, capacity to recognize reality, and his ability to reason or to understand. Respondent does not object to those findings. Respondent argues that the record does not contain sufficient evidence that Respondent presents a danger to himself or to others. He argues that the threats of harm to hospital staff, relied upon by the Referee, are merely "transitory anger" and insufficient to support a finding of dangerousness.

7. The Referee's Order contains sufficient reliable evidence supporting a finding of dangerousness. First, although the officer's report to the hospital staff, taken in isolation, would be unreliable hearsay, that statement is corroborated by other, reliable evidence including admissions by Respondent and behavior observed in the hospital. Respondent admitted that he carries a knife for protection which corroborates the report to hospital staff that Respondent was using a knife to ward off perceived threats from strangers. The officer's report that Respondent was threatening to kill people is corroborated by his threats to kill hospital staff. Based upon the repetition of threatening behavior, and even though the record is thin with regard to harm to others, this Court cannot find that the threats are merely transitory. As such, the statutory criteria for dangerousness ("a recent attempt or threat to physically harm self or others") is satisfied by the record in this case and supported by the Findings of Facts issued by the Referee.

8. Respondent also argues that guardianship is sufficient. Respondent has been under guardianship since September 27, 2016, before the incident giving rise to the commitment occurred. It is clear that guardianship is not sufficient because, despite that level of supervision, Respondent required emergency hospitalization and sedation.

9. The Referee's Findings of Fact, Conclusions of Law, and Order are not clearly erroneous.

CONCLUSIONS OF LAW

1. Referee Schumacher's March 27, 2017, Order Committing Respondent as Mentally Ill is not clearly erroneous.

2. The record contains sufficient reliable, corroborated evidence to support the Findings of Fact *In referee Schumacher's March 27, 2017, Order.*

ORDER

3. Respondent's Motion for a new trial and amended findings is DENIED. The attached memorandum is incorporated by reference.

BY THE COURT:

/s/ Cutter, Elizabeth

2017.06.15

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Elizabeth V. Cutter

Judge of District Court

Mental Health Division

EVC/ANS/See

MEMORANDUM

Under Minn. Stat. § 484.70, this Court has authority to review "any recommended order or finding of a referee . . . filed within ten days of effective notice of the recommended order or finding." "Review of decisions of district court referees is controlled by applicable statutes and order of the supreme court." Minn. R. of Gen. Prac. 312. However, there are no Minnesota cases specific to civil mental health commitment proceedings that establish the standard of review of a referee's order by a district court.

Barring guidance from statutes and appellate courts, this Court reviewed Referee Schumacher's Order under a clear-error standard. Under Minn. R. Civ. P. 52.01, "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *See In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (holding an appellate court will not reverse findings of fact unless clearly erroneous). While this is not an appellate court, the same reasoning applies because this Court did not hear the testimony. It did reviewed the exhibits and relied on the findings of fact by the Referee. This Court will not disturb the Referee's judgment in the absence of a clear error.

Whether the facts found are sufficient to support commitment is a legal question subject to *de novo* review. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

A mentally-ill person is defined "as a person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand ... and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided." Minn. Stat. § 253B.02, subd. 13. The statute "clearly requires that the substantial likelihood of physical harm must be demonstrated by . . . a recent attempt or threat to harm self or others." *Matter of McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (emphasis added). Mere speculation or allegations are insufficient to justify civil commitment. *Id.* The commitment must be supported by clear and convincing evidence, and the Court shall find specific facts supporting the commitment. *Id.* "Where commitment is ordered, the findings of fact and conclusions of law shall specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met." *Id.*

In his March 27, 2017, Commitment Order, Referee Schumacher found that Respondent is a mentally ill person, as defined by section 253B.02, subdivision 13. Referee Schumacher found that Respondent has a traumatic brain injury with cognitive impairment which is a substantial psychiatric disorder. Minn. Stat. Ann. § 245.462, subd. 20 (3). Respondent does not contest this finding.

Respondent argues that the police statements in the hospital reports are unreliable because they are hearsay within hearsay. The Minnesota Court of

Appeals determined that a medical record is relevant and reliable evidence for a civil commitment matter. *In Re Civil Commitment of Williams*, 735 N.W.2d 727, 730 (Minn. Ct. App. 2007); Minn. Stat. § 253B.08, subd. 7. Evidence is relevant if it tends to render any material fact more or less probable. Minn. R. Evid. 401; *Williams*, 735 N.W.2d at 731. Rule 15 of the Special Rules of the Procedure Governing Proceedings under the Minnesota Commitment Act provides that the district court “may admit all relevant, *reliable* evidence, including but not limited to the respondent’s medical records, without requiring foundation witnesses.” (Emphasis added.)

