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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1182**

In the Matter of the Civil Commitment of:
Oscar Lee Adams.

**Filed December 10, 2012
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-MH-PR-07-435

Oscar Lee Adams, Moose Lake, Minnesota (pro se appellant)

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

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

HALBROOKS, Judge

Pro se appellant Oscar Lee Adams challenges his indeterminate civil commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP), arguing that (1) the SDP and SPP commitment statutes are unconstitutional; (2) the district court made improper evidentiary rulings at his commitment trial; (3) the district

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

court abused its discretion in denying his counsel's request for a continuance; and (4) the district court was inherently biased against him. Because Adams's claims are without merit, we affirm the district court's orders for his indeterminate civil commitment.

FACTS

Between 1979 and 1983, Adams was convicted of six felonies in Georgia: credit card theft in 1979; burglary in 1980 and 1981; and four counts of theft by deception and ten counts of first-degree forgery in 1983. He was also convicted of five misdemeanors during this period: theft by taking on four different occasions in 1982 and criminal trespass in 1983. Adams was sentenced to five years in prison for the 1983 theft-by-deception conviction and ten years in prison for the 1983 forgery conviction and was imprisoned until 1990.

After his release from a Georgia state prison, Adams moved to Fargo, North Dakota and then to Minneapolis in 1991. In 1992, Adams was convicted of disorderly conduct, promoting prostitution, and theft. Adams began working in 1992 as an outreach counselor and athletic director at the Minneapolis Urban League. But he was asked to resign in early 1993 after several female students reported having been sexually harassed by Adams. Later that year, Adams was convicted of attempted theft by swindle and receiving profit derived from prostitution.

Between 1992 and 1995, Adams committed three sexual assaults in Minnesota. In March 1992, Adams sexually assaulted J.V., a woman who offered Adams a ride from a bar and invited him to stay at her apartment. Adams stayed at J.V.'s apartment for a few days. One morning, J.V. awoke to find Adams on top of her. He pinned her legs with his

knees and held her wrists with his hands. J.V. struggled to get free and told Adams “no” several times, but Adams vaginally penetrated her. J.V. reported the sexual assault to the Bloomington Police Department and her doctor about two weeks later and underwent testing for sexually transmitted diseases. Adams was never charged, but in the course of the commitment trial the district court found by clear and convincing evidence that Adams sexually assaulted J.V.

In February 1995, Adams assaulted M.R., a woman he had met weeks earlier at a bar in Eden Prairie. After their initial meeting, Adams telephoned M.R. on several occasions. On one such occasion, M.R. agreed to meet Adams at a hotel where he booked a room after he offered her \$10,000 to spend time with him. The two went to a restaurant and then returned to Adams’s hotel room, where they watched television. Adams asked M.R. to take off her clothes, but she refused. Adams removed his clothing and masturbated in front of M.R. and demanded that she unzip her pants. He then threw M.R. onto the bed and pinned her left arm down with his knees. Adams’s elbow struck M.R. in the lip. Adams twisted M.R.’s arm and tried to remove her pants. M.R.’s attempts to break Adams’s grip were futile. Adams continued twisting M.R.’s arm and pinned her right bicep with his knee. M.R. then took off her pants for fear of being hurt. Adams knelt over her and ejaculated on her inner thigh. After the sexual assault, Adams wiped M.R. down with a towel and instructed her to get dressed. M.R. then left. After she returned home, M.R. called the hotel and asked for the name of the occupant of room 1002, where she was assaulted. She was informed that the occupant was Oscar Lee Adams.

M.R. reported the incident to the Bloomington Police that night. She also went to the hospital and reported that she had been sexually assaulted. Police reports indicate that M.R., who was interviewed that night, had a swollen upper lip, blood on her sweatshirt, an abrasion on her right bicep and right wrist, and a bruise on her left bicep. That night, Adams was arrested at the hotel where the assault took place. Semen was detected on the towel removed from Adams's hotel room and on M.R.'s skin and underwear. M.R. later identified Adams as her assailant from a line up. Although Adams was never prosecuted for this sexual assault, the district court found by clear and convincing evidence that he sexually assaulted M.R.

