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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0153**

In the Matter of the Civil Commitment of:
Tony Ray Blaylock.

**Filed July 21, 2009
Affirmed
Ross, Judge**

Otter Tail County District Court
File No. 56-PR-07-3119

Ryan B. Magnus, Zack, Jones and Magnus, 300 St. Andrews Drive, Suite 110, Mankato, MN 56001 (for appellant)

Lori Swanson, Attorney General, John D. Gross, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

David J. Hauser, Otter Tail County Attorney, Otter Tail County Courthouse, 121 West Junius Avenue, Suite 320, Fergus Falls, MN 56537 (for respondent)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

This appeal requires us to address whether the district court properly considered relevant but allegedly unreliable evidence when it ordered an indefinite term of civil

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

commitment. Tony Blaylock appeals his December 2008 indeterminate commitment as a sexually dangerous person. He argues that the district court erroneously considered hearsay statements, the exclusion of which would have left insufficient evidence to establish that he engaged in a course of harmful sexual conduct justifying his indeterminate commitment. Because the record contains sufficient reliable evidence to support his commitment even without the challenged statements, we affirm.

FACTS

Blaylock was twice convicted of criminal sexual conduct, once in the third degree and once in the fourth degree. His conviction of third-degree criminal sexual conduct involved his consensual sex with a 15-year-old girl, A.M.H., when Blaylock was 27. He received an 18-month stayed prison sentence and up to 15 years of probation. Less than three years later, Blaylock was convicted of fourth-degree criminal sexual conduct for sexually assaulting an 18-year-old, A.J.S. The district court sentenced him to 36 months in prison.

Otter Tail County sought to commit Blaylock as a sexually dangerous person and as a sexual psychopathic personality just before Blaylock's release from prison. The district court held a trial and concluded that Blaylock is sexually dangerous, but that he is not sexually psychopathic. It ordered initial commitment. The district court then considered the treatment report of the Minnesota Sex Offender Program and ordered Blaylock to be committed indefinitely. Blaylock appeals.

DECISION

Blaylock challenges his indefinite civil commitment as a sexually dangerous person. He argues that the district court considered improper evidence to conclude that he engaged in a course of harmful sexual conduct. Our review of orders for commitment is limited to whether the commitment is justified by the evidence. *In re Civil Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). This court reviews fact findings for clear error and the district court's conclusions of law for whether they comply with the requirements of the commitment act and are supported by the findings. *Id.* We review the record in the light most favorable to commitment. *In re Civil Commitment of Carroll*, 706 N.W.2d 527, 530 (Minn. App. 2005).

To order a person committed as sexually dangerous, the district court must find that the person “(1) has engaged in a course of harmful sexual conduct . . . ; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c(a) (2006). Blaylock argues that the district court relied on inadmissible hearsay to reach its conclusion that he had engaged in a course of harmful sexual conduct. He asserts that without the hearsay, there is not enough evidence to support the course-of-conduct conclusion. We first consider whether the district court improperly relied on the evidence and then whether the evidence is sufficient to support the order for commitment.

Consideration of Police Reports

Blaylock's hearsay challenge focuses on the district court's consideration of police reports. These reports detail assaults that Blaylock allegedly committed but that did not all result in convictions. The four reports describe the accusations of four young women who claimed that Blaylock assaulted them in separate incidents in 2004 and 2005. According to these reports, K.J.L., 17, accused Blaylock of sexually assaulting her while she slept. E.D.K., 20, told police Blaylock raped her even as she hyperventilated and passed out. A.L.D., 18, reported that Blaylock coerced her into sexual activity by tricking her into removing clothing on the pretense of examining whether she could have a baby. H.R.G., 19, told police that Blaylock forced himself on her several times. Although Blaylock has no convictions for his conduct against these women, the charges regarding E.D.K. and H.R.G. were dismissed when he pleaded guilty to fourth-degree criminal sexual conduct against A.J.S. At his commitment trial, Blaylock denied assaulting the women.

The district court found the accusations in the police reports to be more credible than Blaylock's conflicting testimony. Blaylock contends that the district court failed to consider the unreliability of the statements within the reports and therefore improperly relied on them to support its conclusion that Blaylock engaged in a course of harmful sexual conduct. He contrasts the district court's treatment of these reports with the treatment discussed in *In re Civil Commitment of Williams*, 735 N.W.2d 727, 731–32 (Minn. App. 2007), *review denied* (Minn. Sept. 26, 2007). In *Williams*, this court affirmed the district court's admission of documents containing victim statements, noting

that the district court “diligently vetted the exhibits . . . and examined the reliability of each statement line-by-line.” *Id.* at 731. Blaylock asserts that the district court here failed to similarly vet the exhibits for reliability and that it therefore erred by relying on them.

