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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-318**

In the Matter of the Civil Commitment of:
James Adam Roth, a/k/a Jim Adam Roth.

**Filed August 1, 2011
Affirmed
Hudson, Judge**

Dakota County District Court
File No. 19-P9-07-030117

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James Backstrom, Dakota County Attorney, Debra Schmidt, Karen L. Henke, Donald
Bruce, Assistant County Attorneys, Hastings, Minnesota (for respondent State)

Cean Franklin Shands, West St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant James Adam Roth, a/k/a Jim Adam Roth, challenges the district court orders committing him initially and indeterminately to treatment in the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP). Because clear and convincing evidence supports the district court's orders for both initial and indeterminate commitment, we affirm.

FACTS

Appellant was born in 1956 and grew up in West St. Paul. At the age of three, he contracted polio and was hospitalized for 25 months. He is confined to a wheelchair. Since graduating from high school in 1975, appellant's income has come almost exclusively from Social Security disability benefits and drug dealing. By his own account, he has "used every drug under the sun," but he prefers marijuana, crystal methamphetamine, and cocaine.

In March 1997, a 25-year-old woman, D.H., fled from appellant's apartment in St. Paul to the security desk of the apartment complex, wearing only a white halter top. D.H. had a choke chain around her neck and bondage marks around her ankles and wrists. Appellant later reported that D.H. had gone to his apartment after he offered her \$1,500 to allow him to tie her up and engage in sexual conduct. D.H. told the police that when she arrived at the apartment, an unknown party placed a bag over her head, tied her hands behind her back with duct tape, and placed duct tape over her mouth and eyes. Appellant instructed the unknown person to remove D.H.'s pants, bind her feet, and place her on his bed; she was tied down with leather belts attached to the bedposts. Appellant shaved D.H.'s pubic hair, repeatedly threatened to electrocute her with a stun gun, forcibly put his fingers in her vagina, had oral sex with her, and had intercourse with her. Appellant stated that D.H. fled the apartment after he told her he was not going to give her the money as arranged. D.H. chose not to pursue charges.

Later in 1997, D.H.'s brother, Robert H., went to appellant's apartment in South St. Paul because he knew that his sister was there, and he was concerned. Robert H.

entered the apartment and found his sister lying face down and naked on the bed with her wrists behind her back in handcuffs and a belt around her neck; she was hysterical. Appellant was in the same room, holding a stun gun, which Robert H. took away before removing his sister from the apartment. D.H. again chose not to report the incident.

In January 1998, appellant was charged with a fifth-degree felony controlled-substance crime and felony possession of stolen property; he pleaded guilty to the drug offense. In February 1998, appellant was charged with a fourth-degree controlled-substance crime, possession of stolen property, possession of a pistol by an ineligible person, and aggravated forgery. He pleaded guilty to the drug offense. In investigating the offense, police interviewed a 19-year-old woman who reported that appellant had a high number of teenagers living with him on and off and that the teenagers received drugs from appellant in exchange for sex or for assisting him in the commission of crimes. In March 1998, appellant pleaded guilty to a fifth-degree controlled-substance crime. In April 2000, appellant pleaded guilty to prohibited possession of an electronic incapacitation device and aggravated forgery. The events giving rise to the last plea were as follows: appellant supplied a minor with a forged check and false identification and instructed him to cash the check. When the minor did not do so, appellant threatened to kill the boy's family, then electrocuted him with the stun gun while appellant's adult niece punched the boy in the head with her fist while holding car keys.

On March 8, 2000, appellant and his niece abducted a 14-year-old girl, H.C., at gunpoint and brought her to appellant's apartment in Eagan, where appellant held her until March 31. While H.C. was in the apartment, appellant drugged her, used bondage

equipment to restrain her, threatened her with a stun gun, penetrated her with his fingers and tongue, and attempted to have intercourse with her. Appellant was subsequently charged with deprivation of parental rights and third- and fourth-degree criminal-sexual conduct.

On March 30, 2000 (while H.C. was being held at appellant's apartment), J.F. a 12-year-old girl who lived in appellant's apartment complex, went to appellant's apartment. She was given a drugged drink and became semi-conscious. Appellant and a teenage girl brought J.F. to appellant's bedroom, removed her clothes, shaved her pubic hair, and chained her to the bed. Appellant licked J.F.'s vagina, penetrated her digitally, and shocked her with the stun gun when she attempted to escape. She was able to escape appellant's apartment the next day; her mother, who had reported her missing, found her wandering in the apartment complex with a chain hanging from her neck and accompanied by H.C. Appellant was charged with first- and second-degree criminal-sexual conduct, kidnapping, assault, false imprisonment, deprivation of parental rights, and prohibited use and possession of an electronic incapacitation device.