On May 1, 1995, Adams responded to A.K.B.'s newspaper ad seeking a roommate. He called A.K.B., gave the name "Oscar," provided his telephone number, and said he wanted to see the apartment on May 30. After several phone calls on May 3, A.K.B. allowed Adams in to see the apartment. Adams sat down, began drinking a beer he had with him, and told A.K.B. that he would give her \$1,000 for a "little bit of [her] time." A.K.B. told Adams to look at the apartment and leave.

As A.K.B. gathered Adams's belongings, he grabbed her neck from behind. When she tried to push him away, he began choking her. Adams forced A.K.B. into her bedroom, while continuing to choke her. He then vaginally penetrated A.K.B. After Adams left, A.K.B. called 911 and reported the sexual assault. A.K.B. went to the hospital, where a nurse noted that the marks on A.K.B.'s neck were consistent with choking. The telephone number that Adams provided to the victim was traced to a motel where he had a room registered in his name. A.K.B. also identified Adams as her

assailant from a photo line up. A jury convicted Adams of first-degree criminal sexual conduct, and he was sentenced to 151 months' imprisonment. This court affirmed the conviction on direct appeal. *State v. Adams*, No. C3-96-623 (Minn. App. Jan. 21, 1997), *review denied* (Minn. Mar. 18, 1997).

While serving his sentence, Adams engaged in ongoing misconduct. From 1995 to 2007, Adams had over 100 disciplinary violations while in custody of the department of corrections (DOC) and, before that, over 100 disciplinary reports while imprisoned in Georgia. In 2002, Adams was convicted of fourth-degree felony assault for conduct while in prison, a conviction affirmed by this court. *State v. Adams*, No. C0-02-1593 (Minn. App. July 15, 2003), *review denied* (Minn. Oct. 21, 2003).

Prior to Adams's scheduled release from prison, the DOC filed a petition to have him civilly committed. The district court appointed two examiners to evaluate Adams and held a trial on August 20-22 and 27, 2007. Before trial, Adams's attorney moved to (1) dismiss the petition for commitment on numerous constitutional grounds; (2) secure a jury trial; (3) exclude various documents from admission at trial; and (4) postpone trial. Before trial commenced, the district court denied Adams's motion for a jury trial as well as his motion to dismiss, noting that the constitutionality of the challenged statutes was settled law. On the second day of trial, the district court issued an order denying Adams's motion to exclude certain documents from admission at trial, citing the basis of admissibility of each challenged document. After the county rested, Adams moved the district court for an in camera review of the personnel records of 14 DOC employees who were named in Adams's disciplinary reports. The district court characterized the request

as a “fishing expedition” and cited as reasons for denying the request, among others, that the information was largely confidential and the time to bring evidentiary motions had passed.

During trial, the district court heard testimony from the court-appointed examiners, Thomas Alberg, Ph.D., and Nadia Donchenko, Psy.D., who had interviewed Adams. Both Dr. Alberg and Dr. Donchenko diagnosed Adams with several psychological disorders, including paraphilia not otherwise specified (paraphilia NOS).¹ Both testified that their diagnoses were recognized by the Diagnostic and Statistical Manual (DSM-IV). Dr. Alberg and Dr. Donchenko each testified that Adams’s disorders cause him to have inadequate control over his sexual impulses and an utter lack of power to control his sexual impulses. They also testified that Adams engaged in a course of harmful sexual conduct and a habitual course of misconduct in sexual matters. Upon these findings, the district court concluded that Adams is an SDP and an SPP and issued an interim order, on November 7, 2007, for civil commitment subject to final determination as then required under the commitment statutes.

