NUMBER 13-20-00008-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE THE COMMITMENT OF RICHARD WILEY SR.

On appeal from the 23rd District Court
of Wharton County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Hinojosa and Silva
Memorandum Opinion by Chief Justice Contreras

A Wharton County jury found appellant Richard Wiley Sr. to be a sexually violent predator (SVP), and the trial court ordered him indefinitely committed for sex-offender treatment and supervision. *See* TEX. HEALTH & SAFETY CODE ANN. ch. 841 (SVP Act). On appeal, Wiley contends the trial court (1) lacked jurisdiction, and (2) erroneously admitted hearsay evidence. We affirm.

I. BACKGROUND

Appellee, the State of Texas, filed its petition to civilly commit Wiley as an SVP on November 20, 2018, in the 329th District Court of Wharton County. The petition alleged Wiley was imprisoned after being convicted in that court of two sex offenses: (1) aggravated sexual assault of a child, alleged to have been committed in 1988; and (2) indecency with a child by contact, alleged to have been committed in 1994. *See id.* § 841.003(a)(1). The State further alleged that Wiley suffers from a behavioral abnormality which makes him likely to engage in a predatory act of sexual violence. *See id.* § 841.003(a)(2). The petition noted that Wiley was then incarcerated but that his sentence discharge date was August 22, 2020, and that he could be released on parole before then.

On September 6, 2019, the State filed a motion to transfer the case to the 23rd District Court of Wharton County. The motion noted that, though Wiley's aggravated assault conviction was in the 329th District Court, his indecency with a child conviction was in the 23rd District Court, and the latter court therefore had jurisdiction over the commitment proceedings. *See id.* § 841.041(a). The Honorable Randy M. Clapp, elected judge of the 329th District Court, signed an order granting the unopposed motion to transfer on September 10, 2019. The State later filed an amended petition in the 23rd District Court alleging that court had jurisdiction because it was the court of conviction for Wiley's most recent sexually violent offense. *See id.* Trial proceeded before Judge Clapp in October of 2019.

Darrel Turner, a clinical psychologist, testified at trial that he was retained by the State to review Wiley's case. Turner reviewed records which showed that Wiley was

previously convicted of three sex offenses and had been investigated for several other sex offenses. As part of his evaluation, Turner also interviewed Wiley for around two hours on March 26, 2019. Turner testified that, in his opinion, Wiley "does suffer from a behavioral abnormality that predisposes him to engage in predatory acts of sexual violence."

According to the records reviewed by Turner, Wiley committed his first sexual offense against his daughter in 1984. Specifically, over a four-year period, beginning when Wiley's daughter was fourteen years old, Wiley had sexual intercourse with her at least four times. Wiley was convicted of incest[1] and sentenced to ten years' imprisonment, but he served only four months in prison before being placed on "shock" probation. According to Turner, Wiley's version of events during his interview did not match up with the records—in the interview, Wiley "characterized [his daughter] as much older than she was" and "greatly minimized the degree of violence and the degree to which he forced his daughter into sex." Turner reviewed deposition testimony in which Wiley initially denied that intercourse occurred more than once, painted his daughter as a "willing participant," and admitted to being sexually attracted to her. Turner said that this indicates Wiley "still has this sexually deviant thinking going on now, because he's still describing his victims this way."

Turner testified that Wiley subsequently violated the terms of his probation by failing to report, failing to pay fines, and "continu[ing] to be around children." He also continued to commit sex offenses against other family members. In particular, Wiley

[1] Turner stated that, though incest is not one of the "sexually violent offenses" for which conviction is a predicate for civil commitment in the SVP Act, he still considered the conviction as part of his evaluation.

performed oral sex on his son and attempted anal intercourse on multiple occasions beginning around 1988 when his son was six years old. Based on this conduct, Wiley was convicted of aggravated sexual assault of a child in 1998 and was sentenced to twenty-five years' imprisonment.

Additionally, in 1994, Wiley fondled his grandson's genitals and forced his grandson to perform oral sex on him. Wiley told his grandson that "he was teaching him what not to let other people to do him," which Turner opined was "classic grooming behavior," psychological manipulation, and "evidence of antisociality." Wiley was around fifty years old when he offended against his grandson. He was convicted for this abuse in 1998 and sentenced to twenty years' imprisonment.

