STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0887

In the Matter of the Civil Commitment of:
Earl Lionell Ward.

Filed December 5, 2022
Affirmed
Frisch, Judge

Ramsey County District Court
File No. 62-MH-PR-21-91

Daniel S. Kufus, Kufus Law, LLC, Roseville, Minnesota (for appellant Earl Ward)

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Robert M. Hamilton, Assistant County Attorneys, St. Paul, Minnesota (for respondent county)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the district court's order of indeterminate civil commitment of appellant as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP), appellant argues that the district court abused its discretion in making certain evidentiary and trial-management rulings, exhibited bias, erred in appointing a second examiner without his agreement, and erred in its ultimate finding that appellant meets the standard for commitment as an SDP and an SPP. Because the district court did not abuse its discretion

in making its rulings, the district court did not exhibit bias, appellant acquiesced to the choice of the second examiner, and the record supports the conclusion that appellant meets the standards for commitment as an SDP and an SPP, we affirm.

FACTS

The following facts were elicited at trial.

Ward's Sexual Misconduct History

In March 1991, appellant Earl Lionell Ward approached two juvenile girls at a fast-food restaurant in Minneapolis. The girls had run away from a chemical-dependency treatment center. Ward told them that he could provide them with clothing and other items. Ward took the girls to an apartment and attempted to have sex with one of them, A.T. A.T. said she did not want to have sex with Ward, but Ward pushed her down and told her to take her clothes off. When A.T. refused, Ward hit A.T. across the face and choked her while pushing her to the floor. Ward threatened to beat or kill A.T. if she did not have sex with him. A.T. said she complied with Ward's demands because of his threats.

Ward then brought the girls to three different locations and ordered them to perform oral sex and have intercourse with five different men, all of whom paid Ward. A.T. cooperated because of Ward's threats. Ward was charged with one count of third-degree criminal sexual conduct and three counts of promoting prostitution. In September 1991, Ward pleaded guilty to one count of promoting prostitution.

In May 2000, Ward held his ex-girlfriend J.S.W. and her young son against their will for several days. J.S.W. voluntarily went to Ward's house, but when she attempted to leave, Ward became "enraged" and refused to let her leave. Ward pushed J.S.W. to the

ground and locked all the doors. When J.S.W. tried to calm Ward, he punched her, pulled her hair, and threatened to kill her. While in captivity, Ward forced J.S.W. to have sex with him every day.

During this time, Ward slapped, punched, and choked J.S.W. to the point that she felt like she would lose consciousness and could not breathe. Ward threatened to chain J.S.W. in the basement and to cut her nipples off. When J.S.W. tried to escape, Ward dragged her back inside, choked her, and beat her with a board. J.S.W. felt she could not leave without being harmed or killed. Ward's attacks left J.S.W. with bruises, lacerations, and injuries to her neck, shoulders, arms, and legs. J.S.W.'s son witnessed much of the abuse. J.S.W. ultimately escaped and reported Ward to the police, although she initially reported that she could not share what happened, fearing "he will kill me, he will kill me." Ward was charged with one count of kidnapping, one count of terroristic threats, and one count of second-degree assault. In November 2000, Ward pleaded guilty to second-degree assault, admitting that he hit J.S.W. repeatedly with a board. In February 2001, J.S.W. reported that, despite the existence of an order for protection (OFP) against Ward, he continued harassing her personally and through his family.

In August 2000, Ward broke into the residence of D.S., his intermittent girlfriend, in the middle of the night. Ward entered D.S.'s bedroom and kissed her while "trying to be with [her]." D.S. told Ward he was not supposed to be there. Ward did not respond to D.S. but "just looked at [her] real—like crazy." Ward tried to "profess his love" to D.S., and she rejected his advances. Ward pulled D.S.'s pants down and performed oral sex on her without her permission. Ward also had anal intercourse with D.S. without her consent.

Ward used a crutch D.S. had for a previous injury to strike her repeatedly on the hand, head, and foot. Ward was charged with first-degree burglary and violation of an OFP. In November 2000, the charges were dismissed as part of a plea agreement.