Before the district court issued its order, Adams had been admitted to the Minnesota Sex Offender Program (MSOP) on a pre-commitment order. But due to his

¹ Paraphilias involve recurrent, intense sexually arousing fantasies, urges, or behaviors involving (1) nonhuman objects, (2) the suffering or humiliation of oneself or one’s partner, or (3) children or other nonconsenting persons that occur for a period of at least six months. *Diagnostic and Statistical Manual of Mental Disorders* 566 (Am. Psychiatric Ass’n, 4th rev. ed. 2000). Paraphilia NOS is a paraphilia that does “not meet the criteria for any of the specific categories.” *Id.* at 576. Examples of paraphilia NOS “include, but are not limited to, telephone scatologia (obscene phone calls), necrophilia (corpses), partialism (exclusive focus on part of body), zoophilia (animals), coprophilia (feces), klismaphilia (enemas), and urophilia (urine).” *Id.*

disorderly conduct en route to MSOP, Adams's supervised release was revoked, and he was placed back in the custody of the commissioner of corrections on October 30, 2007. Adams was readmitted to MSOP on January 6, 2012, after his release from the DOC.

The district court held a final commitment-determination hearing on April 18, 2012. As required by law, a treatment report was filed with the district court prior to the hearing. In that report, Lauren Allen, Psy.D., attested that Adams's condition was "unchanged" and that "there is no new information that would suggest his risk to the community has diminished since the initial commitment." Dr. Allen concluded that Adams continues to meet the SDP and SPP commitment criteria. The district court considered this evidence along with a second report by Amanda Powers-Sawyer, Psy.D., an examiner appointed by the district court at Adams's request. Dr. Powers-Sawyer opined that Adams still meets the SDP and SPP criteria, remains at high risk of reoffending due to his lack of treatment participation, and lacks control over his impulses. At the final-determination hearing, Adams disagreed with Dr. Allen's conclusions but presented no evidence refuting them.

The district court ordered the indeterminate commitment of Adams based on its determination that he continued to meet the statutory criteria for an SDP and an SPP. This appeal follows.

DECISION

I.

Adams argues that Minn. Stat. § 253B.02, subs. 18b (defining SPP) and 18c (defining SDP) (2010), are unconstitutional. But the constitutionality of the SPP and

SDP commitment laws is well-settled. In *Linehan IV*, the Minnesota Supreme Court upheld the SDP statute and interpreted it as allowing commitment of those who engage in a prior course of sexually harmful behavior and whose disorder “does not allow them to adequately control their sexual impulses.” *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). Subsequently, in *Kansas v. Crane*, the United States Supreme Court clarified that substantive due process does not require a state to prove a complete lack of control, but only a “serious difficulty in controlling behavior” before committing a sexually dangerous person. 534 U.S. 407, 413, 122 S. Ct. 867, 870 (2002). The county correctly notes on appeal that the lack-of-adequate-control standard enunciated in *Linehan IV* satisfies the *Crane* standard. *In re Martinelli*, 649 N.W.2d 886, 891-92 (Minn. App. 2002), *review denied* (Minn. Oct. 29, 2002).

Adams cites *Linehan v. Milczark*, 315 F.3d 920, (8th Cir. 2003), in support of his argument that the SDP standard fails to distinguish between the typical recidivist and dangerous sexual offenders. But *Milczark* upheld the Minnesota SDP standard precisely because it “adequately distinguishes between the typical recidivist and the dangerous sexual offender and complies with substantive due process requirements.” 315 F.3d at 927-28.

The constitutionality of the SPP statute is also settled law. See *In re Blodgett*, 510 N.W.2d 910, 916-17 (Minn. 1994) (upholding an earlier version of the SPP law as constitutional against substantive-due-process and equal-protection challenges); *State ex rel. Pearson v. Probate Court*, 205 Minn. 545, 555, 287 N.W. 297, 302 (1939) (upholding the SPP law as constitutional against a void-for-vagueness challenge), *aff'd*,

309 U.S. 270, 60 S. Ct. 523 (1940); *see also Joelson v. O'Keefe*, 594 N.W.2d 905, 909 (Minn. App. 1999) (reiterating the constitutionality of the SPP law), *review denied* (Minn. July 28, 1999).

