DA 22-0430

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 80N

IN THE MATTER OF:

S.D.,

Respondent and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DI-22-13
Honorable Jennifer B. Lint, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kathryn Grear Hutchison, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General Tammy K Plubell, Assistant Attorney General, Helena, Montana

Bill Fullbright, Ravalli County Attorney, Lauren Sandau, Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: March 6, 2024

Decided: April 16, 2024

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 S.D. appeals a Twenty-First Judicial District Court order committing him to the Montana State Hospital (MSH) for a period not to exceed three months. S.D. argues that the District Court erroneously admitted hearsay into the record during trial, and that the commitment order was unsupported by substantial credible evidence absent the hearsay.

¶3 We affirm.

¶4 On June 6, 2022, S.D. was transported by police to the emergency room following a call from his parents requesting assistance in getting him to the hospital for a mental health evaluation. S.D. absconded from the hospital while he was changing his clothes, and he was subsequently arrested and detained at the Ravalli County Detention Center.

¶5 Mental health professional Katrena Heagwood conducted S.D.'s initial mental health evaluation. Based on her findings, the State recommended that S.D. be involuntarily committed based on a substantial inability to provide for his own basic needs and safety.

¶6 Finding probable cause for S.D.'s commitment, the District Court set a commitment hearing and ordered a second mental health evaluation to be conducted by Heagwood or another professional person.

¶7 S.D.'s second evaluation was conducted by Simone Schilthuis the morning of the commitment hearing. Schilthuis reported that S.D. was guarded, minimally participatory, and would generally provide one-word responses.

¶8 Schilthuis learned from S.D.'s medical record that while he was at West House, S.D. had refused therapy and medications. S.D. had also engaged in unsafe behaviors like "kicking walls and doors, hitting his head, attempting to leave the building, and setting items on fire." S.D. admitted to these behaviors and told Schilthuis that they were "the only thing [he] could do to lash out." Schilthuis also noted that S.D. was suffering from auditory hallucinations and had been seen laughing and talking with people who were not with him. S.D. told Schilthuis that he was distressed and had experienced auditory hallucinations, but he denied having a mental disorder or needing treatment.

¶9 Following a conversation with S.D.'s mother, L.D., Schilthuis noted that S.D.'s auditory and visual hallucinations revolved around a "colonel" who had been giving S.D. instructions, including "telling him to go to the airport so he [could] fly to see the president." L.D. told Schilthuis that conversations between S.D. and the "colonel" had occurred on multiple occasions. S.D. had even acted upon "orders" to go to the airport with packed bags. L.D. also described an incident where S.D. had armed himself with a shotgun to "defend himself and his parents," and she told Schilthuis that S.D. was "actively engaging with delusions . . . to the point he could not be redirected."

¶10 L.D. explained to Schilthuis that she was increasingly concerned for her and her husband's safety and stated that S.D. had to be monitored around-the-clock for his own

safety. L.D. believed "he would not fully participate in voluntary treatment" without first being committed to MSH for stabilization.

¶11 During the commitment hearing, on Schilthuis' direct examination by the State, the following exchange occurred:

> STATE: And are you aware of the circumstances that led to [S.D.'s] emergency detention?
>
> SCHILTHUIS: Yes. So I had a long conversation with his mother about what's been happening for [S.D.] over the last couple months. She's observed delusions, hallucinations, erratic behavior—
>
> DEFENSE: Objection, Your Honor.
>
> COURT: One Second. Yes, sir.
>
> DEFENSE: We're getting into some hearsay, Your Honor.
>
> STATE: Yes, Your Honor. I believe she does have some of that reported in her report, and I would just want her to stick to what she has in her report.
>
> COURT: [Defense counsel], any objection to that?
>
> DEFENSE: Your Honor, I think it's still hearsay. I think she can discuss it as long as the Court puts it in the right perspective.
>
> COURT: We can certainly do that. So, ma'am, what we're going to ask you to do is, when you are discussing information you heard from any third party, if you could limit that to whatever information you included in your report.
>
> SCHILTHUIS: I can. I guess I'm confused, because I did include this in my report.
>
> COURT: For sure. But what we have is a procedural objection to you reporting what someone else told you, as opposed to that person testifying themselves. Because we have your report in evidence, then we can have you talk about what you included in your report. But if there's other information that you received from third parties that's not in your report, I'll have to ask you to not discuss that.