In January 2008, S.A. went with Ward to his family's home under the pretense of obtaining drugs. Once in his bedroom with S.A., Ward used a knife to jam the door shut. Ward told S.A. to take her clothes off, and he became angry when she refused. Ward threatened S.A. When S.A. attempted to open a window to scream for help, Ward grabbed her by the hair, forced her to disrobe, and forced S.A. to have vaginal intercourse with him.

Ward continued threatening S.A. He used a lighter to burn the hair on her head. He forced S.A. to have anal intercourse with him, causing S.A. to bleed and defecate. Ward ordered S.A. to perform oral sex to "clean" his penis. Ward did not allow S.A. to use the toilet; he made her urinate in a glass and dump the urine in a trash bag. Ward threatened S.A. and her boyfriend, stating that if they called the police he would "kill [them], [their] family, and anyone around" them. A sexual-assault exam of S.A. confirmed injuries to her anal area and burned hair on her head. Police searched Ward's home and found knife marks on the door jamb, a stained sheet and mattress cover, a lighter as described by S.A., a bloody tissue, and a plastic bag that smelled of urine.

Ward was charged with two counts of first-degree criminal sexual conduct, two counts of kidnapping, two counts of terroristic threats, and one count of second-degree assault. Ward pleaded guilty to second-degree assault and was sentenced to 60 months' imprisonment. He was also required to register for life as a predatory offender. At the civil-commitment proceeding, Ward testified that he did not sexually assault S.A. and that

their sexual relationship was consensual. He also testified he was only guilty of singeing some of S.A.'s hair with a lighter and telling her if she did not pay him $2,000 "it was gonna be a problem."

In September 2013, Ward and D.S. were spending time together again. One night, Ward accused D.S. of cheating on him and slapped her on the face. D.S. began to hit back, and Ward pushed her down, laid on top of her, and choked her with his hands around her neck until she lost consciousness. Ward revived D.S. and choked her to unconsciousness several times, all while trying to coerce D.S. to confess she was cheating on him. The next morning, D.S. attempted to escape by running out of the house. Ward tackled D.S. in the yard and forced her into his car. Ward digitally penetrated D.S.'s vagina without her consent. D.S. eventually escaped and reported the incident to police. A medical exam showed several injuries consistent with D.S.'s statement.

Ward was charged with one count of felony domestic assault by strangulation and one count of felony domestic assault. In February 2015, Ward pleaded guilty to felony domestic assault. Ward testified that the altercation with D.S. occurred because he and D.S. "got into it" when Ward went outside to talk to someone, and that D.S. attacked him first.

Procedural History

On February 2, 2021, respondent Ramsey County filed a petition for indeterminate commitment of Ward as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) pursuant to Minn. Stat. §§ 253D.02, subds. 15, 16, .07 (2020). The court appointed Dr. Mary Kenning as the first examiner pursuant to Minn. Stat. § 253B.07,

subd. 3 (2020). On February 22, 2021, Ward's attorney identified Dr. Michael Robertson as Ward's choice for the second examiner pursuant to Minn. Stat. § 253B.07, subd. 3. The district court appointed Dr. Robertson as the second examiner the same day. Ward's attorney later represented to the district court that he was experienced with Dr. Robertson and was "confident" that the choice was "appropriate." In April 2021, the district court held a pretrial conference where the parties finalized the examination dates. Ward's attorney spoke to Ward on the phone at least 16 times prior to that pretrial conference.

The district court conducted the commitment trial over several days from June to December 2021. The county presented testimony from the two examiners and from two of Ward's sexual-assault victims, J.S.W. and D.S. The district court ordered Ward to file his witness list by May 12, 2021. On May 18, Ward filed a list of four witnesses. At a hearing on August 27, Ward requested to add 13 additional witnesses to his list and also requested multiple continuances to allow for such testimony. The district court granted five of Ward's requests to continue the trial and allowed Ward to add six additional witnesses to the earlier list. On December 3, Ward offered testimony from his sister J.W. and himself. The district court judge also questioned Ward on his 1991 conviction for promotion of prostitution with juveniles and his prison phone history.

On April 28, 2022, the district court issued an order finding Ward to be an SDP and an SPP and ordering his indeterminate civil commitment. The district court also found Ward's behavior throughout the proceedings "hindered his attorney's ability to represent him by failing to provide [his attorney] the necessary contact information for potential

witnesses and failing to assist in facilitating witness testimony, including the testimony of his family members with whom he was in contact with."