Turner stated that Wiley portrayed his son as an "active participant" in the abuse and admitted being sexually attracted to him. Wiley greatly minimized the offense against his grandson. Turner said that Wiley's continuing characterization of the children as "sexual beings" is "one of the hallmark signs of being a pedophile." According to records, Wiley's son told police that "his father is a father on the one hand and an animal on another hand." In the deposition testimony that Turner reviewed, Wiley agreed that this was "a pretty good way to sum it up."

According to Turner, Wiley believes it was a "mistake" for him to have been given probation after his first conviction; instead, he "feels that if he had just been given a prison sentence, then he wouldn't have likely reoffended." Turner stated that Wiley attended sex offender treatment for several years while he was on probation, but he continued to offend both during and after the treatment.

Turner testified that several other allegations have been made against Wiley which

did not result in convictions:

- While serving as a United States Marine Corps officer in the mid-1960s, Wiley was twice accused of trying to fondle the penis of a subordinate. He was discharged.
- Wiley told Turner that, in the mid-1970s, he "ma[de] an effort to sexually assault" his daughter, who was around ten or eleven years old at the time, but "she pushed back" and told her mother, who confronted him.
- When Turner asked Wiley whether he had abused another daughter, Wiley said "she accused him of offending against her, but he didn't remember whether it happened or not."
- Wiley admitted in his deposition to performing oral sex on his other son when Wiley was 53 years old.
- Wiley was arrested in 1995 for raping an "adult female neighbor." The charge was eventually reduced to assault, to which Wiley pleaded guilty and received a sentence of time served. Wiley told Turner that the encounter was consensual.
- Wiley was once arrested for domestic abuse against his wife, which Turner opined is further evidence of antisociality, even though it was not a sexual offense.

Turner administered two tests in his evaluation of Wiley for a behavioral abnormality. Wiley scored a 15 on the PCL-R test, which is used to determine whether or not the individual is a psychopath. This score indicates that Wiley has more psychopathic characteristics than the average non-criminal adult male, but not as many as the average criminal, and he does not fall in the range of a psychopath. Wiley scored a 2 on the Static-99R test, which is used to evaluate his likelihood of reoffending. This score indicates that Wiley has an "average" risk of reoffending as compared to other sex offenders.

Nevertheless, based on his entire evaluation, Turner opined that Wiley "is a high risk to sexually reoffend."

Turner stated that, according to research, "two of the biggest risk factors" for reoffending are "sexual deviance" and "antisociality"—offenders that have high levels of those traits are "exponentially" more likely to reoffend. He explained that these two factors are the "most predictive" of reoffending behavior when they exist at the same time. In Turner's opinion, based upon the records and his interview, both of those risk factors apply to Wiley. Turner diagnosed Wiley with "pedophilic disorder" and "adult antisocial traits or characteristics."[2]

Turner also discussed "protective factors," or those indicating Wiley has a lower likelihood of reoffending, including the fact that Wiley obtained an associate's degree while incarcerated and has not sexually offended while in prison. Another protective factor is that Wiley completed a nine-month sex-offender treatment program as a condition of his parole. However, Turner stated that this factor "carries less protective weight" because Wiley had previously participated in sex offender treatment but "continued to offend during and after." Moreover, according to Turner, Wiley's treatment provider said that Wiley "doesn't seem to be grasping the concept of empathy" and "doesn't feel as though he's done a lot of damage to his victims." Finally, another protective factor is Wiley's age of 75 years, because people tend to be less likely to reoffend sexually as they get older. But Turner noted that this protective factor also "doesn't carry as much weight as it normally would" because Wiley was still committing sex offenses when he was over fifty years old.

[2] Turner stated that the only reason he did not diagnose Wiley with "antisocial personality disorder" is because there was no "strong, objective evidence of . . . conduct disorder present prior to the age of 15."

Wiley was the only other witness to testify at trial. He conceded that he committed sex offenses against his daughter, but he said she was a willing participant. He agreed that he sexually offended against her because his "urge was too great." He conceded that he failed to report to his probation officer and failed to pay fees. Wiley was unaware that his probation conditions required him to refrain from being around children. He agreed that he repeatedly sexually offended against his older son while he was on probation, but he believed that his twenty-five-year prison sentence was adequate punishment for those offenses. He further admitted to inappropriately touching his grandson and having intercourse with his other daughter. He stated that he believes he can "control his urges" using the "tools" that he has learned in the sex-offender treatment program.

