STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2258

In the Matter of the Civil Commitment of:
Eric Woods Halvorson.

Filed September 15, 2009
Affirmed
Muehlberg, Judge[*]

Pope County District Court
File No. 61-PR-07-916

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Belvin Doebbert, Pope County Attorney, P.O. Box 288, Glenwood, MN 56334 (for respondent State of Minnesota)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Muehlberg, Judge.

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

MUEHLBERG, Judge

The district court committed appellant as a sexually dangerous person, and appellant challenges the commitment. Appellant argues that there was insufficient evidence to support the district court's conclusion that he engaged in a course of harmful

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

sexual conduct and is highly likely to engage in future acts of harmful sexual conduct. We conclude that sufficient evidence supports the commitment and affirm.

FACTS

Pope County Social Services petitioned for appellant Eric Woods Halvorson's civil commitment as a sexual psychopathic personality (SPP) under Minn. Stat. § 253B.02, subd. 18b (2006), and a sexually dangerous person (SDP) under Minn. Stat. § 253B.02, subd. 18c (2006). When the petition was filed, appellant was 56 years old and in prison, serving a sentence on second-degree criminal sexual conduct and kidnapping convictions.

The county alleged that appellant had a history of harmful sexual conduct beginning in 1966 and continuing until 1992, when he committed the offenses that led to his most recent period of incarceration. According to testimony and records admitted at appellant's commitment trial, appellant's history of violent sexual conduct includes the following:

- **Victim Name Unknown:** When appellant was 16, he approached a girl in school and ripped her blouse when she refused to kiss him.
- **Victim V.C.:** In 1968, appellant drove to a beach on his motorcycle with a nine-year-old girl, V.C., pretended the motorcycle was broken, and asked V.C. to go into a building to get out of the wind. In the building, he asked V.C. if she wanted to "f-ck." She attempted to get away and screamed, and appellant put his hand over her mouth and unzipped her jacket. She struggled and got away. Appellant was charged as a juvenile with indecent

assault, admitted to the allegations, and was committed to the Youth Conservation Commission.

- **Victims P.G. and R.F.:** On November 7, 1974, victim, P.G., and her friend, R.F., were in a parking lot outside of a car. Appellant ran out of the dark, shot R.F., threw her into the car, and then tried to make her drive. Appellant ended up driving the car with P.G. and R.F. inside. In the car, P.G. told appellant that they had to bring R.F. to a hospital. Appellant brought R.F. "near the hospital" and R.F. got out of the car. P.G. tried to go with her, but appellant put his gun to her head and told her she was not going anywhere. Appellant "took off" with R.F. "staggering around" outside. Appellant drove into the country, kept the gun at P.G.'s head, and told her to take off all of her clothes. Appellant made her kiss him, touched and kissed her breasts, and put his fingers in her vagina. He made her fondle his penis and perform oral sex. Appellant then put her on the roof of the car, naked. He made her spread her legs, and then touched her and penetrated her vagina with his fingers. He had her get back in the car, and then made her touch his penis and perform oral sex again, and ordered her to swallow when he ejaculated. He drove back to the parking lot where he first encountered the victims and surrendered to police. Appellant was convicted of aggravated sodomy and two counts of aggravated assault and received a 30-year sentence. Appellant completed sex-offender treatment

while serving this sentence, was released from prison in 1979, and discharged from parole in 1981.

- **Victim M.B.:** In the winter of 1988, when M.B. encountered appellant at a house, went to a bar with him, and then left the bar with him thinking they were going to a friend's house. Appellant drove to his home in rural Glenwood. M.B. thought that she was in trouble when he did not turn to go to the friend's house; she thought that appellant was normal sometimes and not normal other times, and she knew that he had a rape conviction. He left her in the vehicle outside and remained inside for "a considerable amount of time." She felt terrified and vulnerable, but did not leave because it was cold, snowy, and windy, and she had nowhere to go. Appellant came outside and dragged her into the house, and while she was on a couch, appellant tore her clothing and asked her to have sex with him, but she refused. She ended up in his bedroom, pleading with him to let her go. At one point he yanked a phone away from her. She resisted and kicked him when he was unclothed. Appellant told her that if she posed for nude pictures, he would bring her home. She agreed. He inserted a beer bottle into her vagina and made her pose for pictures. After the pictures, he brought her back to the house where they originally met. She and her boyfriend went to appellant's house that night, and her boyfriend retrieved the pictures. M.B. and her boyfriend then went to Gerald Moe's house; Moe was sheriff of Pope County at the time. It was 3:00 or 4:00 in the

morning, but they pounded on the door and woke him up. According to M.B., Moe convinced her that appellant had not raped her so there was nothing that could be done.