Ward appeals.

DECISION

Ward seeks reversal of the district court's order of indeterminate civil commitment because the district court abused its discretion in certain evidentiary and trial-management rulings, exhibited bias in its questions directed to him, and erred by allowing counsel to select his second examiner. Ward also asserts that the evidence does not support the conclusion that he was an SDP and an SPP. We address each argument in turn.

I. The district court did not abuse its discretion by making certain evidentiary and trial-management rulings.

Ward argues that the district court abused its discretion by admitting certain hearsay evidence, by restricting Ward's ability to call additional witnesses, and by allowing the court-appointed examiner to testify about general harm suffered by victims of sexual abuse. We will reverse a district court's determination to admit or exclude evidence "only if the court has clearly abused its discretion." *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *rev. denied* (Minn. Sept. 17, 2002). "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *In re Robb*, 622 N.W.2d 564, 574 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001).

A. The district court did not abuse its discretion by admitting hearsay evidence.

Ward argues that the district court improperly admitted and relied upon hearsay evidence when it admitted the 1991 police report and criminal complaint charging him with criminal sexual conduct with a juvenile and promoting prostitution of a juvenile, the 2000 criminal complaint charging him with felony kidnapping, terroristic threats, and assault of J.S.W., and the 2000 police report detailing the incident of alleged second-degree domestic assault and burglary of D.S.[1] These evidentiary objections are not properly before us because Ward did not object to their admission at trial. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see In re Civ. Commitment of Fugelseth*, 907 N.W.2d 248, 252 n.1 (Minn. App. 2018) (applying *Thiele* in a commitment matter), *rev. denied* (Minn. Apr. 17, 2018). We observe that the district court's order noted that at trial, "[Ward] agreed to the admission of all exhibits and never argued that any of the exhibits offered were unreliable or should not be considered by the Court." Ward does not claim that this finding is clearly erroneous. Accordingly, the hearsay objections newly raised on appeal are not properly before us, and we decline to address them.

Even so, we discern no abuse of discretion in the district court's admission and consideration of the two police reports and two criminal complaints now challenged by

[1] Ward makes a general assertion that the district court "engaged in no meaningful scrutiny of hearsay throughout the years, and every single hearsay statement was admitted." Ward, however, does not offer any argument about any other hearsay statement admitted at trial. We do not consider an assignment of error that is inadequately briefed. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *see In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (applying *Wintz* in a commitment matter), *rev. denied* (Minn. June 20, 2017).

Ward. In a civil-commitment proceeding, the district court "shall make its determination upon the entire record pursuant to the Rules of Evidence." Minn. Stat. § 253B.08, subd. 7 (2020). The district court "may admit all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses." Minn. Spec. R. Commit. & Treat. Act 15. A presumption of admissibility applies in commitment hearings, and the district court is in the best position to determine the admissibility of the evidence. *In re Civ. Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007), *rev. denied* (Minn. Sept. 26, 2007). Further, the district court may consider conduct not resulting in conviction. *Ramey*, 648 N.W.2d at 268.

The district court properly considered and admitted the police reports after making findings that the reports were reliable and trustworthy. *See Robb*, 622 N.W.2d at 575 (discussing admission of police reports in civil-commitment proceeding). The district court stated it "reviewed each and every page of the exhibits—line by line" to assess the reliability of the evidence, including the criminal complaints. *See Williams*, 735 N.W.2d at 731-33 (discussing how the district court's "line-by-line" examination of the evidence satisfied trustworthiness concerns to allow admission of hearsay). We therefore have no basis to conclude the district court abused its discretion in admitting the exhibits.[2]

[2] Ward argues that the 1991 complaint and police report were unreliable because of purported inconsistences and that the 2000 police report and complaint were unreliable because they did not contain any allegations of sexual assault. But we see no abuse of discretion in the district court's assessment of the overall reliability of the documents, particularly when it expressly discredited Ward's testimony as related to these incidents.