Here, the district court's initial commitment and final determination orders follow the *Linehan IV* lack-of-adequate-control standard. In its initial commitment order, the district court found by clear and convincing evidence "that Adams' past sexual misconduct and his future dangerousness are a result of [his] disorders and he, therefore, does not have adequate control over his sexual impulses and that he has an utter lack of power to control his sexual impulses." Based on these findings, among others, the district court determined that Adams is an SDP and an SPP. After Adams's final determination hearing, the district court concluded there had been no change in Adams's condition since the initial order and that he continues to meet the definitions of an SDP and SPP. On this basis, as warranted under the commitment laws, the district court ordered Adams's indeterminate civil commitment.

Finally, Adams asserts that the commitment statutes are being used as preventative detention. But the Minnesota Supreme Court has rejected this argument and held that civil commitment is not punitive but remedial in nature. *Call v. Gomez*, 535 N.W.2d 312, 319-20 (Minn. 1995).

II.

Adams argues that at his commitment trial the district court improperly admitted (1) DOC disciplinary records; (2) a list of lawsuits that Adams brought against DOC employees; and (3) testimonial evidence that Adams had been diagnosed with paraphilia

NOS. He also argues that the district court improperly refused to order an in camera review of the personnel records of various DOC employees. “The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted).

A. Disciplinary records

At the commitment trial, the district court admitted over 100 records of Adams’s disciplinary violations while in DOC custody. Adams moved to exclude only one of those records—a “notice of violation” involving a threatening telephone call that Adams made from prison to a U.S. Bank employee—on the ground that it contained inadmissible hearsay. The district court disagreed and admitted the record because (1) it contained non-hearsay admissions by a party opponent; (2) the business-record hearsay exception applied; and (3) the public-record hearsay exception applied.

Adams does not challenge the district court’s hearsay ruling. Instead, he now objects to the record’s admission on the basis that it was offered as evidence of bad character or a past act in violation of Minn. R. Evid 404. Rule 404(a) provides that evidence of a person’s character is inadmissible for the purpose of proving that he acted in conformity with that character trait on a particular occasion. Evidence of a past act is also inadmissible to prove that a person acted in conformity with that past act on a particular occasion. Minn. R. Evid. 404(b). But evidence of a past act is admissible for

other purposes, including but not limited to proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake. *Id.*

Because Adams raises this rule 404 objection for the first time on appeal, the issue is not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (limiting appellate review to matters raised before the district court). But even if the objection had been raised to the district court, Adams's argument would fail. The evidence of the threatening telephone call that Adams placed from prison was not introduced at trial to prove that he committed a conforming act on another occasion. It was offered to show the extent to which Adams could control his behavior—an inquiry germane to the examiners' assessment of Adams's recidivism risk and the district court's ultimate civil-commitment determination. The examiners testified that Adams's conduct while in prison informed their assessment of his risk of reoffending. This purpose is permissible under rule 404(b).

B. Adams's lawsuits against the DOC

Adams next objects to the district court's admission of a list of lawsuits that he previously brought against DOC employees. At trial, Adams objected to admission of the list on the grounds that it was irrelevant and barred under rule 404, but later withdrew that objection. Despite Adams having retracted his objection, the district court determined that the list was admissible.

Relevant evidence is broadly defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401.