Appellant subsequently pleaded guilty to deprivation of parental rights (as to H.C.) and kidnapping (as to J.F.). One psychologist who helped prepare appellant's presentence investigation reported that appellant "is not amenable to any form of sex offender treatment at the present time because he denies any wrongdoing" and that appellant is a "predatory sex offender who is willing to use and uses violence, threats, and drugs to corner and subdue his victims and who utilizes physical restraint and

bondage as part of his methodology along with shaving pubic hair, committing oral sex, taping mouths shut and blindfolding.”

Appellant entered prison in September 2001, with a scheduled release date of February 24, 2009. In 2006, while in prison, appellant refused to be assessed for treatment in the Minnesota Department of Corrections (DOC) sex-offenders’ treatment program, claiming treatment was unnecessary because he had never committed or been convicted of a sexual offense.

In October 2007, appellant was referred to the Dakota County Attorney’s Office by the DOC for possible confinement as an SDP or a sexual psychopathic personality (SPP). Respondent filed a petition for civil commitment of appellant as an SDP and an SPP in November, 2008; the SPP petition was subsequently dismissed.

Appellant’s commitment trial took place over seven days between February and October, 2009. The district court heard testimony and received expert reports from James Gilbertson, Ph.D., Thomas Ahlberg, Ph.D., and Mary Kenning, Ph.D., and viewed the video depositions of H.C. and Robert H.

Dr. Gilbertson interviewed appellant twice and completed an evaluation. He opined that appellant engaged in a course of harmful sexual conduct by committing sex offenses against 12-year-old J.F., whose victimization lasted two days, and 14-year-old H.C., whose victimization lasted approximately three weeks. Dr. Gilbertson testified that all of appellant’s actions (including kidnapping, restraint, use of the stun gun, and compliance obtained through drugs and alcohol) created a substantial likelihood of serious physical and emotional harm to his victims. He testified that appellant has

manifested a sexual, personality, or other mental disorder or dysfunction, as evidenced by appellant's various diagnoses (including Axis I sexual abuse of adolescents, Axis II personality disorder (not otherwise specified), with antisocial and possibly narcissistic traits) and his history of criminal convictions, illegal activities, and general lifestyle. Dr. Gilbertson testified that appellant's disorder "defines who he is," is not a condition that comes and goes, and does not allow appellant to adequately control his sexual impulses.

Dr. Gilbertson also stated that, in his opinion, and based upon the predictive factors set forth in *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994) (*Linehan I*), appellant is "highly likely" to engage in harmful sexual conduct in the future. Dr. Gilbertson observed that appellant's demographic factors are essentially unchanged since the time of his offenses; that appellant's base-rate statistics, and particularly his high scores on the MNSOSTR, Static 99, and SVR-20 tests, show a very high likelihood of sexual recidivism; that appellant's sources of stress remain since the time of his offenses; that appellant's entire social life has always revolved around selling illegal drugs; that appellant's antisocial nature has not changed since his offenses; and that appellant's social contexts have not changed since his offenses. Dr. Gilbertson further testified that appellant has historically shown an ability to manipulate other people to help him commit his sexual crimes, such that his risk to the public vastly increases if he is in an unsupervised living environment. He also stated that appellant's "actuarial scores consistently place him within a group of released sex offenders who are at moderate to moderately high risk for sexual reoffense"; that appellant's personality disorder indicates

deficits in intimacy and social skills; that appellant demonstrates compromised empathy and anti-authority attitudes; that appellant's sexual-offense history shows a predilection for sexual contact with underage females, driven by his victims' vulnerability and the ease with which appellant gains control of his victims; and that appellant is an untreated sex offender who has denied sexual contact with his victims and the need for treatment.