The jury found that Wiley is an SVP under the statutory definition, and the trial court ordered him indefinitely committed under the SVP Act. The final judgment was signed by Judge Clapp on October 9, 2019, and the caption states that the proceedings were conducted in the 23rd District Court. This appeal followed.

II. Discussion

A. Applicable Law

The SVP Act provides a procedure for the involuntary civil commitment of an SVP. *See id.* §§ 841.001–.153. The statute was enacted based on legislative findings that "a small but extremely dangerous group of [SVPs] exists" and that "those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence." *Id.* § 841.001; *see Kansas v. Crane*, 534 U.S. 407, 413 (2002) (holding that a similar statute satisfies constitutional due process only when there is "proof of

serious difficulty in controlling behavior”).

Under the SVP Act, a person may be civilly committed if the factfinder determines, by a unanimous verdict and beyond a reasonable doubt, that the person is an SVP. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 841.062, 841.081; *see also In re Commitment of Hull*, No. 13-17-00378-CV, 2019 WL 3241883, at *8 (Tex. App.—Corpus Christi–Edinburg July 18, 2019, pet. denied) (mem. op.). An SVP is defined as a person that (1) is a “repeat sexually violent offender,” and (2) “suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence.” TEX. HEALTH & SAFETY CODE ANN. § 841.003(a). A person is a “repeat sexually violent offender” if the person is convicted of more than one “sexually violent offense” and a sentence is imposed on at least one of those convictions. *Id.* § 841.003(b).[3] A behavioral abnormality is “a congenital or acquired condition that, by affecting a person’s emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.” *Id.* § 841.002(2).

B. Jurisdiction

A petition for civil commitment under the SVP Act must be filed “in the court of conviction for the person’s most recent sexually violent offense.” *Id.* § 841.041(a).[4] By his first issue on appeal, Wiley contends the 23rd District Court lacked subject-matter

[3] The statutory definition of “sexually violent offense” includes both offenses of which Wiley was convicted in 1998. *See* TEX. HEALTH & SAFETY CODE ANN. § 841.002(8)(A).

[4] The parties appear to agree that this requirement is jurisdictional and that the court specified in § 841.041(a) is the only court that has subject-matter jurisdiction over an SVP proceeding. *See* TEX. CONST. art. 5, § 8 (“District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.”); *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000) (“[A]ll claims are presumed to fall within the jurisdiction of the district court unless the Legislature or Congress has provided that they must be heard elsewhere.”). For purposes of this analysis, we assume but do not decide that § 841.041(a) is jurisdictional.

jurisdiction because: (1) the petition was initially filed in the 329th District Court; (2) the 329th District Court was the not the court of conviction for his most recent sexually violent offense, and (3) the transfer to the 23rd District Court is void because the presiding judge of the transferee court did not consent to the transfer.

Wharton County is included in both the 23rd and 329th Judicial Districts. *See* TEX. GOV'T CODE ANN. §§ 24.124(a), 24.637(a). The record in this case contains: (1) an indictment filed in the 23rd District Court on December 7, 1994, charging Wiley with indecency with a child, alleged to have been committed in 1994; and (2) an information filed in the 329th District Court on January 6, 1998, charging Wiley with aggravated sexual assault of a child, alleged to have been committed in 1988. Wiley was convicted of both offenses on the same day in 1998, and the judgments of conviction both state: "In the District Court of Wharton County, Texas." Although the aggravated sexual assault charge was brought over three years after the indecency charge, the indecency charge was based on more recent conduct. And the trial court in this case, the 23rd District Court, was the court of conviction for the indecency charge, at least according to the indictment. *See* TEX. HEALTH & SAFETY CODE ANN. § 841.041(a).