- **Victim N.C.:** On March 14, 1992, after encountering victim N.C. at a bar, appellant took her to the milking area of a barn located on appellant's family farm, where his house was located. He pulled her into the barn, used ropes to tie her hands above her head, lifted her clothes and touched her breasts, and tried to touch her vaginal area but could not because she kept her legs and feet locked together. Appellant got a two-inch-long bovine needle with a syringe and told her that she was going to hurt. He put the needle into the left side of her right nipple and pushed it until it came out the other side of her breast. Appellant told her he would let her down if she performed oral sex on him, but after he let her down she screamed and refused. Appellant then drove her to her apartment. Appellant was convicted of two counts of second-degree criminal sexual conduct and two counts of kidnapping and received a 40-year sentence. After two modifications, appellant's sentence was 20 years for criminal sexual conduct and a consecutive term of 42 months for kidnapping. Appellant was serving this sentence when the commitment petition was filed.

After the trial, the district court concluded that appellant met the criteria for an SDP but not an SPP. Appellant's arguments on appeal focus on the evidence supporting

the district court's findings that he engaged in a course of harmful sexual conduct and is likely to engage in harmful sexual conduct in the future.

Trial Exhibits

Documentary exhibits admitted at trial include appellant's records with government entities, including Pope County, the Department of Corrections (DOC), and the military.

In July 1992, appellant had a psychological evaluation. In this evaluation, appellant denied inappropriate sexual behavior. Appellant's "basic personality traits" included a "proclivity to be capricious, easily excited, and intolerant of frustration, delay, and disappointment." The evaluator concluded that appellant's sexual behavior was so ingrained that the risk of reoffending was great.

Appellant's 1992 presentence-investigation report indicates that appellant denied that his conduct in the 1992 incident was illegal.

While serving his sentence on his 1992 offenses, appellant obtained therapy. He began seeing Dr. Kenneth Carlson in 1992. In October 1993, appellant told the therapist that he applied to go to sex-offender treatment and was hopeful that it would influence the judge to reduce his sentence. The therapist noted: "He continues to struggle with the thought that he may be a true sex deviant. He finds this very difficult to accept about himself despite his long history of sex offending."

In 1997, appellant began seeing Dr. Suzanne Erie, who started using the surname Chase in December 1997. The records from his therapy with Dr. Chase reflect that appellant discussed his desire to be in a bondage-type relationship after his release from

prison and was unable to achieve orgasm without involving bondage-type activities in his fantasies. Dr. Chase expressed multiple times in her notes a concern that appellant obtained sexual enjoyment or stimulation from discussing his fantasies in therapy. In the notes from one session, the therapist noted that appellant had "so much of himself wrapped up into his sexual behavior" that she was "concerned he hadn't developed other aspects of himself." In his last session before transferring to a different facility, he told the therapist that he picked her based on her coming across as an attractive woman, and that he needed a face to go with his fantasies and filled it with her face.

In June 2001, appellant met with another therapist, Ralph Cornelia, M.A., in the Lino Lakes facility and "wanted to discuss his 'kinky' sexual fantasies."

In 2006, a psychologist evaluated appellant for possible referral for commitment as an SDP/SPP. The report states appellant's MnSOST-R score was associated with sexual offenders who have a re-arrest rate of 57% over a six-year period. His Static 99 score was associated with a group of offenders who have a sexual reconviction rate of 45% over a ten-year period.

Appellant's end-of-confinement meeting took place on June 18, 2007. Appellant was represented by counsel at the meeting and challenged the risk-level determination. The report states that appellant was asked if he had any concerns about any sexual problems and answered, "No, not since treatment." When asked what treatment taught him, he answered, "I don't know."