The medical records state that Ramsey police brought Respondent to Unity Hospital from the truck stop where he lived in his car after they witnessed Respondent “stating that he was going to ‘kill everyone’ while showing a knife,” that Ramsey police knew Respondent from an earlier incident in which he threatened people at the same truck stop with a knife; that Respondent exhibited other, paranoid behavior including reporting that people looked in his windows, shined lights on him, and “flicked him off.” While the statements are possible exceptions to the hearsay rule as statement for the purpose of medical diagnosis or treatment under Minnesota Rule of Evidence 803(4), they are reliable hearsay under Rule 15 because hospital staff observed and reported similar behavior while Respondent was in the hospital pending this commitment. While the officer’s statements by themselves may not have been reliable hearsay because the statements contain information from unknown sources whose ability to relate the information is unknown to the Court, when the observed behaviors are corroborated by hospital behavior, the Court is justified in attributing greater reliability to the officer’s statements. Referee Schumacher’s finding that the reports from police about Respondent’s behavioral in the community was not unreasonable. The statements are not unreliable hearsay and were properly considered by Referee Schumacher.

Respondent relies on *In re Blaylock*, No. A09-0153, 2009 WL 2151301 (Minn. App. July 21, 2009), for the proposition that there is reason to suspect the reliability of the officer’s statements to hospital staff about Respondent’s behavior in the community. However, *Blaylock*, held that when the record “reflects a strong, facially apparent reason to doubt the reliability of hearsay evidence, the district court should express its bases for deeming the apparently unreliable evidence reliable.” *Id.* at 3. In this case, taken in isolation, the statements of the officer lack independent reliability. However, those statements cannot be considered in isolation. When read in the context of the entire medical record, any facial unreliability disappears. Therefore,

Referee Schumacher did not abuse his discretion in determining that the statements.

Respondent next argues that danger of provoking retaliation, by itself, does not satisfy behavioral criteria for commitment. In *Engberg v. Bonde*, 331 N.W.2d 731, 736-38 (Minn. 1983), the Minnesota Supreme Court recognized that civil commitment of mentally ill persons requires a recent act, attempt, or threat of harm to self or others. Minnesota Statutes section 253B.02, subdivisions 13 (a)(i) & (ii), requires that the substantial likelihood of physical harm must be demonstrated by an overt failure to obtain necessary food, clothing, shelter, or medical care or by a recent attempt or threat to harm self or others.

In this case, Referee Schumacher found that Respondent posed a substantial likelihood of causing physical harm based upon Respondent's threats to persons at a truck stop with a utility knife and his threats to kill hospital staff. The seriousness of the threats is underscored by Respondent's admission to hospital staff that he owned and carried knife for his self-protection. Respondent's volatile behavior in the hospital (yelling, agitation, name-calling, and threats of harm to staff) support the Referee's finding that Respondent posed a danger to himself and others.

Respondent relied on *In re Grabowska*, No. A04-1944, 2005 WL 758018 (Minn. App. Apr. 5, 2005). *Grabowska* states in part: "[t]his court has recognized that an individual may meet the substantial-likelihood-of-harm standard in part by behaving in a way that is likely to outrage others and provoke an attack on himself... We agree that Grabowska's verbal confrontations with others, without more, are insufficient to show there is a substantial likelihood of physical harm to himself or others, as required by the statute" *Grabowska* at *4, quoting *In re Gonzalez*, 456, N.W.2d 724, 729 (Minn. Ct. App. 1990). In *Grabowska*, the respondent admitted that he had loud confrontations with others, quoted Bible scriptures, and believed that his employer denied him just compensation. *Id.* However, the respondent deescalated and mitigated his interactions with others by walking away. The record here is factually distinguishable from *Grabowska*. Respondent was disorganized and felt that multiple cars drove by him every day at the truck stop and gave him the finger. In addition, he carried a utility knife for protection. The police encountered Respondent at least once before the current hospital commitment. The February 2017 encounter also led to hospital admission. Moreover, Respondent was sometimes confrontational with his mother. His family has had to call the police at least three times. Referee Schumacher found that Respondent was delusional, paranoid,

disorganized, and exhibiting erratic behaviors and concluded that Respondent's behavior created a substantial likelihood that he would provoke violence or engaged in violence and as result he or others could suffer physical harm. Referee Schumacher's finding that Respondent's threats qualify under the statute and case law is not clearly erroneous and that conclusion will not be disturbed by this Court.