Finally, Dr. Gilbertson opined that, although appellant is certainly in need of residential sex-offender treatment, given his confinement to a wheelchair, he is not necessarily in need of a maximum-security facility such as those used by the MSOP because he likely poses a smaller escape risk than able-bodied patients. But Dr. Gilbertson also stated he was not aware of any program in Minnesota that might be less restrictive than the MSOP but still provided adequate supervision to safeguard against appellant's ability to recreate his prior environments that enabled him to sexually offend. Dr. Gilbertson therefore testified that the MSOP is the only viable option for appellant and that no less-restrictive treatment alternative exists.

Dr. Ahlberg also interviewed appellant. He testified that appellant meets the criteria for civil commitment as an SDP. Dr. Ahlberg considered both appellant's charged offenses involving J.F. and H.C. and appellant's uncharged offense against D.H. in concluding that appellant has engaged in a course of harmful sexual conduct. He testified that all of appellant's actions created a substantial likelihood of serious physical and emotional harm to his victims (noting specifically that the assaults were highly violent and committed against girls appellant did not know), that appellant used physical and chemical restraints (as well as a stun gun), and that there was a high frequency of

sexual assaults during each incident. Dr. Ahlberg testified that appellant has manifested a sexual, personality, or other mental disorder or dysfunction, as evidenced by appellant's various diagnoses (including Axis I rule out sexual sadism and polysubstance dependence by history and Axis II narcissistic personality disorder with antisocial personality features) and his pervasive pattern of disregard for the rights of others. Dr. Ahlberg testified that appellant's mental disorders do not allow him to adequately control his sexual impulses.

Dr. Ahlberg opined that, based upon the application of various *Linehan* factors, appellant is "highly likely" to engage in harmful sexual conduct in the future. Dr. Ahlberg observed that appellant's demographic factors were essentially unchanged since the time of his offenses: he is a physically handicapped male with a history of poor relationships, employment difficulties, and violence. Dr. Ahlberg stated that appellant's base-rate statistics, including his 33 on the HARE psychopathy checklist (on which a score of 30 indicates categorical psychopathy), his SORAG score placing him in the high-risk category for violent reoffense, his HCR-20 score anticipating a high likelihood of another offense, and his SVR-20 score placing him at a very high likelihood of sexual recidivism, establish that appellant is highly likely to engage in acts of harmful sexual conduct in the future. Dr. Ahlberg noted that, if released, appellant's living environment would more than likely be very similar to the one in which his prior offenses took place and that appellant has not participated in any sex-offender therapy since his offenses. Dr. Ahlberg testified that, during the interview process, appellant denied detaining H.C. against her will and refused to discuss the possibility of reoffending because he did not

acknowledge having offended in the first place. Dr. Ahlberg testified that appellant meets the criteria for an SDP and cannot be safely released to the community.

Like Dr. Gilbertson, Dr. Ahlberg testified that, given appellant's physical limitations, he does not pose the same escape risk as able-bodied MSOP patients and may not need the level of security provided at the MSOP; Dr. Ahlberg suggested that some less-restrictive program might therefore be appropriate, if such a program exists. But, like Dr. Gilbertson, he also stated that he is aware of no such program. Dr. Ahlberg stated that the critical concern was that appellant be prevented from recreating the prior environments that enabled him to sexually offend and that assuming no suitable less-restrictive alternative to the MSOP exists (and in light of appellant's failure to identify a suitable facility), the MSOP is the only viable option for appellant.

Dr. Kenning, who interviewed appellant, testified that appellant meets the criteria for civil commitment as an SDP. Dr. Kenning testified that appellant has engaged in a course of harmful sexual conduct, that his actions created a substantial likelihood of serious physical and emotional harm to his victims, that appellant has manifested a sexual, personality, or other mental disorder or dysfunction, and that appellant's disorder does not allow him to adequately control his sexual impulses.

Applying the *Linehan* factors, Dr. Kenning concluded that appellant is "highly likely" to engage in harmful sexual conduct in the future. She specifically observed that appellant's physical disability does not lower his risk of reoffense and that appellant had the same limitations at the time of his initial offenses. Dr. Kenning concluded that appellant is dangerous to the public and cannot be safely released into the community,

that he is in need of intensive supervised sex-offender treatment in a secure residential setting, and that the MSOP is the only viable option for appellant and that no less-restrictive treatment alternative exists.