Appellant's Testimony

Appellant admitted an ongoing interest in bondage or submissive sexual practices that began when he served in Vietnam. Appellant testified that at some point after his release from his sentence for the 1974 offense, appellant began obtaining the services of prostitutes for "that type of sexual activity," and had relationships of a similar nature with other women as well. The 1988 and the 1992 incidents followed. Regarding the 1992 incident, appellant testified that he might have gone "too far." He testified that the act with N.C. was "consensual up until probably the act of sexual deviant behavior." He did not complete sex-offender treatment following the 1992 convictions in part because he did not want to admit his guilt. As to his present state, appellant testified that he no longer has an interest in deviant sexual behavior, and that his interest stopped when he realized what he did in 1992 could have resulted from his deviant sexual behavior, stating "I got put in prison for that kind of behavior so I can't be doing that no more." He planned to avoid reoffending by not engaging or asking anyone to engage in that kind of sexual behavior.

Victim Testimony

The victims of several of appellant's violent sexual acts testified to the facts and the impact of the incidents. The victim of the 1974 offense, P.M., formerly known as P.G., testified that she remembered what happened because "[i]t never leaves" and added, "I'll be tormented until the day I die." The victim of the 1992 offense, N.N., formerly known as N.C., testified that because of the attack, she had terrible relationships, could not handle crowds and thus could not go to malls or fairs, she could not sleep, and never

felt safe. She felt she would never have friends and would always feel afraid. M.B., the victim of the 1988 incident, testified the incident had affected her emotionally for 20 years, that she would become physically sick when thinking of it, that she was fearful to be alone, had night terrors, and had "dreams and things that just never quit."

Testimony from Psychological Experts

Dr. Robert Riedel, a court-appointed psychologist, testified about his evaluation of appellant, and his report was admitted as Exhibit 12. Dr. Riedel concluded that appellant met the criteria for an SDP. In reaching his conclusions, Dr. Riedel analyzed whether appellant had engaged in harmful sexual conduct, has a disorder, and is likely to reoffend. Dr. Riedel concluded that appellant had engaged in a course of harmful sexual conduct, noting the impact on the numerous victims and the violent acts that occurred and that, in his experience, victims of "this type of conduct" suffer from nightmares, hyper-vigilance, posttraumatic-stress disorder, an inability to have good relationships, fears about their own children, phobias, panic disorders, depression, and frequently suffer from sexual dysfunction and an inability to establish intimacy. Dr. Riedel concluded that appellant engaged in a course of harmful sexual conduct even if the only conduct at issue were the incidents with N.C. and P.G. Regarding a disorder, Dr. Riedel diagnosed appellant with paraphilia not otherwise specified with masochistic, sadistic, and nonconsent features, and defined paraphilia as "an unusual sexual practice and a sexual practice that is maybe not socially acceptable but a[n] atypical sexual practice." Paraphilia "not otherwise specified" means, in this instance that appellant has multiple disorders, including

masochistic, sadistic, and non-consent features. Dr. Riedel also diagnosed appellant with antisocial personality disorder.

Regarding the likelihood of future harmful conduct, Dr. Riedel used actuarial tools to assess appellant's risk of reoffense. Dr. Riedel used multiple tools, but committed errors in scoring some of them such that accurate data was available at trial for only some of the tools. The information available at trial showed a risk of another violent offense to be: (1) 76% after seven years and 82% after 10 years under a tool called the SORAG; (2) 55% after seven years and 64% after 10 years under a tool called the VRAG; and (3) a "high risk of reoffense" under a tool called the HCR-20. Dr. Riedel also used several tools to assess the risk of another sexual offense. Under the MnSOST-R, the risk of reoffense was 70%; under the Static 99 the risk was 39% in five years, 45% in 10 years, and 52% in 15 years. Dr. Riedel concluded that the actuarial tools underestimate the risk of reoffense because they are concerned with future legal processes for offenses and the commitment proceedings are concerned with future acts, and because commitment is concerned with reoffense over a lifetime and the risk assessments predict reoffense over relatively short periods of time. Dr. Riedel also noted that sexual offenses are underreported. On cross-examination, Dr. Riedel agreed that appellant's risk of recidivism "has decreased because of his age" and "is likely to decline in the future."

