

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1077**

In the Matter of the Civil Commitment of:
Sean Patrick Brinkman

**Filed December 2, 2008
Affirmed
Schellhas, Judge**

Anoka County District Court
File No. 02-P4-99-000382

Robert M.A. Johnson, Anoka County Attorney, Janice M. Allen, Assistant County Attorney, 2100 Third Avenue, 7th Floor, Anoka, MN 55303 (for respondent)

Ronald L. Thorsett, 7328 Ontario Boulevard, Eden Prairie, MN 55346 (for appellant)

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

On appeal from his civil commitment, appellant argues that (1) the district court lacked clear and convincing evidence to support his civil commitment and (2) his rights to due process and effective assistance of counsel were denied. We affirm.

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

FACTS

Appellant Sean Patrick Brinkman challenges the district court's decision to indeterminately commit him to the Minnesota Sex Offender Program (MSOP) as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP).¹ The district court's commitment of appellant arose out of the third petition seeking his commitment as an SPP/SDP.

Appellant does not dispute the district court's findings relating to his criminal history. Appellant was arrested twice in 1995, once for loitering with intent to solicit prostitution and once for engaging in nonconsensual sexual activity with a woman known to be a prostitute. Appellant was also arrested twice in 1996. One arrest occurred after appellant offered a woman a ride home, drove into a parking lot and pulled out a knife, and demanded that the woman perform oral sex on him. The woman was a convicted prostitute who told police that she was not working as a prostitute on the evening of the incident. Appellant was charged with second-degree criminal sexual conduct and kidnapping, but the charges were dropped when the woman could not be located. The

¹ On January 23, 2008, the district court issued a 60-page order initially committing appellant as an SPP and an SDP. On May 9, 2008, after a review hearing, the court issued an order committing appellant on an indeterminate basis as an SDP, inadvertently omitting the commitment as an SPP. Appellant challenged his commitment, appealing from the May 9, 2008 order. On July 15, 2008, the district court sent a letter to counsel for both parties, describing as a "clerical error" the court's omission in its May 9, 2008 order of appellant's commitment as an SPP. On July 17, 2008, the district court issued an amended indeterminate commitment order committing appellant as an SPP as well as an SDP. The parties have briefed the propriety of committing appellant as both an SPP and an SDP. We may review any order affecting the order from which an appeal is taken. Minn. R. Civ. App. P. 103.04. Accordingly, we extend review to the July 17, 2008 order and address all the issues raised by the parties.

other 1996 arrest occurred after appellant gave a car ride to a woman, during which he struck her in the face and leg, touched her breasts and vaginal area, threatened to take her to a secluded area and kill her, and asked her to perform oral sex on him. As a result of the arrest, appellant pleaded guilty to second-degree criminal sexual conduct and received an executed sentence of 48 months' imprisonment, and he pleaded guilty to kidnapping and received a consecutive, stayed sentence of 48 months' imprisonment.

Respondent first petitioned the district court to commit appellant as an SPP/SDP in January 1999. The district court denied the petition, based on the opinions of two court-appointed examiners, James H. Gilbertson, Ph.D., and Thomas Alberg, Ph.D. Although Dr. Gilbertson considered appellant highly likely to engage in harmful sexual conduct if the facts underlying appellant's criminal offenses were true, he did not give an opinion about whether appellant had an utter lack of power to control his sexual impulses. Dr. Alberg did not believe appellant was likely to commit future illegal acts as long as he was treated and did not believe that appellant engaged in a course of misconduct because he only had one conviction for sexual misconduct. Dr. Alberg did not consider appellant's other arrests, but testified that if they were proven, the facts underlying those incidents would have "some impact" on his decision. The district court concluded that appellant did not have an utter lack of control over his sexual impulses as required for commitment as an SPP and that appellant was not highly likely to engage in future acts of harmful sexual conduct as required for commitment as an SDP.