Even if the records were not properly admitted, Ward identified no prejudice to him associated with the admission of the challenged documents. *See id.* at 734 (finding no abuse of discretion when the appellant did not show he was prejudiced by the district court's actions). Our review of the record confirms that the remaining 62 exhibits from the state, the testimony from D.S. and J.S.W., and the testimony of the two examiners contained the same information set forth in the challenged exhibits in different forms. This evidence was sufficient for the district court to find by clear and convincing evidence that Ward is an SDP and an SPP.

B. The district court did not abuse its discretion in its trial-management decisions.

Ward argues that the district court improperly precluded Ward from calling additional witnesses to testify at trial.[3] We disagree.

We begin by detailing the extensive accommodations the district court provided to Ward. In April 2021, the district court filed an amended pretrial order requiring Ward to file a witness list by May 12. The order emphasized that "[n]o other witnesses, including impeachment witnesses, shall be allowed to testify except upon a determination by the trial judge that good cause exists for failing to disclose the witness." On May 18, Ward filed his first witness list naming four witnesses: his siblings, J.W. and A.W., D.B., and himself. On June 4, Ward amended this witness list to add the required witness contact information

[3] Ward also argues the district court improperly excluded his testimony that he believed D.S. had sexually abused their son, which he purported would impeach D.S.'s credibility. The district court sustained the state's objection based on the testimony being hearsay and speculative. We note that Ward did not cross-examine D.S. on this issue at trial. The district court did not abuse its discretion excluding Ward's testimony on this subject.

and expected subject matter of the testimony. On July 16, the fourth day of trial and the first day of Ward's case in chief, J.W. and A.W. were present in the courtroom but left without testifying. Ward's brother E.W. had also been present during the trial but did not testify. The hearing concluded for the day without Ward testifying. On August 6, the fifth day of trial, Ward's witnesses did not appear to testify. Ward did not testify at that time and instead requested a continuance to allow him to present witness testimony in his desired order, with his testimony to occur last. The district court granted this request for a continuance. On August 27, the sixth day of trial, Ward's witnesses did not appear for testimony, and Ward did not testify. That same day, Ward gave his attorney a list of 13 additional witnesses for the purported purpose of impeaching testimony from D.S. and J.S.W. Ward had no contact information for any of the additional witnesses, did not identify the last name of two of the witnesses, and made no offer of proof that any of the additional witnesses would testify about a material disputed fact. Despite the untimely disclosure of witnesses and the absence of any substantive offer of proof as to their testimony, the district court allowed Ward to amend his witness list to include six witnesses he had previously mentioned to his attorney out of the 13 additional named witnesses. The district court also granted another of Ward's requests for a continuance.

On November 30, Ward submitted another amended witness list with 23 names, 13 of which were not previously disclosed. Ward did not supply contact information for any of the witnesses or make an offer of proof as to the expected testimony. On December 3, the seventh day of trial, J.W. and Ward testified. No other witnesses appeared at the trial to testify. The district court judge stated that Ward's latest witness disclosure was untimely

but nevertheless stated that "[a]ny witness who would have showed up today I would have considered letting testify but they didn't show up."

The district court provided extensive accommodations to Ward. Notwithstanding Ward's current characterization, we do not view the district court as having "excluded" Ward's witnesses. To the contrary, the district court specifically stated that it would have considered allowing "any witness" who showed up to the final day of trial to testify. But no witness appeared at trial, and Ward did not request another continuance. That no witness appeared is not surprising, given the district court's finding that Ward was uncooperative with counsel, did not provide counsel with contact information for any of these witnesses, did not provide the last name of two listed witnesses, and made no offer of proof as to any testimony that would have been proffered other than two witnesses who would allegedly testify as to the ongoing relationship between D.S. and Ward—an undisputed fact. The district court found Ward "hindered his attorney's ability to represent him by failing to provide" necessary contact information for potential witnesses and failing to assist in facilitating witness testimony. Ward does not challenge that finding on appeal. Under these circumstances, we see no abuse of discretion by the district court in its trial-management decisions.

C. The district court did not abuse its discretion by permitting the court-appointed examiner to testify about the general harm suffered by victims of sexual abuse.