Dr. John Austin, an expert in forensic psychology serving as a consultant to appellant's counsel, testified that he had reviewed the records in this case, and took issue with Dr. Riedel's report and testimony. According to Dr. Austin, the rate of reoffense under a study relied upon by Dr. Riedel shows that reoffense rates go down as time goes

on and that the longer someone is out, the less likely they are to reoffend. To Dr. Austin, appellant's age of 56 "would be very relevant in understanding his likelihood of sexual recidivism" because as persons with at least one conviction for a sexual offense age, their likelihood of committing another sexual offense is decreased. As to why that may be, "[t]here's lots of speculation." Dr. Austin also testified that "what's uncertain in the literature about the effect of age is whether or not or how much to adjust actuarial predictions based on age." He explained, "What's clear is that sexual reoffending decreases with advanced age. What's not clear is what we should do about it. So the debate is should we adjust our actuarial and if so, how." Dr. Austin testified that the literature indicates that "we don't know yet enough about the [e]ffects of age to actually alter the predictions," but that "there may be some reason to believe" the predictions "don't apply as accurately to older offenders." After the county completed its cross-examination of Dr. Austin, the district court examined him briefly regarding age. The district court clarified with Dr. Austin that his testimony regarding age was that some of the actuarial instruments may not adequately take age into account and that his testimony was not that a person over the age of 60 no longer needs sex-offender treatment or that a person over the age of 60 presently in sex-offender treatment should be released.

Appellant also called Dr. Robert Barron, a licensed psychologist retained by appellant. Dr. Barron interviewed appellant twice, administered the MMPI-II, and prepared a psychological evaluation admitted as Exhibit 19. Dr. Barron reviewed Dr. Riedel's scoring of the MnSOST-R and disagreed with Dr. Riedel's scoring in several respects. Under Dr. Barron's scoring, the MnSOST-R reflected a moderate risk level of

45%. On cross-examination, Dr. Barron testified that he had never been court-appointed as an examiner, had never had training on how to use actuarial instruments for violent sex offenders, and had never had training on scoring or interpreting the MnSOST-R. Dr. Barron also testified on cross-examination that in his first interview with appellant, completed in February 2007, appellant strongly denied his guilt of the 1992 offense and stated that he would not complete sex-offender treatment because he was not guilty of the offense. In Dr. Barron's second interview with appellant, which took place in February 2008, appellant admitted that he had read a book in California about bondage that caused him to have sexually exciting fantasies about bondage. When questioned about whether the fantasies played a role in his offenses, appellant reported that the fantasies were current. In the second interview, appellant reported that he now thought that he misinterpreted the 1992 victim's interests.

Later in the trial, the county called Dr. Riedel back to the stand. Dr. Riedel responded to some of the testimony about his report, noting that age is a factor on the MnSOST-R. Counsel noted the testimony that science was uncertain on how much to reduce risk to account for age, and Dr. Riedel testified that he did not believe that appellant's age should reduce his risk below the level of highly likely and that other factors associated with recidivism were relevant. Dr. Riedel also testified that there were aspects of appellant's personality that could make it difficult for him to succeed in outpatient treatment, including defensiveness and inability to be upfront and open about the facts of his offenses as reported by the victims.

Appellant re-called Dr. Austin. Dr. Austin agreed with Dr. Riedel that there was not enough science to formally adjust the actuarial predictions for age, but Dr. Austin thought that "that doesn't negate the fact that age is a significant factor in its association with decreased recidivism." Dr. Austin concluded by agreeing that he was telling the court that "you can't rely on these actuarial risk assessment tools completely in making a prediction about reoffense."

Findings and Order

The district court made extensive findings on appellant's history. Particularly notable findings include that M.B.'s testimony was more credible than appellant's regarding the 1988 incident, appellant's testimony about misinterpreting N.C.'s intentions was contrary to "voluminous" statements in his prison records where he maintained he did nothing wrong in the 1992 incident, and appellant's testimony "lacks credibility and must not be accorded much weight." Regarding the psychological experts, the district court found that: (1) "Dr. Riedel's opinions concerning [appellant's] course of harmful sexual conduct are persuasive"; (2) Dr. Riedel's opinions were most persuasive on whether relevant factors indicated that appellant is highly likely to reoffend; (3) Dr. Austin's opinions and testimony were not persuasive; and (4) Dr. Barron's testimony and opinions were not very credible or persuasive on the material issues in this case. The district court ordered appellant committed on an interim basis.