In connection with the sentences for his convictions of criminal sexual conduct and kidnapping, appellant successfully completed sex-offender treatment, but not without

incident. Beginning in June 1999, appellant was released from prison three times to two different halfway-house sex-offender programs from which he was terminated for rules violations. Finally, appellant was released to live with his parents on the condition that he could leave their home only to travel to a sex-offender-treatment facility. Appellant violated this condition by driving from the treatment facility to downtown Minneapolis, resulting in the issuance of an arrest warrant. When apprehended on the warrant, appellant had two female passengers in his car, one of whom was 16 years' old, along with alcohol, marijuana, and a chat-line address list of women that included their heights and weights.

Appellant's supervised release from prison was revoked, and upon his subsequent release, he lived with his girlfriend in a condominium. When corrections officers visited appellant to obtain a urine sample, he became "frustrated, agitated, and verbally abusive," and refused to give a sample. The officers performed a check of appellant's residence and discovered alcohol and three videotapes, two of which contained explicit pornography, and the third featured a rapper's explanation of how to "pimp a ho." Appellant's supervised release was again revoked, this time for assaultive behavior and possession of alcohol and pornography.

In 2004, respondent again petitioned the district court to commit appellant as an SPP/SDP. The district court denied the petition based on the opinion of Dr. Gilbertson, the court-appointed examiner. Dr. Gilbertson opined that appellant did not have an utter lack of control over his sexual impulses and was not highly likely to reoffend, but added that if the district court considered appellant's lack of self-regulation during his prison

release periods to indicate an utter lack of control, such a finding would also support a determination that appellant was highly likely to reoffend. Dr. Gilbertson also opined that appellant's dynamic risk factors, including his lack of chemical-dependency issues, familial support, and involvement in a stable, adult heterosexual relationship, decreased his likelihood of reoffending. In denying the petition, the district court stated that it held Dr. Gilbertson "in its highest regard as an expert witness in this area," and agreed with his conclusions.

Two days after the district court denied respondent's second commitment petition, appellant signed a probation agreement that (1) prohibited his contact with minors or prostitutes, (2) required him to comply with all mandatory predatory registration requirements, (3) required him to provide the Minnesota Department of Corrections (DOC) with the name of any woman with whom he had a significant relationship or planned to marry, and (4) required him to complete sex-offender treatment. Appellant violated the probation agreement when he failed to notify the DOC of his marriage to A.M., a Dominican Republic citizen with limited English-speaking ability and no awareness of appellant's criminal history. Appellant married A.M. approximately one month after they met and five days before the expiration date of A.M.'s visa.

Appellant began acting aggressively toward A.M. a few days after he was served with an ex parte order for protection, which had been obtained by another woman, N.V. N.V. also contacted some of A.M.'s family members about appellant's criminal history. When A.M. subsequently heard appellant arguing with N.V. on the telephone and realized that he was in some type of relationship with N.V., A.M. decided that she no

longer wanted a sexual relationship with appellant because of his relationship with N.V. and his criminal history. When A.M. refused appellant's sexual advances, appellant became verbally, physically, and sexually abusive toward her.

In November and December 2004, appellant assaulted and raped A.M. several times. On one occasion, appellant raped A.M. after threatening her with a knife. On another occasion, he raped her after tying her hands behind her back with his belt, leaving abrasions and bruises on her wrists. A.M. showed her wrists to appellant's mother, who testified that she did not understand A.M.'s broken English. On yet another occasion, while wielding a butcher knife, appellant placed A.M. in the bathtub, filled it with cold water, and sat on the toilet stool with a butcher knife and alternately threatened to kill A.M. and call immigration authorities. Appellant then dragged A.M. out of the tub with the butcher knife held to her throat, carried her to a bed, and raped her. A.M. did not report the rapes or assaults to police because appellant threatened to tell immigration authorities that she had paid him to marry her. But after appellant raped her at knifepoint, A.M. did not return to the condominium after work; instead, she went to her aunt's home. Appellant sent her flowers and told her that he loved her; three weeks later, A.M. returned to the condominium with him. After appellant raped her again, A.M. returned to her aunt's home.