Respondent argues that his current guardianship is a less restrictive alternative to civil commitment. However, Referee Schumacher found that the guardianship is insufficient to address Respondent's current needs. His guardians have been unable to arrange for a suitable housing. Instead, Respondent was found living in his car at a truck stop. Referee Schumacher's finding that the guardianship is inappropriate to address Respondent's present needs is not clearly erroneous and that conclusion will not be disturbed by this Court.

This Court finds that the factual determinations made by Referee Schumacher are not clearly erroneous. Referee Schumacher correctly applied the law to those facts and found that Respondent meets the statutory definition of mentally ill person in need of commitment. Referee Schumacher's findings and application of the law are not clearly erroneous and will not be disturbed.

EVC

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1243

In the Matter of the Civil Commitment of:
Jerome M. Kraskey

Filed January 16, 2018
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-MH-PR-17-237

Kurt M. Anderson, Minneapolis, Minnesota (for appellant)
Michael O. Freeman, Hennepin County Attorney, John L. Kirwin, Assistant
County Attorney, Minneapolis, Minnesota (for respondent Hennepin County)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and
Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment
pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant Jerome Kraskey appeals from the Hennepin County District Court's order civilly committing him as a "person who is mentally ill" and from its denial of his motion for amended findings or a new trial. He argues that we should overrule our previous decision in *In re Civil Commitment of Williams*, 735 N.W2d 727, 731-33 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007), or, in the alternative, that we should find Minn. Stat. § 253B.08, subd. 7 (2016), to be unconstitutional. Appellant also argues that, should we not overrule *Williams* or find Minn. Stat. § 253B.08, subd. 7, to be unconstitutional, we should reverse the referee and the district court for having considered unreliable hearsay and because the record does not contain clear and convincing evidence that appellant satisfied the behavioral criteria

Jerome M. Kraskey, Petitioner for Certiorari
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for commitment. Further, appellant argues that the district court improperly reviewed the referee's findings contained in the civil-commitment order. Finally, appellant argues that a preexisting guardianship rendered his civil commitment unnecessary. We affirm.

FACTS

In July 2016, appellant suffered a traumatic brain injury with cognitive impairment, resulting in a "substantial psychiatric disorder of his thought, mood, perception, and memory, which grossly impairs his judgment, behavior, capacity to recognize reality and ability to reason or understand." The diagnosis is not in dispute.

Following the initial hospitalization for his injury, appellant received treatment in three facilities. He was discharged from the third facility, apparently for refusing to remain there. After his discharge, appellant struggled to find a stable living situation and eventually ended up homeless and living in his car at a truck stop. Appellant's mother and brother were named his guardians shortly after his brain injury. The guardians do not have a conservatorship and, despite attempts, have not been able to arrange funding for a placement for appellant because appellant will not cooperate with them regarding financial arrangements.

While living at the truck stop, appellant had two encounters with law enforcement that led to his hospitalization. On February 24, 2017, appellant called law enforcement from the truck stop, complaining that people were making a hostile gesture at him. When law enforcement investigated, they found appellant to be verbally combative. Officers arranged for an ambulance to drive appellant to Mercy Hospital for an evaluation. When appellant arrived at the hospital, medical staff found him to be argumentative and agitated, but he eventually calmed down. He also had an alcohol concentration of 0.115. The hospital staff thought that appellant's traumatic brain injury led to his inability to control his verbal outbursts and impaired his memory. The hospital discharged him, finding outpatient care to be appropriate. On March 6, 2017, appellant was again brought to Mercy Hospital. Law enforcement stated to medical staff that appellant had been threatening to kill people with a knife at the truck stop and was physically aggressive toward the police. At the hospital, appellant was intoxicated and, according to medical records, was "uncooperative, agitated, and belligerent[,] calling staff members vulgar names and stating that he was going to kill everyone." Appellant was given a sedative to calm his aggression toward staff members. Appellant told hospital staff that he "carried a knife for protection against others and his son."