Motion for Amended Findings

The county and appellant moved for amended findings. The district court denied appellant's motion, but granted the county's in part. The district court amended findings

64 and 65 to state, among other things, that the district court found Dr. Riedel's testimony that appellant cannot control his sexual impulses to be credible for purposes of the SDP statute.

60-Day Review

The order addressing the motions for amended findings also addressed a 60-day review hearing. The district court found that appellant's need for treatment had not changed and ordered indefinite commitment subject to periodic review. This appeal follows.

D E C I S I O N

If a court finds by clear and convincing evidence that a proposed patient is an SDP, the court shall commit the person for treatment. Minn. Stat. §§ 253B.18, subd. 1(a), 253B.02, subd. 17(b) (2008). An SPD 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. § 253B.02, subd. 18c(a) (2008).

Review of a civil-commitment order is limited to examining whether the district court complied with the commitment statutes and whether the commitment is "justified by findings based upon evidence at the hearing." *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). "The record is viewed in the light most favorable to the trial court's decision." *Id.* "Findings 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 witness." *Id.* (citing Minn. R. Civ. P.

52.01). "Where the findings of fact rest almost entirely on expert testimony, the trial court's evaluation of credibility is of particular significance." *Id.* But this court reviews de novo whether clear and convincing evidence supports a conclusion that the standards for commitment are met. *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

The district court found that appellant met each requirement for commitment as an SDP by clear and convincing evidence. Appellant argues the evidence was insufficient to establish that: (1) he has engaged in a course of harmful sexual conduct; and (2) he is likely to engage in future acts of harmful sexual conduct.

Course of Harmful Sexual Conduct

In *In re Stone*, this court analyzed this element by comparing the facts "of the established incidents, viewed in the light most favorable to the district court's conclusions, to the statutory definition of harmful sexual conduct," and then determined "whether the incidents of qualifying conduct together constitute a course of harmful sexual conduct." 711 N.W.2d 831, 838 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

Harmful Sexual Conduct

"Harmful sexual conduct" is "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another." Minn. Stat. § 253B.02, subd. 7a(a) (2008). A rebuttable presumption establishes that conduct described in certain criminal-code sections creates a substantial likelihood that a victim will suffer serious physical or emotional harm. *Id.*, subd. 7a(b) (2008). The sections include first- through fourth-degree criminal sexual conduct under Minn. Stat. §§ 609.342-345. *Id.* The rebuttable

presumption created by subdivision 7a(b) "is not that a victim actually suffers serious emotional harm, but that the conduct creates a substantial likelihood of such harm." *Stone*, 711 N.W.2d at 837.

When a district court makes "no factual findings of the extent of the sexual abuse or the degree of harm" that a victim suffered, this court examines "whether the evidence clearly and convincingly established that [the victim] is likely to suffer serious emotional harm." *Id.* at 838. Expert testimony on the likelihood of serious harm combined with indications of harmful effects on victims can establish that a victim is likely to suffer serious emotional harm from conduct. *Id.*

The district court's findings on appellant's history of harmful sexual conduct are extensive and cover the facts of the incidents, expert opinion on likelihood of harm, and victim testimony on actual harm. The district court described appellant's conduct with each victim from 1966 to 1992, found that "Dr. Riedel indicated that [appellant's] sexual offending is very likely to cause serious emotional and physical harm to his victims," and found that the "severe emotional harm to the victims was reinforced by the testimony of victims N.C., P.M., and M.B., who all related the severe emotional and physical pain and trauma that they experienced at [appellant's] hands." The district court elaborated, "They all had long-lasting fears, have had to engage in counseling, have had intimacy and relationship problems and have continuing fear for their physical safety and inability to trust." The district court found that Dr. Riedel's opinions were persuasive and that appellant had introduced no evidence to rebut the presumption of harm arising when an offender commits "certain sex crimes."