Appellant learned that A.M. was pregnant and convinced her to meet with him on December 11, 2004. During the meeting, appellant was verbally abusive, threatened to kill A.M., choked her, removed her wedding ring, and pushed her out of his car. A.M. called 911 and, through a Spanish interpreter, was instructed to meet the police in front of

a local Target Store, where a police officer observed that A.M.'s hand was cut, red, and swollen. Notwithstanding this assault, with the assistance of his mother, appellant later convinced A.M. to accept his parents' invitation to their home for Christmas 2004. A.M. was led to believe that appellant would be accompanied by his family when he picked her up for Christmas, but appellant arrived alone. During the car ride to appellant's parents' home, appellant was verbally abusive toward A.M., drove at high speeds, threatened to crash the car and kill A.M., and stopped in a parking lot and physically assaulted A.M. Before arriving at his parents' home, appellant convinced A.M. to forgive him and to act as though nothing had happened. A.M. moved back into the condominium with appellant.

In February 2005, appellant again assaulted A.M. after A.M. found another woman's purse in appellant's car and threatened to throw it away. Appellant hit A.M. in the face and choked her until she became unconscious. When A.M. regained consciousness, she was lying on the ground and appellant was kicking her in the stomach. A.M., who was pregnant, experienced vaginal bleeding after this assault and went to the hospital. When a doctor asked her about the bruising on her face, she told him the bruises were the result of a fall at home. While at the hospital, A.M. saw an advertisement for Casa Esperanza, an organization that assists Spanish-speaking victims of domestic violence, and sought the organization's assistance in obtaining an order for protection against appellant. Appellant agreed to the entry of the order for protection.

In March 2005, during a routine traffic stop, appellant was found with a known prostitute and marijuana in the vehicle. Because Anoka County had previously issued a warrant for appellant for probation violations, appellant was taken into custody and his

condominium was searched. During the search, Anoka County Correctional Officers found: (1) five notebooks containing information pertaining to the sex industry, including how to engage, seduce, and gain compliance of women to work in the sex industry and how to control these women; (2) 13 pages of female names, adults and minors, with their addresses, phone numbers, physical descriptions, and ages; (3) a compact disc titled, "How to Sting the Polygraph Test"; (4) a list of women's treatment centers, halfway houses, and shelters; and (5) bags of marijuana and a plate holding razor blades and cocaine. At appellant's probation-violation hearing, A.M. testified about appellant's numerous assaults upon her. Appellant's probation violations were numerous, and included the assault of another woman on March 14, 2005. Appellant requested execution of his stayed 48-month prison sentence for kidnapping, and the district court granted his request.

While in prison, appellant made repeated phone calls to A.M., all in violation of prison rules and A.M.'s order for protection against him.² Appellant tried to convince third parties to physically assault A.M. and to frame her for criminal charges. Prison officials discovered that appellant was also involved in a sexual relationship with L.O., a female who was 14 years old at the time.

In 2007, for the third time, respondent petitioned the district court to commit appellant as an SPP/SDP. Dr. Gilbertson and Dr. Alberg were appointed by the court to examine appellant, but appellant refused to interview with either examiner. Nevertheless,

² Appellant enlisted some of his family members to assist him in making contact with A.M.

both examiners agreed that appellant's refusal to interview with examiners did not affect the validity of their assessments. Dr. Gilbertson opined that no dynamic risk factors mitigated appellant's risk of reoffending. In consideration of the testimony of L.O., Dr. Gilbertson testified that appellant is both an SPP and an SDP, based on his belief that appellant had a sexual relationship with L.O. Conversely, Dr. Alberg assumed that appellant's only harmful sexual conduct was that underlying his 1996 arrest. Dr. Alberg disagreed with Dr. Gilbertson's conclusion that appellant was highly likely to reoffend, but testified that if the court found that appellant did have a sexual relationship with L.O. or had assaulted his wife, his opinion would change.