District courts “shall admit all relevant evidence” in a commitment hearing. Minn. Stat. § 253B.08, subd. 7 (2006). Evidence is relevant if it tends to render any material fact more or less probable. Minn. R. Evid. 401; *Williams*, 735 N.W.2d at 731. A district court has discretion to determine the admissibility of evidence and to weigh credibility. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995); *Williams*, 735 N.W.2d at 731. It may also rely on hearsay. *Williams*, 735 N.W.2d at 730–31. There is no requirement that evidence of acts of harmful sexual conduct be limited to acts that resulted in a conviction, nor must every victim testify at a commitment hearing. *Id.* at 731–32. Blaylock contends that the victims’ statements are subject to “significant questions” about their reliability and that because the record does not expressly demonstrate that the district court examined each statement’s reliability, the district court clearly erred by relying on them.

The police reports describing K.J.L.’s and A.L.D.’s complaints exhibit some of the same indicia of reliability cited by *Williams* to support the admission of victim statements. The documents “were generated closely in time to the events they describe, and they include the accounts of first-hand witnesses.” *Id.* at 732. But the circumstances surrounding the accounts suggest doubt concerning their reliability. K.J.L. reported to police that while she was free of any drugs or alcohol Blaylock sexually assaulted her (including undressing her, moving her to a different room, and vaginally penetrating her

with his penis), but that she slept through the entire ordeal. A.L.D.'s report to police did not lead to any charges against Blaylock. These two stories have other apparent weaknesses. For example, A.L.D. claimed only that she *might* have told Blaylock "no" when he allegedly began touching her sexually, that if she did tell him "no" it was under her breath and probably inaudible, and that Blaylock then stopped touching her. That hearsay is admissible of course does not address the extent of its reliability.

It is unclear from the record on what basis the district court concluded that K.J.L.'s and A.L.D.'s shaky accounts added to the other, much more significant evidence that Blaylock engaged in harmful sexual conduct. The district court did not reveal why it was convinced that the statements in these two police reports are reliable evidence. Although no statute or caselaw requires that the district court give an on-the-record explanation of its reliance on particular evidence, when the record reflects a strong, facially apparent reason to doubt the reliability of hearsay evidence, the district court should express its bases for deeming the apparently unreliable evidence reliable. Otherwise, we cannot meaningfully review the factual basis for the commitment.

We recognize that the district court here might have considered the totality of Blaylock's predatory behavior when it weighed K.J.L.'s unusual report of having slept soundly through an elaborate and intrusive sexual assault. For example, other evidence in the record establishes that Blaylock provided incapacitating drugs or alcohol to his victims before assaulting them. Although K.J.L. did not report taking drugs or consuming alcohol, one might consider that her account is consistent with Blaylock's other assaults and believe that she lied about her own chemical use but honestly reported

the assault and sleeping through it. But for the reasons stated, without the benefit of the district court's reasoning, we will weigh the district court's commitment order without the use of K.J.L.'s or A.L.D.'s accusations.

By contrast, E.D.K.'s and H.R.G.'s statements, which resulted in criminal charges that were resolved as part of a plea agreement, contain no inherently implausible or obviously questionable elements. And Blaylock suggests none on appeal. We have no reason to question the district court's reliance on the statements in those police reports. Although the district court in *Williams* "examined the reliability" of each challenged statement "line-by-line," no statute or caselaw requires that approach. The statements need simply bear "indicia of reliability" to be considered, unless they are shown to be false or unreliable. *Id.* at 732. Because the reliability of E.D.K.'s and H.R.G.'s statements is supported by Blaylock's decision to plead guilty, and because Blaylock does not establish the statements' unreliability, we conclude that the district court properly considered the statements.

Harmful Course of Sexual Conduct

Even without considering K.J.L. and A.L.D.'s accusations, we hold that the evidence sustains the district court's conclusion that Blaylock engaged in a course of harmful sexual conduct. A course of conduct has "its ordinary meaning, as 'a systematic or orderly succession; a sequence.'" *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002). The conduct need not have resulted in a conviction. *Williams*, 735 N.W.2d at 731. Blaylock's assaults of E.D.K. and H.R.G. described in police reports, and Blaylock's conduct leading to his

criminal convictions for assaulting A.M.H. and A.J.S., support the district court's conclusion that Blaylock engaged in a course of harmful sexual misconduct.

Third- and fourth-degree criminal sexual conduct carries a presumption that the conduct was harmful. Minn. Stat. § 253B.02, subd. 7a(b) (2006). Blaylock's convictions of third- and fourth-degree criminal sexual conduct each led to presumed harmfulness and the conduct was expressly found harmful by the district court. The district court also concluded that the assaults described by E.D.K. and H.R.G. were also actually harmful to the victims. The evidence sustains the district court's finding that Blaylock engaged in a course of harmful sexual conduct.

Affirmed.