Ward argues that the district court improperly admitted testimony from the court-appointed examiner about "the general harm alleged forced sexual conduct has on individuals" because it was "not detailed in her report in advance." There is nothing in the

record on appeal, however, showing that Ward objected to this testimony at trial.[4] Therefore, Ward's objection is not properly before us. *See Park Hill Apartments v. Anderson*, 409 N.W.2d 924, 925 (Minn. App. 1987) (holding party that made a general objection to evidence at trial, but failed to raise a specific objection, forfeits appellate review of the issue). Even so, the county correctly points out that the district court does not appear to have relied upon the court-appointed examiner's "general harm" testimony in reaching its decision and therefore, Ward suffered no prejudice by the admission of this testimony. *See Williams*, 735 N.W.2d at 734.

II. We discern no bias by the district court.

Ward argues that he is entitled to a new trial because the district court judge exhibited bias in questioning Ward about past events. Ward also argues that the district court judge's comment that she did "think [Ward] can remember [the identity of people who called Ward while he was in prison in 2012]" evidences bias. We disagree.

In assessing judicial bias, we consider whether "a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011). We have reviewed the entire record in this case. The district court judge provided Ward with extensive accommodations, granting at least five continuances to facilitate what he said was his desired presentation of evidence. The district court judge demonstrated patience with Ward through his repeated

[4] We note both parties cite to the trial transcript for this particular day, but the record on appeal does not contain the cited transcript. Generally, the appellant bears the burden of providing an adequate record to enable appellate review. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995); *see also* Minn. R. Civ. App. P. 110.02, subd. 1(a).

interruptions of proceedings. The district court judge expressly stated that it was interested in hearing Ward's "side of the story." A reasonable examiner with full knowledge of the facts and circumstances of this case would not question the impartiality of the district court judge in this case.

That the district court judge posed direct questions to Ward does not amount to judicial bias. A district court judge "may interrogate witnesses, whether called by itself or by a party." Minn. R. Evid. 614(b); *see also* Minn. R. Evid. 614 1977 comm. cmt. (stating that the traditional right of trial courts to call and interrogate witnesses "is consistent with the responsibility of the Court in insuring a speedy and just determination of the issues"). A trial judge's questioning of a witness to clarify testimony in a bench trial is "a proper exercise of the power granted by Rule 614." *Teachout v. Wilson*, 376 N.W.2d 460, 465 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985). Accordingly, the questioning to clarify Ward's 1991 conviction and prison phone records was not improper.

Even if the isolated comment questioning Ward's ability to recall certain events could be construed as argumentative, we do not conclude that such a comment amounts to judicial bias, particularly in the context of the entirety of the lengthy, multi-day court trial. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (concluding that although the trial court's comments were "not always appropriate," there is an "appropriate reduction in concern for the content of questions and the tone of voice of a trial judge in a bench trial"). Accordingly, we do not discern any action during the proceedings that would reasonably call into question the impartiality of the district court judge.

III. Ward acquiesced in the selection of the second examiner.

Ward argues the district court committed reversible error because he claims that the second examiner was chosen by his attorney and not personally by him. Pursuant to Minn. Stat. § 253B.07, subd. 3, "[a]t the proposed patient's request, the court shall appoint a second court examiner of the patient's choosing." Counsel must consult with the client before any civil-commitment hearing. Minn. Stat. § 253B.07, subd. 2c(1) (2020). The district court made factual findings that counsel conferred with Ward before court proceedings and that Ward's voluntarily participation in that examination negated his assertion that he did not agree to the second examiner. We review the district court's factual findings for clear error, reviewing "the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotations omitted).

The record supports the district court's finding that Ward voluntarily participated with the examination by the chosen second examiner. On February 22, 2021, at the request of Ward's attorney, the district court appointed Dr. Robertson as Ward's choice for the second examiner. Ward's attorney represented that he was experienced with Dr. Robertson and was "confident" that the choice was "appropriate." On April 6, the district court held a pretrial conference where the parties finalized the examiner and examination dates. Ward's attorney spoke to Ward on the phone at least 16 times before that April pretrial conference. On April 16, Dr. Robertson conducted an interview with Ward by video.

Counsel for Ward and the county were also present by video. At the start of the interview, Dr. Robertson informed Ward of various conditions of the interview, including that Ward had a right to refuse to participate and had a right to refuse to answer any question. Ward acknowledged the conditions and agreed to participate in the interview. Dr. Robertson's report was filed with the district court on May 26.