On January 23, 2008, the district court found that appellant meets the criteria for commitment both as an SPP and an SDP and ordered that appellant be initially committed for treatment in the MSOP. The parties agreed to hold appellant's 60-day review hearing on April 16, 2008.³ At the review hearing, the district court considered that appellant assaulted another patient while in treatment, violated treatment facility rules, was uncooperative during his stay in treatment centers during his initial commitment, and that the MSOP treatment team opined that appellant needed further care and treatment in a secure setting. The district court concluded that appellant continued to be an SPP and an SDP and ordered his indeterminate commitment to the MSOP. This appeal follows.

³ The parties agreed to waive the statutory requirement that the review hearing be held within 14 days of the court's receipt of the MSOP report or 90 days from the date of the initial commitment admission, whichever first occurred.

DECISION

I.

A reviewing court is “limited to an examination of whether the district court complied with the requirements of the commitment act.” *In re Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). The criteria for civil commitment must be shown by clear and convincing evidence. Minn. Stat. § 253B.18, subd. 1(a) (2006). “In order to prove a claim by clear and convincing evidence, a party’s evidence should be unequivocal and uncontradicted, and intrinsically probable and credible.” *Deli v. Univ. of Minn.*, 511 N.W.2d 46, 52 (Minn. App. 1994), *review denied* (Minn. Mar. 23, 1994). Whether the record contains clear and convincing evidence of the statutory requirements for civil commitment is a question of law subject to de novo review. *In re Linehan*, 518 N.W.2d 609, 613 (Minn. 1994) (*Linehan I*). The factual findings of the district court will not be set aside unless they are clearly erroneous. *In re McGaughey*, 536 N.W.2d 621, 623 (Minn. 1995). Due regard must be given to the district court’s opportunity to judge the credibility of witnesses. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

A. In order to commit a person as an SPP, a petitioner must prove by clear and convincing evidence that the person (1) has engaged in a habitual course of sexual misconduct, (2) has an utter lack of power to control sexual impulses, and (3) is therefore dangerous to others. *In re Kindschy*, 634 N.W.2d 723, 732 (Minn. App. 2001) (citing Minn. Stat. §§ 253B.02, subd. 18b, .12, subd. 4 (2000)), *review denied* (Minn. Dec. 19, 2001).

Appellant asserts that clear and convincing evidence does not support the conclusion that he has engaged in a habitual course of sexual misconduct. Appellant first argues that he was never charged with criminal sexual conduct relating to his conduct toward L.O or for sexual or domestic violence against his wife. But “the psychopathic personality statute does not address convictions; it addresses behavior.” *In re Monson*, 478 N.W.2d 785, 789 (Minn. App. 1991). The district court’s findings as to appellant’s sexual conduct are supported by clear and convincing evidence. Appellant next argues that A.M.’s and L.O.’s accounts of his sexual misconduct are not credible. We defer to the credibility determinations of the district court, *Knops*, 536 N.W.2d at 620, which found these witnesses’ testimony credible based in part on the corroboration by other evidence presented at trial.

Finally, appellant disputes that he engaged in a pattern of sexual misconduct. *See In re Bieganowski*, 520 N.W.2d 525, 529-530 (Minn. App. 1994) (stating that a habitual course of sexual conduct can be shown when similar incidents of misconduct or incidents form a pattern), *review denied* (Minn. Oct. 27, 1994). The district court’s conclusion that appellant engaged in a habitual course of sexual misconduct is based on appellant’s kidnapping and sexual-assault convictions, his other arrests, his multiple sexual assaults of A.M., and his sexual relationship with L.O. The district court found that appellant’s offenses are similar in that appellant appears to have targeted vulnerable individuals who are less likely to report his conduct to police and habitually kept lists of potential victims. These similarities establish a pattern of conduct. *See id.* at 529 (considering habitual a

pattern of conduct where the subject lived in homes with children, consumed alcohol, and “groomed” children for sexual relationships).