Following the expert testimony, and at the request of his counsel, appellant was interviewed by Project Pathfinder, Inc., an outpatient treatment facility for sex offenders, to determine whether a less-restrictive alternative setting than the MSOP could be available to appellant. The district court admitted the Project Pathfinder intake report into evidence and observed in its findings that the report only addressed appellant's potential admission as an outpatient participant in the program in the event the district court concluded that appellant did not meet the criteria for civil commitment as an SDP. Because the court concluded that appellant does meet the criteria (and that no suitable less-restrictive alternative to the MSOP existed), the results of the report were not relevant to the proceedings. Although both Project Pathfinder and the district court concluded that appellant was not a suitable candidate for the program, the district court did note, in its order, that, during his interview with Project Pathfinder, appellant admitted for the first time that he had engaged in oral sex and sexual intercourse with 12-year-old J.F. while he was holding her in his apartment on March 30–31, 2000.

The district court heard the video testimony of H.C., who testified that in March 2000, when she was 14, appellant kidnapped her at gunpoint and brought her to his apartment, where, after shaving off her pubic hair, he drugged her, bound her, shocked her with a stun gun, and sexually assaulted her repeatedly over a period of approximately three weeks. The district court specifically found H.C.'s deposition testimony to be

credible and persuasive, and concluded that the testimony constituted clear and convincing evidence that appellant sexually assaulted H.C. such that the incident, which did not result in a conviction for a sexual offense, should be considered part of appellant's course of harmful sexual conduct.

The district court also heard video testimony from Robert H., D.H.'s brother, concerning the 1997 uncharged incident involving appellant and D.H. at appellant's apartment in South St. Paul. The district court found the testimony to be credible and persuasive and observed that Robert H.'s credibility was further enhanced by the similarity between the events he described and the events described by D.H. in the incident report she gave to the police in March 1997. The district court found that Robert H.'s testimony described conduct similar to appellant's conduct in the assaults against H.C. and J.F. The district court concluded that the conduct described in Robert H.'s testimony clearly took place and should be considered a part of appellant's course of harmful sexual conduct.

In its initial commitment order, the district court concluded that sufficient evidence exists to commit appellant as an SDP and that there is no less-restrictive available facility than the MSOP. The district court found that both 1997 incidents involving D.H. (the second of which was the subject of Robert H.'s testimony), despite not being charged offenses, were clearly sexually motivated, caused D.H. serious physical and emotional harm, and were part of appellant's course of harmful sexual conduct for the purpose of satisfying the statutory criteria for commitment as an SDP. The district court found that the kidnapping of 12-year-old J.F. in March 2000, of which

appellant was convicted, was sexually motivated, caused J.F. serious physical and emotional harm, and was part of appellant's course of harmful sexual conduct. The court found that the conviction for deprivation of parental rights, arising out of the three-week abduction and imprisonment of 14-year-old H.C. in March 2000, was a sexually motivated offense, caused H.C. serious physical and emotional harm, and was part of appellant's course of harmful sexual conduct. The district court reviewed the expert reports and the rest of the evidence, including the deposition testimony of H.C. and D.H.'s brother, in light of the requisite factors and criteria set forth in the relevant statutory and case law, and concluded that respondent had proved the statutory elements of commitment by clear and convincing evidence. The district court committed appellant to the custody of the Commissioner of Human Services at the MSOP subject to a final determination.

After the close of evidence in appellant's commitment trial and before the January 11, 2010, interim order, appellant suffered a stroke and was hospitalized for approximately one week. At the request of appellant's counsel, the district court appointed Michael J. Fuhrman, Ph.D., a neuropsychologist, to examine appellant and provide a neuropsychological evaluation. Dr. Fuhrman's examination took place eight months after appellant's stroke. In light of this special circumstance, the 60-day review hearing was continued to December 2010. At the hearing, Dr. Fuhrman testified that the stroke caused appellant mild brain injury and that, assuming the district court found that appellant met the criteria for commitment as an SDP in the order filed at the end of trial, Dr. Fuhrman believed that appellant continued to meet those criteria as of the date of the

review hearing. Dr. Fuhrman also testified that, during the examination, appellant attempted to manipulate him into believing that appellant's symptoms were worse than they actually were and that appellant continues to aggressively attempt to manipulate others into doing what appellant wants them to do. A doctor from the MSOP testified at the hearing that there had been no change in appellant's condition since the commitment hearing and that appellant continued to meet the necessary criteria for an SDP. The district court affirmed its original order and committed appellant as an SDP for an indeterminate period. This appeal arose from both commitment orders.

