STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0579

In the Matter of the Civil Commitment of: Shannon Dwayne Hollie

Filed August 25, 2009
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-PR-CV-06-2

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Willis, Judge.*

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

HUDSON, Judge

Appellant Shannon Dwayne Hollie appeals the district court orders committing him initially and indeterminately to treatment in the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and as a sexual psychopathic personality (SPP). Because clear and convincing evidence supports the district court's orders for

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

initial and indeterminate commitment and because the district court did not abuse its discretion in admitting certain exhibits during the commitment trial, we affirm.

FACTS

Appellant was born on October 11, 1962, and is currently 46 years old. Throughout his adulthood, appellant has used alcohol and drugs frequently. He claims to have engaged in "street life," consisting of drug trafficking and prostitution.

On July 10, 2006, respondent State of Minnesota petitioned for the civil commitment of appellant as an SDP and an SPP. The record establishes that appellant committed several sexual offenses, although he has repeatedly maintained his innocence.

In February 1983, appellant sexually assaulted a woman, C.J., in Washington state. C.J. told police that appellant pushed his way into her house, while her children were sleeping. C.J. tried to run, but appellant grabbed her arm, struck her in the eye, and pushed her over a chair. Eventually appellant subdued C.J. and engaged in forced vaginal intercourse with her. Appellant was charged with second-degree rape, but pleaded guilty to third-degree rape.

Another female victim, J.R., reported that in July 1989, appellant, her neighbor across the hall in an apartment complex, entered her residence at 4:00 a.m., woke her up, and fondled her breasts and vagina. Because she was afraid for herself and for her sleeping children, J.R. fought with appellant until he left her apartment. Appellant was charged with first-degree burglary and second-degree criminal sexual conduct, but pleaded guilty to second-degree criminal sexual conduct.

M.A. reported that in August 1989, appellant asked her, a tenant in his apartment building, to come to his apartment to talk. When M.A. entered appellant's apartment, he forced her to the floor, got on top of her, and proceeded to engage in vaginal intercourse with her. Appellant was charged with third-degree criminal sexual conduct and pleaded guilty to this charge.

An assault against B.E. also occurred in August 1989. When B.E. answered the door to the apartment where she was staying in the middle of the night, appellant threatened to knock her out and forced her to let him in and shut the door. He ordered her to take off her clothes and had forced vaginal intercourse with her twice, threatening to cut her throat and referring to himself as "the Devil." She reported that appellant told her, "[I]f you send somebody after me I will kill them and I'll come after you and kill you too." Appellant was charged with first-degree criminal sexual conduct. Pursuant to the plea agreement involving all of the 1989 assaults, this charge was dismissed.

In July 1991, appellant sexually assaulted a 16-year-old female at the home he shared with his girlfriend. R.M. reported that as she laid down to sleep, appellant approached her and attempted to turn her onto her back. When she resisted, he punched her and knocked her unconscious. When she regained consciousness, appellant was on top of her, engaging in vaginal intercourse. When R.M. later refused appellant's suggestion that she become a prostitute for him, he continued to beat her until his girlfriend, present at the apartment, intervened. Police reports indicate that when R.M. attempted to call 911, appellant ripped the phone from the wall, grabbed her by the hair, punched her, and dragged her to the couch. Appellant then forcibly engaged in vaginal

intercourse with R.M. again, inserting a pair of sunglasses into her vagina. His girlfriend was able to run to a neighbor's to call 911 and told the dispatcher that a "rape" was occurring. When police arrived, they found R.M. nude, crying hysterically, and yelling, "[H]elp me, get me out of here, he raped me, he raped me, I can't believe he raped me." Appellant was charged with first-degree criminal sexual conduct. He pleaded not guilty, and jury selection commenced for trial, but the charge was dismissed when R.M. and appellant's girlfriend both fled the state and were unavailable for trial.

Police reports indicate that while attempting to murder a male, C.W., by stabbing and beating him in April 1993, appellant forced a juvenile female to perform oral sex on him and on C.W., and later threatened her at knife point. Appellant was charged with three counts of first-degree criminal sexual conduct for assaulting the female, but following a jury trial, was found guilty of only attempted first-degree murder and burglary as to C.W.