In arguing that the transfer of the proceedings to the 23rd District Court is void, Wiley points to § 24.003(b-1) of the government code, which states that "a district judge may not transfer any civil or criminal case or proceeding to the docket of another district court without the consent of the judge of the court to which it is transferred." TEX. GOV'T CODE ANN. § 24.003(b-1). Wiley notes that the order transferring the case was signed by Judge Clapp, the elected judge of the 329th District Court, but it was not signed by the elected judge of the transferee court, the 23rd District Court.

District judges in Texas are generally given broad authority to conduct proceedings of other district courts in the same county. *See id.* § 24.003(b); TEX. R. CIV. P. 330(e); *see also* TEX. CONST. art. 5, § 11 ("District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law."); *In re Shoreline Gas, Inc.*, Nos. 13-06-00001-CV & 13-06-00018-CV, 2006 WL 2371472, at *5 (Tex. App.—Corpus Christi–Edinburg Aug. 17, 2006, combined appeal & orig. proceeding) (mem. op.) ("The ability to transfer cases among the courts within the same county is a very necessary tool in the orderly administration of justice."). With respect to the district courts of Wharton County in particular, the government code states:

> There is one general docket for the 23rd and 329th district courts in Wharton County. All suits and proceedings within the jurisdiction of the courts in Wharton County shall be addressed to the district court of Wharton County. All citations, notices, restraining orders, and other process issued in Wharton County by the clerk or judges of the courts are returnable to the district court of Wharton County without reference to the court number. On return of the process the judge of either court may preside over the hearing or trial. The judges of the 23rd and 329th district courts in Wharton County may hear and dispose of any matter on the courts' general docket, both civil and criminal, without transferring the matter.

TEX. GOV'T CODE ANN. § 24.124(f).

In light of this broad statutory authority, there is effectively no substantive difference between the two Wharton County district courts. *See Starnes v. Holloway*, 779 S.W.2d 86, 96 (Tex. App.—Dallas 1989, writ denied) (noting in an analogous situation that "[d]istinctions between the Dallas County civil district courts are obliterated, and each court constitutes a part of a greater judicial organism"). Even if the purported transfer to the 23rd District Court is void, Judge Clapp was authorized, as the elected judge of the 329th Judicial District, to "hear and dispose of any matter" on the docket of the 23rd District Court. *See* TEX. GOV'T CODE ANN. § 24.124(f). We conclude the trial court properly

exercised jurisdiction in this case. Wiley's first issue is overruled.

C. Admission of Hearsay

By his second issue, Wiley argues the trial court reversibly erred by overruling his objection to Turner's testimony regarding the opinion of a non-testifying psychologist. We review the trial court's evidentiary rulings for abuse of discretion. *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 27 (Tex. 2014); *In re Commitment of Mares*, 521 S.W.3d 64, 69 (Tex. App.—San Antonio 2017, pet. denied). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles. *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012).

At trial, after Turner first testified that Wiley suffers from a behavioral abnormality, the following colloquy occurred:

Q [State's counsel]	And in your review of the records in this case, did you review any other psychologists' analysis of whether Mr. Wiley has a behavioral abnormality?
A [Turner]	Yes, I did.
Q	And was your opinion consistent with that psychologist's analysis—
[Wiley's counsel]:	Objection, Your Honor, to hearsay as to—
THE COURT:	Overruled.
[Wiley's counsel]:	And can I get a running objection for?
THE COURT:	Yes, you may. You have a running objection as to whether he—well, his answer is about to be, I think, that whether or not his opinions are consistent with this other evaluation, to the extent that you're objecting to that, you have a running objection.
[Wiley's counsel]:	And I've got a limiting instruction, if you'd like to read, if that's all right.
THE COURT:	Show it to me.

[Wiley's counsel]: Yes, sir. May I approach?

([Wiley's counsel] passes document.)

THE COURT: You have an objection to this?

[State's counsel]: No objection to that instruction, Your Honor.

THE COURT: I'm going to make one change. I'll show it to both of you. Y'all want to take a look?

[State's counsel]: No objection.

THE COURT: Okay? I think that more accurately states the law.

So, ladies and gentlemen, I'm going to interrupt our expert's—their expert I should say, his assessment and just give you this instruction, because you need to know this in order to think about what he's telling you as he testifies.