D E C I S I O N

Appellant argues that the evidence is insufficient to support the district court's conclusions that he satisfies the requirements for commitment as an SDP and that there is no less-restrictive treatment program available.

On appeal from an order committing a person as an SDP, our review "is limited to an examination of the [district] court's compliance with the statute, and the commitment must be justified by findings based upon evidence at the hearing." *In re Commitment of Jackson*, 658 N.W.2d 219, 224 (Minn. App. 2003) (alteration in original), *review denied* (Minn. May 20, 2003). The district court's findings of fact will not be set aside unless clearly erroneous, and the record is viewed in a light most favorable to the findings. *In re Commitment of Ramey*, 648 N.W.2d 260, 269 (Minn. App. 2002). We defer to the district court's opportunity to judge witness credibility. *Id.* But whether the evidence is sufficient to meet the statutory requirements for commitment is a question of law, which

we review de novo. *In re Commitment of Martin*, 661 N.W.2d 632, 638 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003).

I

A person may be committed as an SDP under the Minnesota Commitment and Treatment Act if the petitioner proves that the person meets the criteria for commitment by clear and convincing evidence. Minn. Stat. §§ 253B.18, subd. 1(a), .185, subd. 1(a) (2010). An SDP is one who: (1) “has engaged in a course of harmful sexual conduct”; (2) “has manifested a sexual, personality, or other mental disorder or dysfunction”; and (3) “is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253B.02, subd. 18c(a) (2010). “Harmful sexual conduct” is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” *Id.*, subd. 7a(a) (2010). It is not necessary for the petitioner to prove that the person to be committed has an inability to control his sexual impulses. *Id.*, subd. 18c(b) (2010). But the statute requires a showing that the person’s disorder “does not allow [him] to adequately control [his] sexual impulses.” *In re Linehan*, 594 N.W.2d 867, 876 (Minn. 1999) (*Linehan IV*). Appellant contends that the record does not establish the first and third elements for commitment. As to the second element, appellant does not appear to challenge the district court’s determination that he has manifested a sexual, personality, or other mental disorder or dysfunction.

A. Appellant engaged in a course of harmful sexual conduct.

Appellant argues that respondent did not prove by clear and convincing evidence that he engaged in a course of harmful sexual conduct. Clear and convincing evidence

requires “more than a preponderance of the evidence, but less than proof beyond a reasonable doubt.” *In re Ray*, 452 N.W.2d 689, 692 (Minn. 1990). The district court’s “[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01; *see Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001) (stating that the district court is in the best position to weigh the evidence, and appellate courts defer to its credibility determinations), *review denied* (Minn. Feb. 21, 2001).

The SDP statute does not define “course” or specify the number of incidents necessary to constitute a “course,” but Minnesota case law indicates that a “course” is a “systematic or orderly succession; a sequence.” *In re Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) (quotation omitted), *review denied* (Minn. June 20, 2006). The county “is not required to show that the incidents of harmful sexual conduct are the same or similar harmful sexual conduct.” *Id.*; *see also id.* at 839 (stating that establishing a course of harmful sexual conduct “does not require that the harmful sexual conduct be precisely the same type or demonstrate a degree of similarity other than what is necessary to establish that it is harmful sexual conduct”). This course of conduct is not limited to “convictions, but may also include conduct amounting to harmful sexual conduct, of which the offender was not convicted.” *Ramey*, 648 N.W.2d at 268; *see also In re Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007) (“Incidents establishing a course of harmful sexual conduct need not be recent and are not limited to those that resulted in a criminal conviction.”), *review denied* (Minn. Sept. 26, 2007). The

harmfulness aspect of the course of conduct is defined as “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” Minn. Stat. § 253B.02, subd. 7a (2010).

Appellant’s argument on this issue focuses exclusively on the district court’s determination that the deposition testimony of H.C. and Robert H. was credible. At trial, the three experts informed the court that their opinion as to whether appellant engaged in a course of harmful sexual conduct required a prior determination by the district court concerning the credibility of H.C.’s and Robert H.’s deposition testimonies. The district court specifically found the testimony of each witness to be both credible and persuasive, and each expert consequently found that appellant had engaged in a course of harmful sexual conduct. Appellant contends that neither witness is credible and that the evidence is therefore insufficient to support the experts’ findings.