On March 7, 2017, appellant was placed on a 72-hour hold and transferred from Mercy Hospital to inpatient care at Mercy Hospital's Unity Campus (Unity Hospital). While there, he was agitated at times, but calm at other times. Unity Hospital staff determined that a petition for appellant's judicial commitment as a mentally ill person should be filed. On March 8, a mental health therapist, employed by Mercy Hospital, filed a petition for appellant's civil commitment. Dr. Krista Peterson was appointed by the district court to examine appellant. Her March 15 report supported appellant's commitment. She found appellant to suffer from a substantial psychiatric disorder. Appellant was noted to have erratic speech, agitated mood, paranoia, and "misperception of others' actions." Dr. Peterson opined that (1) appellant's disorder grossly impaired his judgment, evidenced by his "sleeping in his car" and being "uncooperative with police"; (2) appellant had grossly impaired behavior, evidenced by his being impulsive and his threats to kill people with a knife; and (3) appellant's disorder grossly impaired his capacity to recognize reality because he had "no insight into his behaviors, reason for hospitalization, or impairments related to [traumatic brain injury]."

There was a hearing on the commitment petition before a referee on March 17. Appellant objected to four exhibits, consisting of appellant's records from Community Outreach for Psychiatric Emergencies (COPE), his medical records from Mercy and Unity Hospitals, and his medical records from Hennepin County Medical Center (HCMC). His objection was not to the use of those records "as evidence of the direct observations, opinions, and diagnoses of the treatment teams at these respective facilities[.]" but to the hearsay statements contained in the records.

The records from COPE detail appellant's behavior at the times his mother and brother called to request assistance from the organization. The records from Mercy and Unity Hospitals describe appellant's medical state, his behavior towards hospital staff, and, based largely on hearsay statements contained in the records, appellant's behavior that led to his contacts with law enforcement in late February and early March. The records from HCMC described appellant's traumatic brain injury and his mental state since the injury, including other people's descriptions concerning appellant's behavior (including a report that, at one point, law enforcement were called to respond to appellant's banging on neighborhood doors). The referee admitted the records, "with the exception of any hearsay that the [c]ourt finds is not reliable." The referee admitted as reliable hearsay evidence references to appellant's outside-of-hospital conduct as reported by law enforcement to hospital and emergency medical staff, indicating that appellant was carrying

a knife to “protect” himself from strangers and that he was threatening to kill people.

Appellant, appellant’s mother, and Dr. Peterson all testified at the hearing. The referee made detailed findings in an order which was then signed by a district court judge. The referee found, and the district court adopted, that appellant’s illness could not be adequately treated by voluntary inpatient or outpatient care, appointment of a guardian or conservator, or a conditional release. It further found that there were no less restrictive alternatives, because there was no evidence that an appropriate facility was available. Appellant moved under Minn. Stat. § 484.70, subd. 7(d) (2016), and Minn. R. Civ. P. 52 and 59 for judicial review, amended findings, dismissal of the case, or in the alternative for a new trial.

The district court heard appellant’s posttrial motions on June 5, 2017. The district court reviewed its commitment order and found that the medical records stated that law enforcement brought appellant to the hospital from a truck stop after he had threatened others with a knife and exhibited other types of paranoid behavior. The district court found hearsay statements from law enforcement concerning this behavior to be reliable hearsay under Minn. Spec. R. Commit. & Treat. Act. 15 “because hospital staff observed and reported similar behavior while [appellant] was in the hospital pending this commitment” and that,

[w]hile the officer’s statements by themselves may not have been reliable hearsay because the statements contain information from unknown sources whose ability to relate the information is unknown to the [c]ourt, when the observed behaviors are corroborated by hospital behavior, the [c]ourt is justified in attributing greater reliability to the officer’s statements.

The district court concluded that the referee’s findings were supported by the record and that the order previously adopted by the district court was not clearly erroneous. It denied appellant’s motion for amended findings or a new trial. [FN 1]

This appeal followed.

[FN 1] These motions were heard and decided by the same district court judge who had adopted the referee’s recommended order.

DECISION

Jerome M. Kraskey, Petitioner for Certiorari
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Appellant argues that we should overrule our previous decision in *Williams* concerning the admissibility of hearsay evidence in civil-commitment proceedings or, in the alternative, that we should find Minn. Stat. § 253B.08, subd. 7, to be unconstitutional. Appellant alternatively argues that the referee and the district court improperly considered unreliable hearsay when making the commitment determination and that there was no clear and convincing evidence that appellant satisfied the behavioral criteria for commitment. Further, appellant argues that the district court applied the wrong standard when it reviewed the referee's findings in ruling on appellant's posttrial motions. Finally, appellant argues that the preexisting guardianship of him established by his mother and brother rendered civil commitment unnecessary.