Appellant argues that the evidence does not support the conclusion that he has an utter lack of power to control his sexual impulses. The supreme court has identified seven factors that are useful in determining whether a person lacks the power to control his sexual impulses: (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.” *In re Blodgett*, 510 N.W.2d 910, 915 (Minn. 1994). Appellant cites Dr. Gilbertson’s assessment that he does not suffer from paraphilia and that “a preponderance of [appellant’s] criminal behavior . . . is not sexual in nature.” But Dr. Gilbertson’s statements imply only that appellant did not experience sexual arousal as a result of his assaults. The district court referred extensively to Dr. Gilbertson’s assessment of appellant when it addressed the *Blodgett* factors in its findings and agreed with Dr. Gilbertson’s conclusion that appellant utterly lacks the power to control his sexual impulses. The court observed that both examiners diagnosed appellant with personality disorders that “have a direct connection to his inability and failure to adequately control his sexual impulses or behavior.” The court also cited Dr. Gilbertson’s characterization of appellant as an untreated sex offender as a factor in his conclusion that appellant lacks the power to control his sexual impulses and noted that appellant has repeatedly been

terminated from treatment programs for rules violations. Moreover, the court noted that appellant has committed acts of harmful sexual conduct while participating in sex-offender treatment. The district court's findings and conclusions are supported by clear and convincing evidence.

In order to commit a person as an SPP, a petitioner must also prove by clear and convincing evidence that the person is likely to commit violent sexual assaults. *In re Robb*, 622 N.W.2d 564, 573 (Minn. App. 2001), *review denied*, (Minn. Apr. 17, 2001) (stating that the SPP statute has been interpreted to “require a showing that a person’s behavior is violent in order to demonstrate that the person is dangerous to other persons”). The district court relied on Dr. Gilbertson’s opinion that the combination of the substantial emotional and physical harm that appellant’s sexual offending caused, and the high likelihood that appellant would commit such harmful acts in the future, supported the conclusion that he is dangerous to others. Appellant cites *Robb*, 622 N.W.2d at 572, in arguing that his past use of limited physical restraint is insufficient to show that he is likely to commit violent sexual assaults in the future. But the district court found, and the record supports, that appellant’s acts were committed with a “relatively high degree of violence,” rather than the mere limited physical restraint as characterized by appellant. Appellant’s reliance on *Robb* is misplaced; he used a knife in two attacks and threatened to kill his victims in at least two attacks.

Appellant argues that the results of his psychological and psychiatric evaluations are “mixed at best,” in that his scores of 29.1 and 30 on the PCL-R-2 are only at the threshold for a psychopathic personality, that his high PCL-R-2 score in combination

with a diagnosis of paraphilia/sexual deviance would indicate a higher risk of offending, and that appellant was not diagnosed with paraphilia. But assuming the truth of the first statement and the relevance of the second, these statements do not contradict the district court's conclusion that appellant lacks the power to control his sexual impulses, which was also based on appellant's results from other assessments such as the MNSOST-R, SVR-20, HCR-20, SORAG, and STATIC-99. Appellant asserts that Dr. Gilbertson erroneously interpreted his MNSOST-R results to indicate a high risk of reoffending rather than a moderately high risk of reoffending, but appellant provides no support for this assertion. Appellant also argues that the actuarial risk assessments used were flawed, but provides only a reference to a single DOC study as support and ignores the district court's note that "both doctors concur that the actual rate of sexual re-offense is higher than suggested" by these tools, in that they only consider the rate of conviction for new sexual offenses, and "sexual re-offenses are underreported." We determine that appellant's arguments lack merit.

B. Appellant also challenges his commitment as an SDP. An SDP is one who (1) has engaged in a course of harmful sexual conduct, defined in Minn. Stat. § 253B.02, subd. 7a (2006) as "sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another"; (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) (2006). Although an "utter lack of control" is not required of an SDP, a court must find that the person suffers from a mental abnormality or personality disorder that does not allow a person to adequately control his

sexual impulses. *In re Linehan*, 594 N.W.2d 867, 875 (Minn. 1999) (*Linehan II*). A court must also find that the person is “highly likely” to engage in future harmful sexual conduct. *Id.* at 876.