As to H.C., appellant argues that her deposition testimony was not credible because “[m]any of the acts [she] alleges Appellant performed are physically impossible for Appellant to accomplish” and because H.C., who has a history of running away from home, admitted during the deposition that she previously lied to her father about being abducted and sexually assaulted. H.C. was deposed under oath and subject to cross-examination. She gave a detailed, and emotional, account of her abduction at gunpoint and brutal treatment while in appellant’s custody. The district court found that H.C. had difficulty composing herself during the deposition, that H.C. “continually sobbed” during the questioning, and that “[i]t was painfully obvious . . . that H.C. was being traumatized by reliving these events in her testimony.” The district court found that H.C. has given

consistent reports of the events involving appellant in the years since they occurred and that the deposition testimony was consistent with those reports, further enhancing H.C.'s credibility.

As to appellant's allegation that H.C. is not credible because he cannot physically accomplish the acts she testified that he performed on her, appellant does not specifically identify any such acts. Nor does he dispute that he is physically capable of accomplishing many of the criminal acts H.C. testified he performed on her person, including holding and using a stun gun and penetrating her with his tongue, fingers, and various plastic devices. These acts supported the district court's conclusion that appellant sexually assaulted H.C. in a manner that caused her physical and emotional harm. We further note that, to the extent appellant was physically assisted in the abduction, restraint, and confinement of H.C. by other people (including his adult niece), appellant's demonstrated ability to manipulate others to commit sexual abuse and other criminal acts is an integral part of the experts' (and the district court's) determination that he is a danger to the public who meets the criteria for an SDP. The district court acted well within its discretion by crediting H.C.'s deposition testimony, and that testimony was sufficient to support the experts' determination that appellant's treatment of H.C. formed part of a harmful course of sexual conduct.

Appellant also argues the allegations concerning D.H. are not credible because (1) as to the March 1997 incident (when D.H. fled from appellant's apartment wearing only a halter top), D.H. never filed a police report and (2) the deposition testimony of Robert H. concerning the events later in 1997 is not credible because Robert H. admitted

that he and his sister were taking drugs in 1997 and because Robert H. is a convicted felon. Concerning the March 1997 events, the district court observed that, although D.H. initially reported them, she ultimately decided she did not want to pursue criminal charges. The district court found that the similarity of the assault alleged by D.H. in March 1997 to the sexual assaults reported by H.C. and J.F. in 2000 and to the events described by Robert H. in his testimony enhance D.H.'s credibility concerning the March 1997 events and constitute clear and convincing evidence that the events alleged by D.H. took place. This finding is not clearly erroneous.

Like H.C., Robert H. gave testimony under oath and was subject to cross-examination. The district court specifically credited the testimony in which Robert H. described finding his sister hysterical, naked, and face-down on appellant's bed, with her hands cuffed behind her back, while appellant electrocuted her with a cattle prod. Appellant had an opportunity to impeach Robert H.'s testimony at the time of the deposition, which the district court viewed in assessing Robert H.'s credibility. The district court found that Robert H.'s personal observations were credible and corroborated the credibility of D.H.'s initial police report concerning the March 1997 events. The district court properly found, based upon Robert H.'s testimony, that the events described therein took place.

B. Appellant is likely to engage in acts of harmful sexual conduct.

Appellant also argues that the record does not establish that he is likely to engage in acts of harmful sexual conduct, the third element of the SDP determination. "Harmful sexual conduct" includes "sexual conduct that creates a substantial likelihood of serious

physical or emotional harm to another” and includes first-, second-, third-, and fourth-degree criminal sexual conduct. Minn. Stat. § 253B.02, subd. 7a. The statutory phrase “likely to engage in acts of harmful sexual conduct” means that the person is “highly likely” to engage in harmful sexual conduct. *In re Linehan*, 557 N.W.2d 171, 180 (Minn. 1996) (*Linehan III*), *vacated and remanded*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff’d*, 594 N.W.2d 867 (Minn. 1999) (*Linehan IV*). The supreme court has set forth six factors to be considered in examining the likelihood of reoffense: (1) the offender’s demographic characteristics; (2) the offender’s history of violent behavior; (3) the base-rate statistics for violent behavior among individuals with the offender’s background; (4) the sources of stress in the offender’s environment; (5) the similarity of the present or future context to those contexts in which the offender used violence in the past; and (6) the offender’s record of non-participation in sex-therapy programs. *Linehan I*, 518 N.W.2d at 614.