We decline to overrule *Williams*.

Appellant first argues that this panel should overrule *Williams*, where we interpreted Minn. Stat. § 253B.08, subd. 7, to permit the admission of relevant and reliable hearsay as evidence in civil-commitment proceedings. *Williams*, 735 N.W.2d at 731-33. Appellant argues that *Williams* was incorrectly decided. "The interpretation of a statute is a question of law that we review de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

Generally, the doctrine of stare decisis encourages us to "adhere to former decisions in order that there might be stability in the law," *Oanes v. Allstate Ins. Co.*, 617 N.W.2d 401, 406 (Minn. 2000), and we "only overrule our precedent if provided with a compelling reason to do so." *Ariola v. City of Stillwater*, 889 N.W.2d 340, 356 (Minn. App. 2017), *review denied* (Minn. Apr. 18, 2017) (quotation omitted). More specifically, we may determine that the doctrine does not apply where "the reasons underlying the particular rule no longer exist or the rule no longer conforms to changed conditions of society." *Doe v. Lutheran High Sch. of Greater Minneapolis*, 702 N.W.2d 322, 330 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005).

Appellant moved to have this issue considered by the court of appeals en banc. We denied that motion, because a panel of this court may overrule the decisions of another panel when "provided with a compelling reason to do so. . . . The reasons for departing from former decisions [must] greatly outweigh reasons for adhering to them." *Ariola*, 889 N.W.2d at 356 (alteration in original) (quotation omitted); see also Minn. Stat. § 480A.08, subd. 3(c)(2) (2016) (indicating that the court of appeals may publish decisions that "overrule a previous Court of Appeals' decision not reviewed by the Supreme Court").

We decline to overrule *Williams*. Our decision in *Williams* interpreting Minn. Stat. § 253B.08, subd. 7, has stood for ten years. “The doctrine of stare decisis has special force in the area of statutory interpretation because the Legislature is free to alter what we have done.” *Schuette v. City of Hutchinson*, 843 N.W.2d 233, 238 (Minn. 2014). Here, Minn. Stat. § 253B.08, subd. 7, has not been amended in the numerous legislative sessions taking place since *Williams* was decided. Minn. Stat. § 253B.08, subd. 7, is not unconstitutional as violating due process or equal protection.

Appellant argues in the alternative that, if *Williams* correctly interpreted Minn. Stat. § 253B.08, subd. 7, then the statute is unconstitutional under the Due Process and Equal Protection Clauses of the federal and state constitutions. “The constitutionality of a statute is a question of law that we review de novo.” *SooHoo v. Johnson*, 731 N.W.2d 815, 821 (Minn. 2007). “Minnesota statutes are presumed constitutional and, as we have said in the past, our power to declare a statute unconstitutional must be exercised with extreme caution and only when absolutely necessary.” *Hamilton v. Comm’r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). “The challenger of the constitutional validity of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional.” *Assoc. Builders & Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000). “A person to whom a statute may constitutionally be applied has no standing to challenge that statute on the ground that it might conceivably be applied to others.” *State v. Mireles*, 619 N.W.2d 558, 561 (Minn. App. 2000), *review denied* (Minn. Feb. 15, 2001).

Appellant makes two main arguments that the statute is unconstitutional: first, that the statute violates due process generally; and second, that the statute deprives respondents in judicial commitment proceedings of equal protection of the laws. [FN 2]

[FN 2] Appellant also argues that Minn. Stat. § 253B.08, subd. 7, is unconstitutional because it both abrogates the requirement of clear-and-convincing evidence in commitment proceedings and shifts the burden of production to district-court respondents in commitment cases. Because Minnesota law requires the use of the clear-and-convincing-evidence standard in commitment cases, *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003), and unambiguously puts the burden of production on the petitioner, we reject this argument.