In 1996, appellant's girlfriend intercepted a sexually explicit letter that appellant mailed from prison to her 13-year-old daughter. The letter describes in graphic detail mouth-to-genital and genital-to-genital sexual contact between appellant and his girlfriend's daughter. The narrative describes past sexual contact and contains a description of future intended contact.

The district court appointed two examiners for the commitment trial. The first examiner diagnosed appellant with sexual sadism, anxiety disorder, drug/alcohol dependency, and antisocial personality disorder. He recommended that appellant "be

committed as a sexually dangerous person and sexual psychopathic personality to a secured, locked facility."

The second examiner diagnosed appellant with sexual sadism because he inflicted humiliation or physical abuse upon his victims while sexually assaulting them, antisocial personality disorder, and psychopathy. He opined that appellant is an SDP and SPP who "is in need of an inpatient/residential sex offender treatment program" at MSOP.

In committing appellant as an SDP and SPP following trial, the district court wrote:

> In addition to stretching credulity to an intolerable limit, [appellant's] testimony offered a rare glimpse into his universe, a truly Kafkaesque configuration populated by vengeful women, incompetent defense attorneys, stupid juries, men who exaggerate the extent of their injuries, and girls who engage in consensual sexual activity but later cry rape.
>
> After carefully reviewing the Exhibits and listening to [appellant's] woeful explanation for each incident for which he was wrongfully convicted and punished, this Court was stunned at the extent to which he is disconnected from others and is utterly incapable of acknowledging their feelings.

A third examiner was appointed to determine if any changes warranted reversal of the commitment order. He found no changes and recommended that appellant "remain at MSOP as he has made no treatment gains or changes in his risk level since his initial commitment."

D E C I S I O N

Appellant argues that the evidence is insufficient to support the district court's conclusions that he satisfies the requirements for commitment as an SDP and an SPP.

"We review de novo whether there is clear and convincing evidence in the record to support the district court's conclusion that appellant meets the standards for commitment." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). On appeal from a commitment order, we defer to the district court's findings of fact, and we will not reverse those findings unless they are clearly erroneous. *In re Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law. *In re Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

This court defers to the district court's role as factfinder and its ability to judge the credibility of witnesses. *Ramey*, 648 N.W.2d at 269. "Where the findings of fact rest almost entirely on expert testimony, the [district] court's evaluation of credibility is of particular significance." *Thulin*, 660 N.W.2d at 144 (quotation omitted).

I

A person may be committed as an SDP under the Minnesota Commitment and Treatment Act if the petitioner proves that the person meets the criteria for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1 (2008). An SDP is one 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) "is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2008). It is not necessary for the petitioner to prove that the person to be committed has an inability to control his sexual impulses. Minn. Stat. § 253B.02, subd. 18c(b) (2008). But the statute requires a showing that the person's disorder "does

not allow [him] to adequately control [his] sexual impulses." *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*).

As to the first element, appellant does not appear to challenge the district court's determination that he engaged in a course of harmful sexual conduct. With respect to the second element, both experts agreed that appellant manifested a sexual disorder, namely sexual sadism and antisocial personality disorder. Appellant claims that his diagnoses fail to distinguish him from the ordinary recidivist offender, but evidence that appellant meets the statutory criteria for SDP commitment is sufficient, in and of itself, to distinguish him. *See Linehan v. Milczark*, 315 F.3d 920, 927 (8th Cir. 2003) ("This combination of required findings will adequately distinguish an offender subject to civil commitment, who has difficulty controlling his behavior because of a disorder or dysfunction, from the more typical offender with behavioral problems, who is best dealt with in the criminal system.").

Appellant also argues that the record does not establish the third element. The statutory phrase "likely to engage in acts of harmful sexual conduct" means that the person is "highly likely" to engage in harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated on other grounds*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand*, 594 N.W.2d 867 (Minn. 1999). The supreme court has set forth six factors to be considered in examining the likelihood of reoffense: (1) the offender's demographic characteristics; (2) the offender's history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender's background; (4) the sources of stress in the offender's environment; (5) the

similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender's record of participation in sex-therapy programs. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*).

i. Demographic Characteristics

Appellant contends that because it has been 16 years since he committed his last sexual offense, this time gap is a mitigating factor in reducing his likelihood of reoffense due to his advancing age and maturity. Although the record does not indicate that appellant has committed a sexual offense since 1993, he has been incarcerated most of this time. Furthermore, appellant continues to engage in inappropriate sexual behavior, in spite of his advancing age, even while residing in a secure facility.