Appellant does not challenge the district court’s findings on his demographic characteristics, his base-rate statistics, his sources of stress, his present and past contexts, or his record of participation in sex-therapy programs. The district court’s findings on these issues are amply supported by voluminous record evidence, including expert testimony, and are not clearly erroneous. Rather, focusing on his history of harmful sexual conduct, appellant argues that because “he is physically incapable of physically forcing anyone to do anything,” and because “[a]ll of [his] alleged harmful sexual conduct required the help of someone else,” it is improper to impute this conduct to him for the purpose of determining whether he is highly likely to engage in acts of harmful

sexual conduct. “The criminal concept of liability for crimes of others,” he argues, “should not be used in determining whether someone should be committed as [a] sexually dangerous person.”

Appellant’s argument is not supported by the record. Neither the experts nor the district court concluded that he is highly likely to engage in acts of harmful sexual conduct based upon other people’s conduct. Rather, Dr. Gilbertson testified that appellant has historically shown an ability to manipulate other people to help him commit his sexual crimes. Further, Dr. Henning testified that appellant’s physical disability does not lower his risk of reoffense. The Project Pathfinder evaluator who interviewed appellant wrote in his report that, although appellant’s

extreme physical disability limits his mobility and his capacity to engage in any harmful acts . . . he has historically demonstrated an ability and willingness to manipulate or use others to commit sexual abuse and numerous other criminal acts. So his disability is clearly not a protective factor, nor does it appear to mitigate the risk of any type of criminal recidivism.

The district court also found that appellant “did not play a passive role in these sexual assaults.” The experts agreed that, in light of appellant’s ability to manipulate others to assist in the commission of his crimes, his disability does not minimize his dangerousness to the population or the risk of further offenses. Appellant himself admits in his brief to this court that “[a]ll of the experts agreed Appellant’s ability to manipulate people is what makes him dangerous,” conceding the role of his own agency in his harmful sexual conduct. After interviewing and testing appellant and considering his history, the experts concluded that appellant is highly likely to reoffend. Their conclusions were not based

upon the imputation of anyone else's crimes to appellant. Thus, the record contains clear and convincing evidence that appellant is highly likely to reoffend.

II

Appellant argues that the Project Pathfinder non-residential program presents a suitable less-restrictive alternative to the MSOP's secure facilities. Under the statutory civil commitment scheme, a patient is committed to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less-restrictive program is available that satisfies both the patient's treatment needs and public-safety requirements. Minn. Stat. § 253B.185, subd. 1(d) (2010). Observing that the experts all stated that the highly secure environment of the MSOP may be unnecessarily restrictive for appellant in light of his physical limitations, appellant contends that Project Pathfinder is a suitable alternative. He relies on statements allegedly made by Project Pathfinder staff that he may be appropriate for their outpatient program under certain circumstances and that the only impediment is that appellant find his own housing.

Appellant's characterization of his previous interaction with Project Pathfinder is inaccurate, as is his conclusion about the program's suitability. First, Project Pathfinder only considered the propriety of its outpatient program for appellant in the event the district court determined that he does not meet the criteria for commitment as an SDP. Because the district court concluded appellant meets the criteria, Project Pathfinder was foreclosed as an option. In the report prepared during trial, the Project Pathfinder social worker noted that appellant would be a "high risk outpatient candidate" because of his criminal history and demonstrated ability to manipulate others to commit criminal acts.

While appellant is correct that Dr. Gilbertson opined that the MSOP may provide more security than is arguably necessary to protect the public from appellant, none of the experts, or the district court, ever suggested that a non-residential program would be appropriate, particularly in light of the experts' consensus that he should be committed as an SDP. The district court properly concluded that appellant did not meet his burden of demonstrating that a less-restrictive alternative to the MSOP exists.

Finally, appellant suggests that his stroke reduced his communication skills such that he was rendered less able to "effectively manipulate others." Dr. Fuhrman, the neuropsychologist who examined appellant eight months after his stroke, testified at the 60-day review hearing that appellant's stroke-related brain injury was mild, that he did not believe the stroke had affected whether appellant meets the criteria for commitment as an SDP, and that, even after the stroke, appellant is extremely manipulative and clearly still able to manipulate others. The district court properly concluded that appellant's stroke did not change his condition such that he no longer meets the statutory criteria for commitment as an SDP.

Affirmed.