We addressed in *Williams* the question of whether Minn. Stat. § 253B.08, subd. 7, concerning the admission of hearsay evidence in a civil-commitment

hearing, violates an individual's due process rights. *Williams*, 735 N.W2d at 731-33. We recognized in *Williams* that "the trustworthiness of evidence is the primary concern of the rules of evidence generally and of the hearsay rule particularly. The purpose of the hearsay rule with its various exceptions is to prevent unreliable evidence from infecting fairness of process." *Id.* at 732. We determined that a district court's "thoughtful preview" of evidence "satisfies the concern about trustworthiness of [hearsay] evidence." *Id.* In *Williams*, we commended the district court for receiving "relevant evidence, weigh[ing] it, and mak[ing] findings supported by the record." *Id.* The challenged hearsay in that case had "threshold indicia of reliability for admission" and *Williams* was unable to show that the challenged evidence was "false or unreliable." *Id.*

Here, as in *Williams*, the district court carefully reviewed the referee's findings to determine that the statements by law enforcement contained in appellant's medical records were corroborated and were reliable hearsay. The district court acknowledged that these statements would be unreliable without the corroboration. The district court discharged its duty under *Williams* to ensure that the hearsay evidence was reliable and relevant. Appellant's due-process rights were not violated by the admission of reliable, corroborated hearsay in his civil-commitment hearing under Minn. Stat. § 253B.08, subd. 7.

Appellant next argues that Minn. Stat. § 253B.08, subd. 7, is unconstitutional because it deprives respondents in commitment proceedings, including appellant, of equal protection of the laws. He contends that the statute treats civil-commitment litigants differently than other types of civil and criminal litigants by abrogating the hearsay rule.

The threshold question in an equal-protection analysis is whether "similarly situated" individuals are being treated differently. *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011).

[W]e have routinely rejected equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently. . . . [C]ontrolling law is clear that the Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.

Id. at 521-22 (quotations and citations omitted). The "focus" of this threshold determination then, is whether two groups are alike "in all relevant respects." *Id.* at 522. It is clear to us that civil-commitment respondents are not similarly situated to other civil or criminal litigants. In *Williams*, we highlighted a

significant difference between civil-commitment proceedings and criminal proceedings: that the Confrontation Clause does not apply to civil-commitment proceedings. *Williams*, 735 N.W.2d at 732; *see also Allen v. Illinois*, 478 U.S. 364, 375 (1986) (holding there is no privilege against self-incrimination in proceedings under a state sexually dangerous persons act because civil-commitment proceedings are not “criminal” within the meaning of the Fifth Amendment); *State ex rel. Pearson v. Probate Ct. of Ramsey Cty.*, 205 Minn. 545, 556-57, 287 N.W. 297, 303 (1939) (holding there is no constitutional right to a jury trial in civil-commitment proceedings). Further, the Minnesota Rules of Civil Procedure provide that civil-commitment hearings are not subject to all of the rules. Minn. R. Civ. P. 81.01 directs us to Appendix A of the rules, which lists proceedings that are not subject to all of the rules of procedure and includes civil-commitment hearings. And, Minn. Stat. § 253B.08, subd. 1 (2016), provides for a number of procedures applicable to a civil-commitment proceeding that differ significantly from other civil litigation. Appellant does not appear to contend that all the various exceptions to the Rules of Civil Procedure identified in Appendix A to those rules offend equal protection. The very fact of the exceptions suggests a recognition that the proceedings excepted from the rules are not “in all relevant respects” like other cases. Because respondents in commitment cases in the district court are not similarly situated to other types of civil litigants or to criminal litigants, appellant cannot demonstrate that respondents in commitment cases are deprived of equal protection rights by the district court’s application of Minn. Stat. § 253B.08, subd. 7, to civil-commitment hearings.

The referee and the district court properly considered reliable hearsay evidence when making the commitment determination, and the record contains clear and convincing evidence that appellant satisfied the behavioral criteria for commitment.

Appellant argues in the alternative that, if we do not find Minn. Stat. § 253B.08, subd. 7, to be unconstitutional, then the hearsay considered by the referee and the district court was not reliable, and there was not clear and convincing evidence that appellant satisfied the behavioral criteria for civil commitment.

Appellant argues that the referee abused its discretion in considering unreliable hearsay because it “did not state an adequate basis for crediting multiple and unattributed levels of hearsay evidence, and erred in admitting that evidence.”

“The decision of whether to admit or exclude evidence is within the district court’s discretion and will be reversed only if the court has clearly abused its discretion.” *In re Civil Commitment of Spicer*, 853 N.W.2d 808, 813 (Minn. App. 2014) (quotation omitted). Minn. Stat. § 253B.08, subd. 7, permits the admission of relevant hearsay evidence. See also *Williams*, 735 N.W.2d at 732-33 (determining that when a district court thoughtfully considered hearsay evidence to find it reliable and relevant, appellant’s due-process rights were not violated and the district court properly admitted the evidence).