Appellant argues first that his relationship with L.O., due to its “consensual nature,” was not part of a “course of harmful sexual conduct.” But, given L.O.’s age of 14 at the time she began her relationship with appellant, the district court properly found that appellant’s relationship with L.O. satisfied the definition of third-degree criminal sexual conduct. *See* Minn. Stat. § 609.344, subd. 1(b) (2004) (providing that third-degree criminal sexual conduct occurs when “the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant.”). Section 253B.02, subdivision 7a, which defines “harmful sexual conduct,” provides that there is a “rebuttable presumption” that third-degree criminal sexual conduct “creates a substantial likelihood that a victim will suffer serious physical or emotional harm.” Contrary to appellant’s argument, consent is not a defense to third-degree criminal sexual conduct involving a minor, Minn. Stat. § 609.344, subd. 1(b) (stating that “consent by the complainant is not a defense”). Willingness on the part of a minor fails to rebut the presumption that third-degree criminal sexual conduct involving a minor is harmful sexual conduct; thus, appellant’s argument fails.

Appellant argues that clear and convincing evidence does not support the finding that he is highly likely to reoffend as a consequence of any mental disorder. *See Kansas v. Crane*, 534 U.S. 407, 413, 122 S. Ct. 867, 870 (2002) (stating that a mental abnormality must cause a lack of control, therefore distinguishing the subject from the

“dangerous but typical recidivist”); *Linehan II*, 594 N.W.2d at 874 (stating that like the Kansas statute applied in *Crane*, the Minnesota SDP statute “requires evidence of past harmful sexual behavior and a present qualifying disorder or dysfunction that makes future dangerous conduct highly likely if the person is not incapacitated”). But the district court observed that both examiners diagnosed appellant with impulse-control and personality disorders with narcissistic and antisocial traits and cited Dr. Gilbertson’s opinion that appellant’s “psychological disorders are clearly linked to a higher probability of repeat sexual offending.” We therefore reject this argument.

Appellant asserts that respondent has not shown by clear and convincing evidence that he is highly likely to commit harmful sexual acts in the future. *Linehan I* establishes six factors that determine whether an individual poses a future serious danger to the public:

(a) the person’s relevant demographic characteristics (e.g., age, education, etc.); (b) the person’s history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts); (c) the base rate statistics for violent behavior among individuals of this person’s background (e.g., data showing the rate at which rapists recidivate, the correlation between age and criminal sexual activity, etc.); (d) the sources of stress in the environment (cognitive and affective factors which indicate that the person may be predisposed to cope with stress in a violent or nonviolent manner); (e) the similarity of the present or future context to those contexts in which the person has used violence in the past; and (f) the person’s record with respect to sex therapy programs.

518 N.W.2d at 614. The district court relied on Dr. Gilbertson’s evaluation of these factors and his conclusion that they indicated a high likelihood that appellant would

engage in acts of harmful sexual conduct if not committed. Appellant's assertion is unfounded.

We conclude that clear and convincing evidence supports the district court's commitment of appellant as an SPP and an SDP.

II.

During appellant's commitment proceedings, appellant requested personal access to data that the district court admitted into evidence at the initial commitment trial as "confidential" and requested continuances to examine new evidence and to obtain substitute counsel. The district court denied each of these requests.

Appellant argues that his inability to personally access documents admitted at trial as "confidential" deprived him of his due-process rights, thus entitling him to a new trial. "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and the opportunity to meet it." *Matthews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976) (quotation omitted). A party is entitled to a new trial if that party can show that an evidentiary ruling was both improper and prejudicial to the party. *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990).

The district court allowed appellant's counsel to access the evidence, which included private data about third parties, including L.O., and data related to ongoing investigations, but denied appellant personal access to it. The subject of a commitment hearing may have direct access to his medical records and the reports of court-appointed examiners. Minn. R. Civ. Commitment 12, 13. Appellant does not dispute that he was given access to this data. Section 253B.07, subdivision 2c (2006), provides that the

attorney of a person subject to a commitment hearing be given “adequate . . . access to records to prepare for all hearings.” At issue here is not appellant’s counsel’s access to this data, but appellant’s personal access to it. Appellant has identified no authority that would allow for his *personal* access to any other private or confidential data.