This evidence was relevant because, as the district court explained, the document tended to show Adams's long-term conflict with authority, his resistance to rules, his low likelihood of following community supervision, and behavior that is consistent with a personality disorder. For the same reason, the evidence did not violate rule 404. The list of lawsuits against DOC employees was not offered to prove that Adams acted in conformity with those past acts on a particular occasion. Instead, it was offered to show whether Adams could obey authority and whether he suffered a personality disorder. As previously discussed, rule 404 does not bar admission of evidence for this purpose. As such, even if Adams had not withdrawn his evidentiary objection, it was well within the district court's discretion to admit this evidence.

C. Adams's diagnosis

Adams argues that the district court abused its discretion in allowing the court-appointed medical examiners to testify about his diagnosis of paraphilia NOS because this mental disorder is not recognized by the scientific community. Because Adams did not raise this issue before the district court, it is not properly before us on appeal.

Nonetheless, Adams's assertion is wholly without merit. He argues that because paraphilia coercive disorder (PCD) was rejected from inclusion in DSM III and DSM V, the examiners should not have been allowed to testify in his case. But there is no evidence to suggest that Adams was ever diagnosed with PCD. Instead, the examiners testified that Adams suffers paraphilia NOS, a condition included in DSM-IV and recognized by the psychiatric community. This argument, along with Adams's additional

assertion that paraphilia NOS is a rape-based paraphilia, is specious and unsupported by the record.

D. DOC personnel records

Adams cites as error the district court's refusal to compel production of or conduct an in camera review of the personnel records of 14 DOC employees who are listed in Adams's disciplinary records.

After the county rested its case, Adams moved the district court to compel production of these records. In his oral motion, Adams argued that because the examiners relied on the DOC's disciplinary records in rendering their opinions, DOC personnel files were pertinent to the credibility of the employees who either wrote incident reports or testified at Adams's disciplinary hearings. He suggested that one of the employees might have used excessive force on African-American inmates and that the personnel records would speak to that issue. He further asserted that *State v. Renneke*, 563 N.W.2d 335 (Minn. App. 1997), *abrogated on other grounds*, *State v. Underdahl*, 767 N.W.2d 677 (Minn. 2009), required the district court to conduct an in camera review of requested documents to determine if any should be disclosed.

In denying the motion, the court noted that (1) the information sought was largely confidential, (2) the county had not been properly apprised of the issue, (3) the county had already rested its case, (4) Adams had objected to only one disciplinary record, and (5) the time for objecting had passed because the parties set firm deadlines for all evidentiary motions. The district court further determined that Adams's credibility

arguments were too tenuously related to the civil-commitment determination that the court was to make and that *Renneke* is not controlling.

On appeal, Adams again argues that, under *Renneke*, the district court was required to conduct an in camera review of the personnel records to determine whether any should be produced. We disagree. The district court properly determined that *Renneke* is distinguishable. Not only did that matter involve discovery in the criminal context, but the nexus between the legal question in Adams's civil-commitment proceeding (whether he is an SDP or SPP) and the personnel records sought is not just tenuous but unconvincing. The district court, therefore, did not abuse its discretion by refusing to compel production of or conduct an in camera review of the personnel records sought.

III.

Adams argues that the district court abused its discretion in denying his pretrial motion for a continuance. But Adams has failed to provide this court with a transcript of the proceedings on this motion or any other evidence indicating how the district court ruled. Without an adequate record, appellate review of this issue is not possible.

IV.

Adams argues that, because his pretrial motions were denied, the district court was unfairly biased. There is no evidence in the record of judicial bias. And Adams fails to offer any explanation for his bare assertion that the pretrial rulings, although unfavorable to him, reveal any suggestion of bias. This allegation is entirely without merit.

V.

Finally, we note that after briefing in this appeal was complete, Adams filed a motion with this court, seeking a remand to the district court on the ground that the district court administrator destroyed the documentary exhibits admitted at his 2007 commitment trial. In an order filed on October 31, 2012, we denied Adams's motion because replacement copies of the original trial exhibits have been provided to Adams, Adams's court-appointed counsel, the district court administrator, and to this court. Adams has not alleged any inaccuracies in these replacement copies.

Affirmed.