Appellant challenges the referee’s crediting of the hearsay regarding appellant’s threatening behavior at the truck stop. He argues that, in applying the clear-and-convincing evidentiary standard, evidence that he carried a knife for protection does not “adequately corroborate[] an assertion that [appellant] threatened anyone with the use of a knife.”

The referee found that appellant was “angry” and “verbally aggressive” toward hospital staff during his first visit following an interaction with law enforcement in late February 2017. During his early March hospital visit following a second interaction with law enforcement, the referee found that appellant was “uncooperative, agitated, and belligerent,” drunk, and that he was “calling staff members vulgar names and stating he was going to kill everyone.” The referee also found that a clinical counsellor at Mercy Hospital spoke with law enforcement over the phone regarding appellant’s behavior at the truck stop on March 6. It further found that law enforcement said that they had ongoing contact with appellant, and that he had a knife and was making threats at the truck stop on two occasions. The referee also found that appellant told hospital staff that he carried a knife for protection. And, the referee found the hospital staff’s account of appellant’s in-hospital behavior to be credible, and found that their description of their communications with law enforcement was also credible. While the referee did not explicitly identify why he found this hearsay evidence credible, the referee’s findings are supported by the record.

A reading of the referee’s findings indicates that the referee made factual findings regarding appellant’s in-hospital behavior before he found the hearsay evidence to be reliable, and thus appears to have taken into consideration appellant’s in-hospital behavior and statements in determining that the hearsay evidence of his out-of-hospital behavior was reliable. The referee appears to have complied with *Williams* by properly determining that the hearsay evidence was relevant and reliable before considering it.

Further, the district court reviewed the referee's findings in its own order after appellant's post-trial motions. It found that law enforcement's statements to hospital staff, which "by themselves may not have been reliable," were corroborated by appellant's observed in-hospital behavior and statements about appellant's aggression and his admission to carrying a knife. The district court stated that the "context of the entire medical record" permits any "facial unreliability" to "disappear[]." The district court also found that there was no strong, facially apparent reason to doubt the reliability of the hearsay evidence. The challenged hearsay is statements from law enforcement to medical staff regarding the behavior of a patient in that staff's care. That hearsay was corroborated by appellant's own statements to medical staff. Those statements on their own support appellant's civil commitment. Neither the referee nor the district court abused their discretion in finding the challenged hearsay evidence to be reliable.

Appellant further argues that there was not clear and convincing evidence that appellant satisfied the behavioral criteria for commitment. On appeal, we will not reverse a district court's "findings of fact unless they are clearly erroneous." *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). "We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *Thulin*, 660 N.W.2d at 144. Minn. Stat. § 253B.02, subd. 13 (2016), defines a mentally ill person as

any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand . . . and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided.

Minn. Stat. § 253B.02, subd. 13. The Minnesota Supreme Court has interpreted the statute as requiring that "the substantial likelihood of physical harm must be demonstrated by . . . a recent attempt or threat to harm self or others." *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995) (emphasis omitted). Mere speculation or allegations are not enough to justify commitment; the commitment must be supported by clear and convincing evidence. See *Id.* at 623-24. And our case law indicates that a person can satisfy the substantial-likelihood-of-harm standard by acting in a way that may provoke others into an attack. See, e.g., *In re Gonzalez*, 456 N.W.2d 724, 729 (Minn. App. 1990) (finding an appellant committable when he "pose[d] a

likelihood of harm to himself by his conduct which may outrage others and result in an attack on him”); *In re Burmeister*, 391 N.W.2d 89, 91 (Minn. App. 1986) (holding that the commitment statute “requires only that an individual pose a threat of harm to others or himself”) (emphasis omitted).

The record supports the district court’s factual findings. Here, the referee found that appellant “has a traumatic brain injury with cognitive impairment which is a substantial psychiatric disorder.” And both the referee and the district court found that appellant carried a knife and made threats to kill people. There is record evidence that supports these findings.