"The expert," this man, "has testified and will testify regarding hearsay, things he has heard from other people. Hearsay is a statement made by a person at some time other than while testifying at the current trial or hearing which a party offers into evidence to prove the truth of the matter asserted in that statement. Generally, hearsay is not admissible as evidence during the trial. However, in this case, certain hearsay information contained in records was reviewed and relied upon by the expert and will be presented to you through the expert's testimony." In other words, he's going to tell you through these records what other people have said. But they're not here.

"Such hearsay evidence is being presented to you only for the purpose of showing the basis of the expert's opinion but cannot be considered as evidence to prove the truth of the matter asserted in those hearsay statements." In other words, he heard them. He's using them to formulate his opinion. But neither he, nor anyone else in this courtroom is allowed to argue to you that those statements were necessarily true. The person who made those statements is not here, so they're not being offered for that purpose.

Everybody understand what I've just said? It's a little bit complex. Okay. So, therefore, he is—I will allow him to present such hearsay evidence to you only for the purpose of showing the basis of his opinion, the fact that he's heard and read these things. But it cannot be considered as evidence to prove the truth of the matter asserted. You may not consider the hearsay information for any other purpose, including whether the facts presented through hearsay evidence are true.

All right. Everybody understand? Okay.

With that limitation, you may consider your—I mean, continue your examination.

. . . .

Q [State's counsel]	Now, Dr. Turner, I believe the last question, I'll just repeat it for you again. Was your opinion consistent with the psychologist—the other psychologist's analysis of whether Mr. Wiley suffers from a behavioral abnormality?
A [Turner]	Yes, it was.

On appeal, Wiley argues that Turner's testimony should not have been admitted under Texas Rule of Evidence 705(d) because Turner did not rely on the psychologist's opinion as a "basis" in formulating his own opinion for purposes of testifying at trial. The State contends that Wiley did not preserve the issue because he never objected on the basis that Turner did not rely on the psychologist's opinion under Rule 705; instead, he only objected on the general basis of hearsay. *See In re Commitment of Sawyer*, No. 05-17-00516-CV, 2018 WL 3372924, at *6 (Tex. App.—Dallas July 11, 2018, pet. denied) (mem. op.) (finding appellant failed to preserve his argument under Rule 705(d) because he objected only on the basis of hearsay and unfair prejudice). The State further argues that the trial court did not abuse its discretion and, even if it did, Wiley failed to show that the ruling probably resulted an improper judgment. *See* TEX. R. APP. P. 44.1(a)(1).

Assuming but not deciding that the issue has been preserved, we conclude that no abuse of discretion has been shown. The rules of evidence provide that "[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed." TEX. R. EVID. 703. "If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted." *Id.* That said, "[a]n expert's opinion is inadmissible if the underlying facts or data do not provide a sufficient basis for the opinion." TEX. R. EVID. 705(c). And "[i]f the underlying facts or data would otherwise be inadmissible, the proponent of the opinion may not disclose them to the jury if their probative value in helping the jury evaluate the opinion is outweighed by their prejudicial effect." TEX. R. EVID. 705(d). "If the court allows the proponent to disclose those facts or data the court must, upon timely request, restrict the evidence to its proper scope and instruct the jury accordingly." *Id.*

Wiley does not argue on appeal that the probative value of the subject testimony in helping the jury to evaluate Turner's opinion is outweighed by its prejudicial effect. *See id.* Instead, he contends that Rule 705(d) does not apply because "Turner provided no testimony that he relied on [the non-testifying psychologist's opinion] as a basis for his opinion." But in the excerpt set forth above, Turner agreed that he "review[ed]" the psychologist's opinion. *See* TEX. R. EVID. 703. Later, when the State's counsel asked Turner whether he "rel[ied] on the facts and data contained in the records [he] received in forming the basis of [his] opinion," Turner replied, "Yes, Ma'am." Additionally, Wiley's counsel did not object to the trial court's limiting instruction, which stated that "certain hearsay information contained in records was reviewed and relied upon by [Turner]" and

that Turner was "using" those hearsay statements "to formulate his opinion."[5] The trial court could have reasonably determined that Turner "base[d]" his own expert testimony on the non-testifying psychologist's opinion, at least in part. *See* TEX. R. EVID. 703.