ii. History of Violence

Each of appellant's sexual assaults involved some aspect of force or violence. As the second examiner noted, appellant "physically restrained numerous victims; used threats of death; physically assaulted; humiliated; and used [a weapon] in his sexual assaults." He wrote, "There is historical evidence of an 'explosive display of rage' when [appellant's] needs are not met."

iii. Base-Rate Statistics

The district court found that appellant is highly likely to reoffend based on the examiners' analyses of actuarial tests, and the record supports the examiners' conclusions.

iv. Sources of Stress

Appellant argues that he would have support from his family were he to be released, but nothing in the record indicates that appellant himself is properly equipped to deal with the stressors he would face if released. And in the past, he has continually turned to drugs and alcohol to cope.

v. Similarity of Present/Future Context to Past Contexts

Appellant is in the beginning stages of sex-offender treatment, having refused to participate in treatment in the past. Thus, the record supports the second examiner's opinion that appellant's lifestyle upon release would be similar to those conditions that previously thwarted his success on conditional release, especially considering the availability of drugs, alcohol, and potential victims to appellant.

vi. Treatment Record

Due to appellant's past refusal to engage in sex-offender treatment and his lack of empathy and insight into his behaviors, there is no evidence to suggest that he will follow through with the current sex-offender treatment.

The district court's determination that appellant is highly likely to reoffend is supported by clear and convincing evidence. On this record, the district court did not err in ordering appellant's commitment as an SDP.

II

A petitioner must prove that the standards for commitment as an SPP are met by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1. A "sexual psychopathic personality" is defined by statute as:

> [T]he 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. § 253B.02, subd. 18b (2008). The statute requires that the district court find: (1) a habitual course of misconduct; (2) an utter lack of power to control sexual impulses; and (3) dangerousness. *Id.; see also Matter of Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*). "While excluding 'mere sexual promiscuity,' and 'other forms of sexual delinquency,' a psychopathic personality 'is an identifiable and documentable violent sexually deviant condition or disorder.'" *In re Preston*, 629 N.W.2d 104, 110 (Minn. App. 2001) (quoting *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994)).

Appellant does not dispute that he engaged in a habitual course of sexual conduct. He challenges, however, the district court's determination that he lacked the power to control his sexual impulses and is therefore dangerous. Appellant argues that he does not exhibit deviant sexual thinking or grooming behavior and that he is "more appropriately handled by the criminal justice system" because he is unamenable to sex-offender treatment.

"If a person has the ability to control the sexual impulse, the standard for commitment is not met." *In re Pirkl*, 531 N.W.2d 902, 907 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). In determining whether an individual exhibits an utter lack of control over his sexual behavior, there are several significant factors:

> [1] the nature and frequency of the sexual assaults, [2] the degree of violence involved, [3] the relationship (or lack thereof) between the offender and the victims, [4] the offender's attitude and mood, [5] the offender's medical and family history, [6] the results of psychological and psychiatric testing and evaluation, and [7] such other factors that bear on the predatory sex impulse and the lack of power to control it.

Blodgett, 510 N.W.2d at 915.

i. Nature/Frequency of Sexual Assaults

Impulsive sexual assault demonstrates a lack of control. *See Matter of Schweninger*, 520 N.W.2d 446, 450 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994) (holding that defendant demonstrated control because he plotted and planned his sexual assaults and groomed his victims, "which is different from an impulsive lack of control"). The record indicates that appellant's frequent sexual impulsiveness demonstrates an utter lack of control.

ii. Degree of Violence

There is sufficient evidence of violence in the record if the offender used "the amount of force necessary to accomplish his will." *Preston*, 629 N.W.2d at 113 (finding that where defendant performed oral sex and digital penetration on victims, committed numerous offenses, engaged in level of force required to reach objectives, and both experts testified that defendant was a pedophile, there was adequate violence in record to support commitment). As discussed above, the record establishes that appellant's sexual assaults have been sudden, unexpected, and violent.

iii. Relationship with Victims

Because appellant's sexual misconduct was driven by impulsiveness, he offended against acquaintances or strangers with whom he did not have a previous relationship. The second examiner noted the breadth of appellant's victim pool that "contained both known and stranger victims." Considering this and the fact that nothing in the record indicates that appellant planned out his attacks, this factor weighs in favor of a finding that appellant utterly lacks the ability to control his sexual impulses. *See id.* at 111 (affirming SPP commitment when appellant offended against victims "he just happened upon" and did not plan out attacks ahead of time, indicating utter lack of control of sexual impulsivity).

