*This opinion will be unpublished and*
*may not be cited except as provided by*
*Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1931**

In the Matter of the Civil Commitment of:
Michael Dijon Pittman

**Filed April 20, 2010**
**Affirmed**
**Wright, Judge**

Ramsey County District Court
File No. 62-MH-PR-08-232

Mary M. Huot, St. Paul, Minnesota (for appellant)

Susan Gaertner, Ramsey County Attorney, Melinda S. Elledge, Elizabeth C. Henry, Assistant County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Crippen, Judge.[*]

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

**WRIGHT**, Judge

In this appeal from his initial civil commitment as a sexually dangerous person (SDP) and a person with a sexual psychopathic personality (SPP), appellant challenges the district court's denial of his motion in limine to exclude an exhibit that contains records regarding charges that were brought against appellant in 1989, arguing that the

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

exhibit was inadmissible under the Minnesota Rules of Evidence and the right to due process was violated by the admission of this evidence. We affirm.

## FACTS

Appellant Michael Pittman is currently incarcerated for first-degree criminal sexual conduct involving two of his stepchildren. Pittman does not have any other criminal convictions. But in 1989, Pittman was charged in Wyandotte County, Kansas, with three counts of indecent liberties with a child. The victims included two girls, ages five and seven, and one boy, age seven. These children reported that Pittman touched their private parts, licked one child's vagina, got some "brown stuff" from his penis onto a sheet, and touched their buttocks with his penis. Pittman entered into a diversion agreement that included a requirement to attend sex-offender treatment, and the charges were dismissed in 1992. Pittman maintains that he neither admitted the conduct underlying the charges nor pleaded guilty to the charges.

In November 1995, Pittman was charged with two counts of first-degree criminal sexual conduct for raping his two seven-year-old stepdaughters. Both victims reported that Pittman spit on his hand, rubbed his spit on their vaginal or anal areas, and put his erect penis in their vagina or anus. The victims reported multiple rapes, but Pittman only admitted penetrating each victim "probably twice." The victims' five-year-old brother witnessed one of the sexual assaults. Pittman pleaded guilty to one count, and the second count was dismissed. Pittman was convicted and sentenced to 162 months in prison, which was an upward durational departure from the sentencing guidelines, based on the vulnerability of the victims and the position of authority and trust that Pittman held as

their stepfather. The district court also considered the apparent similarity of Pittman's conduct to the 1989 Kansas charges.

In August 1999, while incarcerated, Pittman attacked and anally raped an inmate in a bathroom at the Minnesota Correctional Facility at Moose Lake. The victim reported that Pittman spit on his hand, wiped spit on the victim's anal cavity, and penetrated him. Pittman claims that the sex was consensual. But the victim denied this and suffered a head injury and broken ribs during the assault. The matter was administratively charged as extortion, sexual behavior, and holding a hostage. Pittman pleaded no contest and served 220 days in segregation.

Between approximately March 2005 and March 2007, Pittman was on supervised release. His supervised release was revoked after having unauthorized contact with his 13-year-old son, and he was returned to prison.

According to reports dated June 19 and June 23, 2008 respectively, while incarcerated and participating in the Minnesota Sex Offender Program (MSOP), Pittman had unwanted sexual contact with two inmates. This contact included patting one inmate on the buttocks and grabbing another inmate's penis. In July 2008, Pittman ended his participation in the MSOP.

In October 2008, respondent Ramsey County filed a petition to civilly commit Pittman as an SDP and a person with an SPP. Prior to trial, Pittman brought a motion in limine to exclude Exhibit 3, which contains records of the 1989 charges from Kansas. The district court denied the motion, and following a trial during which testimony was

presented by three examiners and by Pittman, the district court ordered Pittman's initial commitment as an SDP and a person with an SPP. This appeal followed.

## D E C I S I O N

Pittman challenges the district court's denial of his motion to exclude Exhibit 3. Pittman argues that Exhibit 3 is inadmissible under the rules of evidence and that admission of Exhibit 3 violated the right to due process.

The decision whether to admit or exclude evidence rests within the district court's discretion and will be reversed only if the district court has clearly abused its discretion. *In re Ramey*, 648 N.W.2d 260, 270 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). In a civil-commitment proceeding, the district court is directed to "admit all relevant evidence at the hearing." Minn. Stat. § 253B.08, subd. 7 (2008); *see also In re Morton*, 386 N.W.2d 832, 835 (Minn. App. 1986) (stating that in all commitment cases, there is a presumption of admissibility and district court shall admit all relevant evidence at hearing). Except for the rules relating to relevance, the Minnesota Rules of Evidence do not apply to civil-commitment proceedings. *In re Williams*, 735 N.W.2d 727, 730-31 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007). Evidence is relevant if it has "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.