Ward's after-the-fact objection to Dr. Robertson does not negate his agreement to the examination. Ward did not object to the second examiner until after Dr. Robertson completed the examination and issued the final report. Ward did so a month later by filing a pro se motion to dismiss.[5] Before that time, Ward had multiple opportunities to object and chose not to do so. He did not object after his attorney chose the examiner or when Ward participated in the examination with the second examiner. Ward was given the opportunity not to participate in the examination with Dr. Robertson and chose to proceed. And while the record does not contain details of the consultation between Ward and his attorney about the choice of examiner, Ward's attorney represented to the district court that Ward had talked to him about "other examiners from New York City or Baltimore or Washington coming in." While Ward later identified a different second examiner, Ward has made no showing that the second examiner was available or willing to conduct the

[5] To the extent Ward argues he did not have an opportunity to object earlier, the district court noted that Ward repeatedly brought his own pro se motions and addressed the court directly whenever he wanted. While a respondent is not necessarily obligated to bring motions on his own behalf when he is represented by counsel, we cannot agree that Ward had no opportunity to object given his counsel's representation and Ward's demonstrated advocacy on his own behalf.

examination, why an examination by a different examiner would have yielded a different outcome, why he specifically objected to Dr. Robertson, why he consented to the examination by Dr. Robertson, why he did not object to Dr. Robertson earlier, or why Ward believed the selection of Dr. Robertson was a poor choice.[6] We cannot conclude that the district court erred in finding that Ward agreed to the choice of the second examiner after Ward willingly and cooperatively participated in the evaluation process through its conclusion.[7] *See In re Civ. Commitment of Cox*, No. A08-0910, 2009 WL 113397, at *4 (Minn. App. Jan. 20, 2009) (affirming that appellant not personally choosing his second examiner in civil-commitment proceeding was not a basis for granting a new trial when appellant failed to show who else he would have chosen, why his counsel made a poor choice, or why he did not agree with counsel's choice other than the fact that the second examiner recommended appellant's commitment), *rev. denied* (Minn. Mar. 31, 2009). And even if the district court's decision amounted to error, "the mere existence of that error is, by itself, insufficient to require a grant of relief; the appellant must also show that the error was prejudicial." *In re Civ. Commitment of Turner*, 950 N.W.2d 303, 309 (Minn. App. 2020). Ward has not shown prejudicial error, and we do not discern any given the first

[6] We observe that Ward argued to the district court that his attorney's selection of Dr. Robertson at the pretrial conference in Ward's absence violated his constitutional rights. But Ward cites to no authority in support of this argument and the district court found, as a factual matter, that Ward conferred with counsel before court proceedings. Ward also offers no explanation as to why his consultation with counsel, demonstrated ability to object on his own behalf, or acquiescence in the examination process are constitutionally insufficient.

[7] Before the district court, Ward argued that the remedy for this alleged error was dismissal of the petition but offered no legal basis for such a remedy and sought no alternate relief.

examiner's conclusions and the other significant evidence in the record supporting the district court's ultimate conclusions.

IV. The record supports the district court's conclusion that clear and convincing evidence establishes that Ward meets the standards for commitment as an SDP and an SPP.

Ward argues that the district court's order for commitment should be reversed because the county did not prove by clear and convincing evidence that he meets the statutory definitions of an SDP or an SPP. In a civil-commitment proceeding, the district court "shall make its determination upon the entire record." Minn. Stat. § 253B.08, subd. 7. We review de novo whether the record contains clear and convincing evidence to support commitment. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). We do not set aside findings of fact unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). We view the record in the light most favorable to the district court's decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). We defer to the district court's role as fact-finder and its opportunity to assess witness credibility. *Ramey*, 648 N.W.2d at 269.

An SDP is a person who (1) has engaged in a course of harmful sexual conduct; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct. Minn. Stat. § 253D.02, subd. 16.

SPP is defined as:

> the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the

> consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, *if the person has evidenced, by a habitual course of misconduct in sexual matters,* an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Minn. Stat. § 253D.02, subd. 15 (emphasis added). The county was required to prove these elements by clear and convincing evidence. Minn. Stat. § 253D.07, subd. 3.