The district court's findings are adequately supported by the record and not clearly erroneous, particularly in light of the deference this court shows to the district court's reliance on expert testimony. *See Knops*, 536 N.W.2d at 620 (stating that when findings rest almost entirely on expert testimony, the district court's evaluation of credibility has particular significance). Appellant's history of violent sexual conduct began at least as early as 16, continued over his lifetime, and has involved several instances of forcing or attempting to force victims into sexual conduct without their consent, sometimes using extreme violence. The district court's finding is also supported by Dr. Riedel's opinion, which the district court found persuasive, and the victim testimony as to the actual harm suffered from appellant's violent sexual conduct. Finally, two of appellant's offenses raise the presumption of harm. The offense with N.C. led to convictions of second-degree criminal sexual conduct, and the offense with P.G. fits within the definition of first-degree criminal sexual conduct. *See* Minn. Stat. § 609.342(c) (2008) (defining first-degree criminal sexual conduct as penetration when the complainant has a reasonable fear of imminent great bodily harm). The facts cited by the district court and established in the record provide clear and convincing evidence that appellant's sexual conduct has been harmful.

In arguing that the evidence was insufficient to establish harmful sexual conduct, appellant minimizes his history of sexual violence, noting that his conviction related to V.C. does not raise a presumption of harm, and challenges M.B.'s version of events. But appellant's history shows numerous violent sexual incidents in which appellant forced or attempted to force victims to engage in sexual behavior against their will, and the district

court found M.B.'s testimony to be credible. Appellant's argument is not persuasive, and he has not demonstrated that the district court was incorrect to conclude that his sexual conduct was harmful.

Course

"The statute does not define 'course' or specify the number of incidents necessary to qualify as a course." *Stone*, 711 N.W.2d at 837. "Minnesota caselaw, however, indicates that 'course' is a 'systematic or orderly succession; a sequence.'" *Id.* (quoting *In re Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002)). The conduct need not be similar to be a course of conduct for purposes of the SDP statute. *Id.* "An examination of whether an offender engaged in a course of harmful sexual conduct takes into account both conduct for which the offender was convicted and conduct that did not result in a conviction." *Id.* The incidents that establish the course "need not be recent," and "the existence of a period in which a person has not committed sex offenses does not preclude a determination that he engaged in a course of sexual misconduct." *Id.* at 837-38. Expert testimony may support a conclusion that past instances of conduct constitute a course of harmful sexual conduct. *Id.* at 839-40.

In this case, in finding that appellant's conduct amounted to a course of harmful sexual conduct, the district court relied on Dr. Riedel's opinion that appellant's conduct was habitual and formed a course of conduct, noting that Dr. Riedel based his opinion on "the fact that appellant sexually offended against V.C., a 9 year old stranger; R.F. and P.M., two female strangers; M.B., a female acquaintance; and N.C., a female acquaintance."

The district court's finding is adequately supported by the record and is not clearly erroneous, particularly in light of the deference shown to the district court's reliance on expert testimony. *See Knops*, 536 N.W.2d at 620. Appellant's long history of offenses and Dr. Riedel's opinion adequately support the finding. The history of offenses provides clear and convincing evidence of a course of harmful sexual conduct.

In arguing that the evidence was insufficient, appellant characterizes his sexual assaults as "sporadic" and of a "varied nature." But the record shows that appellant has persistently and since a young age used violence to force or attempt to force victims to engage in sexual behavior. This history shows the "sequence" or "orderly succession" that establishes a course. *See Stone*, 711 N.W.2d at 837 (defining "course").

Likely to Engage in Future Harmful Sexual Conduct

Commitment as an SDP requires a finding that the proposed patient is likely to engage in harmful sexual conduct in the future. Minn. Stat. § 253B.02, subd. 18c(a)(3); *In re Linehan*, 557 N.W.2d 171, 179 (Minn. 1996) (*Linehan III*). For harm to be "likely" for these purposes, it must be "highly likely." *Linehan III*, 557 N.W.2d at 180.