Appellant also argues that the district court deprived him of his due-process rights in not granting him continuances to review newly discovered documents before trial and to obtain private counsel. The decision whether to grant a continuance is within the district court’s discretion and will not be reversed absent an abuse of discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). In this case, the district court based its decision to deny a continuance to review new evidence on the fact that the new evidence pertained to an incident about which there was “much information in the file already.” In addition, the record indicates that the new evidence was given to appellant pursuant to appellant’s discovery request to receive updated documents. As to appellant’s requests for a continuance to obtain private counsel, the district court denied this request on the ground that, while appellant had previously represented to the court that he had obtained a private attorney, appellant never provided any evidence that he ever hired the private attorney. The district court also described appellant’s appointed counsel as having “a great deal of experience in this area.” We conclude that the district court did not abuse its discretion in denying appellant’s requested continuances.

Appellant also raises an ineffective-assistance-of-counsel claim. The standard for evaluating ineffective-assistance-of-counsel claims is the same in civil-commitment cases as in criminal cases. *In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987), *review*

denied (Minn. Mar. 25, 1987). Whether a party receives ineffective assistance of counsel is a constitutional question subject to de novo review. *State v. Blom*, 682 N.W.2d 578, 623 (Minn. 2004). In order to prove ineffective assistance of counsel, an appellant must prove counsel's "representation 'fell below an objective standard of reasonableness.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2064 (1984)). The appellant must also demonstrate "that a reasonable probability exists that the outcome would have been different but for counsel's errors." *State v. Miller*, 666 N.W.2d 703, 716 (Minn. 2003). "Even if counsel's representation is less than perfect, the result of a hearing or trial will be set aside only if counsel's actions so undermine the hearing process that the result is prejudiced." *In re Cordie*, 372 N.W.2d 24, 29 (Minn. App. 1985), *review denied* (Minn. Sept. 26, 1985). A strong presumption exists that an attorney's performance was reasonable. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986).

Appellant argues that, in a conversation prior to his 60-day review hearing and again at trial, his counsel effectively withdrew from representing him. Appellant's counsel testified that in a conversation before the review hearing, appellant began screaming at him and threatened to report him to the Lawyer's Professional Responsibility Board. Appellant's counsel testified that he replied, "[i]t appears you have lost confidence in my ability to represent you. Therefore, given your threat of Lawyer's Board [sic], I don't feel I can talk," at which point appellant's counsel "cut off conversation." But after terminating his conversation with appellant, appellant's counsel apparently continued to assist appellant by attempting to set up a meeting with

appellant's examiner of choice, albeit while demanding that appellant commit to such a meeting in writing because appellant had a history of calling off interviews once an examiner arrived. Appellant's counsel also represented appellant at his 60-day review. While appellant's counsel requested permission to withdraw, after his request was denied, he proceeded to cross-examine witnesses at the hearing on appellant's behalf. We conclude that appellant's counsel did not effectively withdraw from representing appellant.

Appellant also argues that his counsel did not present a vigorous defense because he failed to call witnesses and obtain transcripts to impeach the testimony of A.M. and L.O. and failed to consult with him about these decisions. Individuals facing commitment have the right to be represented by counsel, and counsel must act as a vigorous advocate. Minn. Stat. § 253B.07, subd. 2c. "What evidence to present to the jury, including which defenses to raise at trial and what witnesses to call, represent an attorney's decision regarding trial tactics which lie within the proper discretion of trial counsel and will not be reviewed later for competence." *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999). Although appellant's counsel did not call witnesses at appellant's 60-day hearing, which was limited in scope, his counsel did call three witnesses at appellant's initial trial, cross-examined respondent's witnesses at both proceedings, engaged in a diligent discovery process, and filed motions on appellant's behalf. The record indicates, therefore, that appellant was not deprived of a vigorous defense, and we conclude that he received effective assistance of counsel.

Affirmed.