As the State notes, other Texas appellate courts have held that Rule 705 allows an expert witness to reveal a non-testifying expert's opinion as to whether a person meets the SVP criteria. *See In re Commitment of Winkle*, 434 S.W.3d 300, 315 (Tex. App.—Beaumont 2014, pet. denied); *see also In re Commitment of Barnes*, No. 04-17-00188-CV, 2018 WL 3861401, at *5 (Tex. App.—San Antonio Aug. 15, 2018, no pet.) (mem. op.); *In re Commitment of Sawyer*, 2018 WL 3372924, at *6; *In re Commitment of Carr*, No. 09-14-00156-CV, 2015 WL 1611949, at *2 (Tex. App.—Beaumont Apr. 9, 2015, no pet.) (mem. op.); *In re Commitment of Garcia*, No. 09-12-00194-CV, 2013 WL 6558623, at *6 (Tex. App.—Beaumont Dec. 12, 2013, pet. denied) (mem. op.). Wiley urges us not to follow these cases—instead, he suggests that it is impossible for a jury to consider hearsay, such as the testimony at issue here, *only* for purposes of evaluating the testifying expert's opinion and *not* for the truth of the matter asserted. In support of this argument, Wiley cites two minority United States Supreme Court opinions as well as opinions from the high courts of California and the District of Columbia. *See Williams v. Illinois*, 567 U.S. 50, 106 (2012) (Thomas, J., concurring) ("[S]tatements introduced to explain the basis of an expert's opinion are not introduced for a plausible nonhearsay purpose. There is no

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[5] As shown above, Wiley's counsel drafted the limiting instruction and asked the trial court to read it to the jury. The trial court made one change to the proposed instruction, but the record does not reveal what was changed. In any event, unless the record demonstrates otherwise, we generally presume the jury followed the trial court's instructions. *Columbia Rio Grande Healthcare, L.P. v. Hawley*, 284 S.W.3d 851, 862 (Tex. 2009); *see also In re Commitment of Cain*, No. 02-18-00043-CV, 2018 WL 5993335, at *4 (Tex. App.—Fort Worth Nov. 15, 2018, no pet.) (mem. op.). Wiley does not point to anything in the record demonstrating that the jury failed to comply with the limiting instruction.

meaningful distinction between disclosing an out-of-court statement so that the factfinder may evaluate the expert's opinion and disclosing that statement for its truth."); *id.* at 127 (Kagan, J., dissenting) (stating "basis" evidence "has no purpose separate from its truth; the factfinder can do nothing with it *except* assess its truth and so the credibility of the conclusion it serves to buttress"); *People v. Sanchez*, 374 P.3d 320, 332 (Cal. 2016) ("When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth."); *In re Amey*, 40 A.3d 902, 911 (D.C. 2012) (observing that considering hearsay for "basis" purposes but not for the truth of the matter asserted "'may call for mental gymnastics which only the most pristine theoretician could perform'" (quoting *In re Melton*, 597 A.2d 892, 907 (D.C. 1991))).

We find these cases inapposite. Two of them were criminal cases involving application of the Confrontation Clause, which is not applicable to civil commitment proceedings. *See Williams*, 567 U.S. at 57–58; *Sanchez*, 374 P.3d at 330; *see also In re Commitment of Adame*, No. 09-11-00588-CV, 2013 WL 3853386, at *3 (Tex. App.—Beaumont Apr. 18, 2013, no pet.) (mem. op.) (noting that "SVP cases are civil proceedings, not criminal or quasi-criminal" and rejecting appellant's reliance on *Williams* for that reason). The third cited case was a civil commitment proceeding, but even though that court quoted an earlier case which expressed skepticism as to whether jurors could feasibly limit their consideration of hearsay evidence to "basis" purposes, it nevertheless held that the trial court did not err in allowing an expert witness to testify as to the bases of his opinions, which included out-of-court statements by other non-testifying

professionals. *In re Amey*, 40 A.3d at 914.

We conclude the trial court acted within its discretion in determining that Turner's testimony regarding the non-testifying psychologist's opinion was admissible under the rules of evidence. *See* TEX. R. EVID. 703, 705. Wiley's second issue is overruled.

III. CONCLUSION

The trial court's judgment is affirmed.

DORI CONTRERAS
Chief Justice

Delivered and filed on the
28th day of January, 2021.