The petitioner in an SDP civil-commitment proceeding has the burden of establishing by clear and convincing evidence that the patient has engaged in a course of harmful sexual conduct; has manifested a sexual, personality, or other mental disorder or

dysfunction; and as a result, is likely to engage in acts of harmful sexual conduct. Minn. Stat. §§ 253B.02, subd. 18c(a), 253B.18, subd. 1 (2008). "Incidents 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 Ramey*, 648 N.W.2d at 268 (stating that court may consider conduct not resulting in a conviction); *In re Irwin*, 529 N.W.2d 366, 374 (Minn. App. 1995) (stating that conduct need not be recent), *review denied* (Minn. May 16, 1995). Evidence of Pittman's sexual conduct with three children resulting in a diversionary disposition in 1989 in Kansas is clearly *relevant* to these civil-commitment proceedings, in which Pittman is alleged to be an SDP and a person with an SPP.[1] *See* Minn. Stat. § 253B.08., subd. 7 (requiring admission of all relevant evidence). Accordingly, Pittman's arguments challenging the admissibility of this evidence based on Minn. R. Evid. 410 (barring evidence of a plea of *nolo contendere*)[2] and its failure to meet the legal standards of Minn. R. Evid. 803(6) (business records exception) and 807 (residual hearsay) fail.

---

[1] "Sexual psychopathic personality" means 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. § 253B.02, subd. 18b (2008).

[2] We also observe that not one of the documents contained in Exhibit 3 refers to Pittman entering a *nolo contendere* plea. Rather, several documents refer to him receiving a "deferred prosecution" pending his successful completion of a "diversion agreement." The negotiation and terms of that agreement are not disclosed.

Pittman also argues that his constitutional rights were violated by the district court's admission of Exhibit 3. He asserts that it was "fundamentally unfair that dismissed criminal charges from a foreign jurisdiction that were never admitted in that jurisdiction, should stand as evidence on its own validity." Pittman's constitutional challenge appears to be rooted in procedural due process, which ensures that "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, [that action] must still be implemented in a fair manner." *United States v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 2101 (1987) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976)). Minnesota's civil-commitment statutes have survived constitutional challenges on substantive due-process grounds. *See In re Commitment of Travis*, 767 N.W.2d 52, 59-60 (Minn. App. 2009) (discussing Minnesota cases that have upheld constitutionality of SDP/SPP statutes).

In Minnesota, although the district court is given discretion to "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, constitutional due-process guarantees also require an evaluation of the proffered evidence to determine its reliability even if it is relevant, *cf. Williams*, 735 N.W.2d at 731-32 (addressing appellant's due-process challenge and noting district court's diligent vetting of exhibits to which appellant objected, to determine their reliability). Our analysis comports with that of the Ohio Court of Appeals, which held that, although the Ohio Rules of Evidence do not apply to sexual-predator hearings, "simple notions of due process must apply." *State v. Lee*, 716 N.E.2d 751, 757 (Ohio App. 1998). "A relaxed standard for admissibility of

evidence in a sexual-predator hearing cannot be equated with automatic admissibility of any and all materials." *Id.*

Here, the district court reviewed Exhibit 3 and determined that it was admissible in this civil-commitment proceeding. Exhibit 3 consists of 78 pages of records from 1989 Wyandotte County, Kansas, Criminal Court Case No. 89 CR 0598, *Kansas v. Pittman*. According to the Assistant Ramsey County Attorney who represented the county in its petition to civilly commit Pittman, his office obtained these records in response to a written request to the District Attorney of Wyandotte County, Kansas City, Kansas. The documents are public information and are not subject to any disclosure restrictions. These materials were sent to the examiners without objection by Pittman's counsel, and the three examiners considered the documents in Exhibit 3 when formulating their written reports and recommendations to the district court.

The documents in Exhibit 3 can be grouped into the following categories: (1) court records, including the Information charging Pittman with three counts of indecent liberties with a child and the 1992 order dismissing the charges upon Pittman's compliance with the terms of the diversion agreement; (2) police records, including reports of statements made by the victims to a social worker in early December 1988; three separate transcripts of statements made by the victims to the investigating detective on December 16, 1988; a transcript of Pittman's statement to the detective on December 22, 1988; a transcript of the social worker's statements to the detective on December 29, 1988, regarding her interviews of the victims; a December 22, 1988, narrative report from the detective; and a statement given by Pittman's mother on January 12, 1989; (3) records

from the diversion program, including two diversion evaluation reports, one of which indicates that an "apology session has been conducted," two letters from the diversion director, one of which indicated that there was a possibility of revocation; and (4) medical reports concerning the three victims.[3]

These documents, particularly the police reports, were "generated closely in time to the events they describe" and "include the accounts of firsthand witnesses, the victims." *See Williams*, 735 N.W.2d at 732. The statements made by the victims are internally consistent and are generally consistent with each other, which lends some corroboration to the victims' claims. In addition, many of the documents are copies of medical records or of records generated by the courts and by police investigating criminal activity. These documents have sufficient indicia of reliability, notwithstanding the presence of some secondhand accounts, to meet due-process requirements. Because the contents of Exhibit 3, with the exception of the one-page document addressed in footnote 3, satisfy both relevance and reliability requirements, Pittman's challenge to the district court's decision to admit Exhibit 3 fails.

**Affirmed.**

---

[3] Exhibit 3 also contains a one-page document that appears related to Pittman's 1996 Minnesota conviction: An unsigned "case note" from Sex Offender Assessor Scott Johnson. Johnson's note states that on March 4, 1996, he spoke with the Wyandotte County probation officer, who stated that Pittman had been found guilty of the offenses, and that on March 6, 1996, he spoke with an attorney at the Wyandotte County District Attorney's office, who stated that Pittman "did in fact commit the crimes and that is why he was required to complete the diversion program." Although this document does not demonstrate the same level of reliability as the other 77 pages of documents contained in Exhibit 3, we do not conclude that its admission was so prejudicial as to violate Pittman's due-process rights.