iv. Attitude & Mood

Without insight into his sexual problem, an offender demonstrates an utter lack of control. *In re Irwin*, 529 N.W.2d 366, 375 (Minn. App. 1995), *review denied* (Minn. May 16, 1995). The record clearly establishes that appellant lacks insight into his sexual impulses.

v. Medical & Family History

The record is not fully developed regarding appellant's family history, but appellant has a long history of alcohol and drug abuse and failed treatment. Additionally, appellant's siblings' testimony at trial indicates that they, too, are in denial about appellant's history of sexual misconduct. Appellant's medical and family history exacerbates his inability to control his sexual impulses.

vi. Testing & Evaluation

As outlined clearly in the examiners' reports, the results of appellant's psychological testing demonstrate that he is highly likely to reoffend sexually in the future, thereby demonstrating that he will be unable to control his sexual impulses.

vii. Other Factors

Courts may also consider the offender's refusal of treatment opportunities and the offender's lack of a meaningful relapse-prevention plan. *Pirkl*, 531 N.W.2d at 907. And courts may consider an offender's lack of sex-offender treatment or successful completion of a sex-offender program and the failure of an offender to remove himself from similar situations in which offenses occurred in the past. *In re Bieganowski*, 520 N.W.2d 525, 529–30 (Minn. App. 1994) (holding that offender's failure to avoid precursors that trigger impulsive behavior, such as alcohol consumption, demonstrated lack of control), *review denied* (Minn. Oct. 27, 1994).

The record demonstrates that appellant has repeatedly refused sex-offender treatment and lacks the insight to remove himself from similar trigger situations in the future. During his interview with appellant, the first examiner was "struck" by appellant's "extreme[] defensiveness and guardedness," and he noted that appellant "literally admits to no sex offending." Appellant presented himself "as being victimized by his victims, as well as by the system." The examiner wrote:

> It is quite clear that [appellant] manipulates and uses an array of psychological defense mechanisms in order to present himself as a victim. He utilizes projection, denial, redefining, rationalization, externalization, repression, and rage. It is also quite clear that he absolutely has no remorse. . . . He has no

> appreciation of the consequences his acts have had on his victims. He could have no empathy for his victims.

These factors support the district court's conclusion that appellant is utterly unable to control his sexual impulses. The district court did not err in concluding that appellant lacks the ability to control his sexual impulses. On this record, appellant meets the criteria for classification as an SPP.

III

"The decision of whether to admit or exclude evidence is within the district court's discretion and will be reversed only if the court has clearly abused its discretion." *Ramey*, 648 N.W.2d at 270. The right to a new trial based on an improper evidentiary ruling depends on the complaining party's ability to demonstrate prejudicial error. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42 (Minn. 1997).

Appellant contends that the district court abused its discretion by admitting unreliable hearsay evidence under the business-record exception. *See* Minn. R. Evid. 803(6) (permitting admission of hearsay evidence that qualifies as a record of "regularly conducted business activity"). In a commitment proceeding, 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. Commitment & Treatment 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 Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007).

"We observe that the trustworthiness of evidence is the primary concern of the rules of evidence generally and of the hearsay rule particularly." *Id.* at 732. "The purpose of the hearsay rule with its various exceptions is to prevent unreliable evidence from infecting the fairness of process." *Id.*

Appellant takes issue with Exhibit 2, a timeline or summary of respondent's Exhibit 1, claiming that it was prepared in anticipation of litigation and is therefore inadmissible. *See* Minn. R. Evid. 803(6) ("A memorandum, report, record, or data compilation prepared for litigation is not admissible under this exception."). Respondent counters that Exhibit 2 was not offered under rule 803(6) but instead was offered and admitted under Minn. R. Evid. 1006, which provides that the contents of voluminous writings may be presented to the court in the form of a chart or summary if it is inconvenient for the writings to be introduced individually. The record indicates that the district court admitted Exhibit 2 over appellant's objection "as a summary of the existing exhibit." Thus, because Exhibit 2 was admissible under rule 1006, the district court did not abuse its discretion.

Affirmed.