Ward now appears to argue that the county did not offer clear and convincing evidence that he "engaged in a course of harmful sexual conduct" necessary to support a determination that he is an SDP, or a "habitual course of misconduct in sexual matters" necessary to support a determination that he is an SPP. Minn. Stat. § 253D.02, subds. 15, 16(1).

"Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253D.02, subd. 8(a) (2020). The requirement of a "course" of sexual misconduct under the SDP and SPP statutes "informs us that the [commitment] proceeding takes a longer, broader view of the person; it examines whether the offender's relevant sexual history and recent sexual conduct exposes a developing story that will, if unaltered, likely culminate in harmful sexual conduct." *In re Civ. Commitment of Crosby*, 824 N.W.2d 351, 358 (Minn. App. 2013). Accordingly, "[i]ncidents establishing a course of harmful sexual conduct need not be recent and are not limited to those that resulted in a criminal conviction." *Williams*, 735 N.W.2d at 731; *see also In re Monson*, 478 N.W.2d 785, 789 (Minn. App. 1991) (holding habitual course of sexual misconduct required for psychopathic personality commitment

was met where multiple acts of sexual abuse occurred, although appellant had only one conviction for criminal sexual conduct).

The record contains evidence of multiple incidents where Ward sexually assaulted different girls and women, supporting the district court's conclusion that clear and convincing evidence established that Ward engaged in a habitual course of harmful sexual conduct. The district court found that in 1991, Ward forcefully sexually assaulted A.T., a vulnerable juvenile. In May 2000, Ward violently held J.S.W. captive and raped her for several days. Shortly after, in August 2000, Ward violated an OFP by breaking into D.S.'s residence and raping her while her children were sleeping nearby. In 2008, Ward violently held S.A. captive, raped her, and assaulted her by burning her hair. In 2013, Ward violently and repeatedly choked D.S. and again sexually assaulted her.

Each of these women stated they were afraid of Ward, that he caused them to fear for their lives, and that they felt like they had to acquiesce to his sexual assaults because of their fear of him. This historical pattern of sexual violence over many years is clear and convincing evidence supporting the district court's determination that Ward engaged in a habitual course of harmful sexual conduct for purposes of the SDP and SPP statutes. *See In re Bieganowski*, 520 N.W.2d 525, 530 (Minn. App. 1994) (finding that similarities between incidents of sexual activity can be indicative of a habitual pattern). The two examiners also concluded Ward engaged in a habitual course of sexual misconduct, and the district court credited the examiners' expert testimony.

Ward argues this evidence is not clear and convincing proof that his sexual conduct was a "course" or harmful because (1) he disputes the underlying facts of many of the allegations, (2) he claims he did not have notice of J.S.W.'s sexual-assault allegation, and (3) he asserts that the August 2000 incident with D.S. was not harmful because it was not nonconsensual. At oral argument, Ward's attorney clarified that the district court could not properly conclude Ward was an SDP and an SPP when it relied predominately on hearsay. Each argument is unavailing.

First, Ward did not object to any exhibit, so we do not consider his argument that the evidence was unreliable. Even so, the district court specifically credited evidence originating from victims and reporters of sexual assaults by Ward, and it expressly discredited Ward's testimony. Second, to the extent Ward may not have had notice of J.S.W.'s allegations from the criminal records, the state's civil-commitment petition put Ward on notice of J.S.W.'s claim and the state's intent to rely upon it. *See Williams*, 735 N.W.2d at 732 (concluding "[t]he [civil commitment] petition gave [the appellant] notice that the county planned to rely on the reported events in seeking commitment"). Third, Ward's argument that his sexual assault of D.S. in 2000 was not harmful because it was consensual is not consistent with the credited facts as found by the district court, including that Ward broke into D.S.'s bedroom in the middle of the night, she told him he should not be there, and she did not respond affirmatively to any of his sexual advances. Finally, to the extent the district court relied on hearsay, we have addressed that argument above and conclude the district court's credited facts are sufficient to find by clear and convincing evidence that Ward committed a course of harmful sexual conduct. Thus, we affirm the

district court's conclusion that the record evidence clearly and convincingly establishes that Ward is an SDP and an SPP.

Affirmed.