> SCHILTHUIS: And I guess I'm still a little confused, because I had a long conversation with his mom about the circumstances which led to her bringing him to the hospital, concerns about his mental health, his safety, and the safety of others.
>
> COURT: For sure. And those are what's in your report. So let's take it from there. And, [defense counsel], we'll all keep an eye on it. How's that?
>
> DEFENSE: Thank you, Judge.

Schilthuis proceeded to testify about the findings included in her report, including "that [S.D.] had been experiencing a mental disorder, including delusions and hallucinations, in which he was a danger to himself and others, unable to meet basic needs, [and] acting erratically." Schilthuis testified further that, in her opinion, S.D. was unable "to provide for his own basic needs of food, clothing, shelter, health, or safety[,]" without commitment.

¶12 At the close of evidence, the District Court provided oral findings of fact, conclusions of law, and judgment committing S.D. to MSH for involuntary mental health treatment. The District Court ruled that S.D. suffers from a mental disorder, demonstrated by "recent acts, which include appearing to take commands from auditory hallucinations to go to the airport." Further, the District Court determined that S.D.'s ability to provide for himself was jeopardized by his disorder, and that it was treatable by commitment to MSH.

¶13 Although involuntary commitment proceedings are civil matters, the fundamental liberty interests at stake are analogous to those of criminal proceedings. *In re C.K.*, 2017 MT 69, ¶ 12, 387 Mont. 127, 391 P.3d 735 (citation omitted). Courts must therefore strictly adhere to the procedural and substantive requirements of the involuntary

commitment statutes. *In re G.M.*, 2024 MT 49, ¶ 10, 415 Mont. 399, ___ P.3d ___ (citations omitted).

¶14 To satisfy the standard for an involuntary commitment, the State bears the burden of proving (1) that an individual is suffering from a mental health disorder to a reasonable medical certainty; (2) all pertinent "physical facts" beyond a reasonable doubt; and (3) all other matters by clear and convincing evidence. Section 53-21-126(1)-(2), MCA; *In re T.J.D.*, 2002 MT 24, ¶ 13, 308 Mont. 222, 41 P.3d 323.

¶15 The State was thus required to demonstrate that S.D. suffered from a mental disorder with reasonable medical certainty, and to prove by clear and convincing evidence that he would be substantially unable to provide for his own basic needs and safety without treatment.

¶16 S.D. argues the State failed to meet its burden because Schilthuis' testimony included inadmissible hearsay, and S.D.'s commitment was not supported by substantial credible evidence without it. The State counters that Schilthuis' testimony was properly admitted non-hearsay expert testimony under M. R. Evid. 703, and that S.D.'s commitment was supported by clear and convincing evidence. We agree with the State.

¶17 Title 53, chapter 21, MCA, comprehensively addresses the procedural requirements in involuntary commitment proceedings, including the type of evidence required to support a commitment. While a professional person may testify "as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment," a professional person's testimony is insufficient to justify an involuntary commitment unless it is:

> [a]ccompanied by evidence from the professional person or others that . . . the respondent's mental disorder . . . has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and . . . will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent . . . will be unable to provide for [his] own basic needs of food, clothing, shelter, health, or safety.

Section 53-21-126(4)(d)(i), (ii), MCA.

¶18 Here, Schilthuis' recommendation that S.D. be committed was accompanied by substantial record evidence, including statements from S.D. affirming his distress, hallucinations, and unsafe behavior during his detention at West House. S.D.'s medical records from West House and the out-of-court statements of his mother provided further support for Schilthuis' recommendations. The District Court cited all of this evidence in making its determination that "[S.D.'s] mental disorder, as demonstrated by [his] recent acts or omissions, will, if untreated, predictably result in deterioration of his mental condition to the point at which he will become a danger to self or to others or will be unable to provide for his own basic needs of food, clothing, shelter, health, or safety."