A "multi-factor analysis for dangerousness prediction" was outlined in *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*), and followed in *Linehan III*, 557 N.W.2d at 189, for prediction of likelihood of future harm under the SDP statute. *See also In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*) (stating that the court would not again address elements of commitment that were "fully reviewed in *Linehan III*"). The court listed six factors to consider in predicting danger to the public: (1) the person's relevant demographic characteristics, such as age and education; (2) the

person's history of violent behavior, paying special attention to recency, severity, and frequency of violent acts; (3) the base-rate statistics for violent behavior among individuals of this person's background, such as data showing the rate at which rapists recidivate or the correlation between age and criminal sexual activity; (4) the sources of stress in the environment and indications that the person may be predisposed to cope with stress in a particular manner; (5) the similarity of the present or future context to those in which the person has used violence in the past; and (6) the person's record with respect to sex therapy programs. *Linehan I*, 518 N.W.2d at 614. In *Linehan III*, the supreme court, rejecting an argument that actuarial methods or base rates are the "sole permissible basis for prediction," concluded that the district court properly considered the six *Linehan I* factors and that the district court did not err in considering evidence "not specifically listed in *Linehan I*." 557 N.W.2d at 189.

In *Linehan III*, the supreme court also addressed in detail the adequacy of evidence relating to Linehan's likelihood of future harm under *Linehan I* and other factors. *Id.* at 189-91. Linehan was 54 when committed, and in finding that Linehan was likely to repeat a course of harmful sexual conduct, the district court weighed Linehan's age in his favor. *Id.* at 174, 178. But other factors weighed against him, including testimony that child molesters were less prone to moderate their behavior with age, his history of violent conduct, that the time that had lapsed since his last criminal act was explained by his lack of opportunity to reoffend while in custody, stress upon release, and Linehan's need for and refusal to obtain treatment and support to prevent him from consuming alcohol. *Id.* at 178. Additional factors included that Linehan was still attracted to young girls and

recently displayed impulsiveness, deceitfulness, lack of remorse, and aggressiveness. *Id.* The supreme court affirmed the district court, stating that though Linehan believed evidence related to his age deserved more weight, "that determination was largely for the district court and its assessment of expert testimony." *Id.* at 190.

In this case, the district court similarly relied on a number of factors in concluding appellant was highly likely to reoffend. The district court began by noting "[appellant's] past convictions for known sex offenses, the use of force in some of his sexually inappropriate behaviors, his shallow acknowledgement of his offenses, his lack of insight, and his denial and minimization." The district court also noted Dr. Riedel's opinion that appellant is likely to reoffend based on repeated offenses over a significant period of time, high scores on actuarial tools, reoffense after treatment, appellant's failure to recognize or appreciate his risk of reoffense, and his opinion that the actuarial tools significantly underestimated actual recidivism rates. The court also noted Dr. Riedel's opinion that as an offender ages into his 60's, his likelihood of reoffense is reduced, but the court found "that fact, in and of itself, did not alter [Dr. Riedel's] opinion that [appellant] is highly likely to re-offend." The district court additionally explicitly considered each of the six *Linehan I* factors, noting particularly that "[t]he various actuarial measures, even after re-calculation to adjust for scoring errors, indicate that the likelihood of sex offense recidivism for an individual like [appellant] is substantially higher than the base rate statistics." The district court did acknowledge that, under the *Linehan* factors, family income, a family support system, and community support weighed in appellant's favor, but concluded that the community support evidence was

"not as persuasive since the community support people did not have a clear understanding of the specifics of his prior offenses–and said support could wither if further specifics were known." Appellant would also be returning to the same environment in which he committed prior offenses. The district court concluded its analysis by stating that it found the opinions of Dr. Riedel to be most persuasive on the issue of likelihood of reoffense.

The district court's findings are adequately supported by the record and are not clearly erroneous, particularly given the deference shown to the district court's reliance on expert testimony. *See Knops*, 536 N.W.2d at 620. The record shows that appellant has, as noted by the district court, committed past sex offenses, used force, had "shallow acknowledgement" of his offenses, and showed denial and minimization. In addition, Dr. Riedel opined that multiple factors indicate that appellant poses a high risk of reoffense, and this opinion supports the district court's findings. We conclude that the record provides clear and convincing evidence that demonstrates appellant's high risk of reoffense.

In summary, we reject appellant's arguments for error and conclude that the record contains clear and convincing evidence that demonstrates appellant has engaged in a course of harmful sexual conduct and is highly likely to reoffend.

Affirmed.