We next consider whether the clear-and-convincing-evidence standard was met. The referee found appellant to be “a brain-damaged individual who is paranoid, delusional, disorganized, and seeing threats where none exist, whose judgment is significantly impaired, who is isolated and living a marginal existence, and who is carrying a knife and threatening to kill people,” and that appellant “creates a substantial likelihood that he will provoke violence or engage in it himself with the result that someone will suffer physical harm.” The record supports the referee’s findings of fact that appellant displayed behavior that may reasonably be construed either to place him at a risk of harm from others, or indicate that he may harm others. For example, the court examiner testified that if appellant were to offend the wrong person leading to a physical assault, it could result in his death due to his recent brain injury. Appellant made death threats to hospital staff, and he threatened individuals at the truck stop while in possession of a knife. These factual findings suffice to satisfy the clear-and-convincing-evidence standard concerning appellant’s risk of causing substantial harm to himself or to others.

The district court properly reviewed its own civil-commitment order.

Appellant next argues that the district court improperly reviewed its civil commitment order, which adopted the referee’s findings. Following the commitment hearing, appellant moved the district court to review the referee’s findings under Minn. Stat. § 484.70, subd. 7(c)-(e) (2016), and for amended findings or a new trial under rules 52.02 and 59.01. Appellant argues on appeal that the district court incorrectly applied the “clearly erroneous” standard when it reviewed the referee’s findings and order when considering appellant’s posttrial motion.

Whether the district court applied the correct standard of review when reviewing the referee’s findings contained in its own order seems to us to be of little consequence. The essence of appellant’s posttrial motion was a request

for amended findings pursuant to rule 52.02 or for a new trial pursuant to rule 59.01, and the district court responded to those motions by denying them in a carefully reasoned and thoughtful order. It is from this order that appellant takes this appeal.

We review a district court's denial of a motion to amend findings or for a new trial under an abuse-of-discretion standard. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). Here, the district court thoroughly analyzed the record and the referee's findings. It properly gave some deference to the referee as the initial factfinder. As discussed above, the referee's factual findings in support of civil commitment are supported by clear and convincing evidence in the record. The district court did not abuse its discretion in denying appellant's motion for amended findings or for a new trial. The district court did not err in finding that the preexisting guardianship does not render civil commitment unnecessary.

Appellant argues that the preexisting guardianship established over him by his mother and brother is sufficient to meet his treatment needs and necessarily amounts to a less restrictive alternative to commitment. He argues that the district court should therefore have dismissed the petition. "Unless it is clearly erroneous, we must affirm the [district] court's finding that there was no suitable less restrictive treatment alternative." *In re King*, 476 N.W.2d 190, 193 (Minn. App. 1991); see Minn. Stat. § 253B.09, subd. 1 (2016) (listing dismissal of petition and appointment of a guardian or conservator as reasonable alternative dispositions to judicial commitment).

Appellant's mother and brother became appellant's temporary guardians when appellant suffered his brain injury. They later became his permanent guardians. The referee found that appellant's guardians had been unable to find a new placement for appellant because appellant refused to cooperate with their efforts. The referee found that, because they are not conservators, they have "no control" over his finances. And, when the district court reviewed the referee's findings, it found that "[i]t is clear that guardianship is not sufficient because, despite that level of supervision, [appellant] required emergency hospitalization and sedation."

Appellant argues that his guardians have enough control over his financial affairs to take care of him without a judicial commitment. He correctly argues that Minn. Stat. § 524.5-313 (c)(2)-(5), (7) (2016), gives guardians the ability to provide for a ward's "care, comfort, and maintenance needs" either by using government benefits or funds from the ward's estate, and to apply or contract for non-necessities on behalf of the ward. However, despite the control that

appellant's guardians do have, the district court found that this control was not sufficient to find appellant a safe placement or to control his behavior to prevent it from leading to altercations with law enforcement and hospitalization. Appellant's past behavior indicates that he had trouble remaining in a rehabilitation facility which he was free to leave. There is no record evidence that a suitable facility will take appellant without a civil-commitment order. We defer to the district court's finding that there is no reasonable alternative to commitment consistent with appellant's overall treatment needs. The referee and district court's finding that there is no less restrictive alternative to civil commitment is not clearly erroneous.

Affirmed.

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STATE OF MINNESOTA
IN SUPREME COURT
A17-1243

In the matter of the Civil Commitment of:
Jerome M. Kraskey.

ORDER

Based upon all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jerome M. Kraskey for further review be, and the same is, denied.

Dated: March 28, 2018

BY THE COURT:

/s/ Lorie Skjerven Gildea
Lorie S. Gildea
Chief Justice

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The Appendix is attached to and immediately follows the Petition for Certiorari.