¶19 Further, whether S.D.'s commitment was supported by substantial evidence absent the alleged hearsay is immaterial because Schilthuis' testimony was definitional non-hearsay under M. R. Evid. 703.

¶20 The rules of evidence apply in civil commitment proceedings, thus hearsay is inadmissible "unless otherwise provided by statute." M. R. Evid. 101(a), 802. Expert testimony is non-hearsay under M. R. Evid. 703 as long as it is used "only to show the basis of the testifying expert's opinion," rather than to show the truth of the matter asserted. *In re C.K.*, ¶ 19. A professional person qualified as an expert witness may thus reference

otherwise inadmissible hearsay testimony if it is provided for the "limited purpose of aiding the factfinder in assessing the relative credibility, veracity, and probative value of the expert's opinion by explaining the underlying rationale or basis of the opinion." *In re G.M.*, ¶ 14 (internal quotations and citation omitted).

¶21 When determining whether or not to admit otherwise inadmissible hearsay testimony under M. R. Evid. 703, a district court has broad discretion to weigh the probative value of the evidence against the risk of unfair prejudice, confusion, or delay. M. R. Evid. 403; *see In re C.K.*, ¶ 22. M. R. Evid. 403 is the "critical safeguard that protects against [the] improper or unfair use or effect" of expert testimony. *In re G.M.*, ¶ 14.

¶22 There is no dispute that Schilthuis was properly qualified as an expert. S.D. does not assert an argument about whether the probative value of the evidence outweighed any prejudicial effect on S.D. S.D. only disputes whether Schilthuis' conversation with L.D. and "notes made by a different provider" constitute inadmissible hearsay. We hold that they do not.

¶23 The record shows that Schilthuis based her recommendation for commitment on independent observations made during her evaluation of S.D. For example, S.D. admitted to Schilthuis that he had experienced hallucinations and delusions. Likewise, he affirmed that he had engaged in unsafe behavior at West House, and he admitted to owning weapons. S.D. was "non-committal about whether he would still take medications if recommended and prescribed by a provider," and generally denied a need to do so because, at the time, he "[felt] fine." Schilthuis' references to her conversation with L.D. and to the observations of other healthcare providers—which may well be otherwise inadmissible hearsay—were

made solely for the purposes of corroborating her independent observations, thus they were properly admitted as expert testimony pursuant to M. R. Evid. 703. *In re C.K.*, ¶ 22.

¶24 We recently reached the same conclusion in a near-identical legal context. In *In re G.M.*, the district court committed G.M. to MSH based on her schizophrenic and delusional disorder, finding it substantially interfered with her ability to provide for her basic needs and safety. *In re G.M.*, ¶ 7. During the commitment hearing, the appointed professional person similarly testified to the out-of-court statements of G.M.'s family member over G.M.'s objections and referenced G.M.'s medical records and clinical observations regarding the paranoid delusions. *In re G.M.*, ¶ 4. Again, like S.D., G.M. denied having a mental disorder and refused antipsychotic medications, and she ultimately argued that her commitment was unsupported by substantial evidence because it was based on hearsay. *In re G.M.*, ¶¶ 4-6. We affirmed, ruling that the professional person's testimony was not hearsay testimony under M. R. Evid. 703. *In re G.M.*, ¶ 15. The testimony was used for the appropriate non-hearsay purpose of supporting the professional person's expert opinion as to G.M.'s need for commitment and treatment. *In re G.M.*, ¶ 15.

¶25 Like *In re G.M.*, the District Court's findings of fact were supported by substantial admissible evidence here, thus its order committing S.D. to MSH for a period not-to-exceed three months was not clearly erroneous.

¶26 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶27 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE