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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1126**

In the Matter of the
Civil Commitment of:
Harley Beverly Morris.

**Filed December 27, 2011
Affirmed
Klaphake, Judge**

Washington County District Court
File No. 82-PR-09-7683

Gregory J. Schmidt, Bayport, Minnesota (for appellant Harley Beverly Morris)

Richard D. Hodsdon, Assistant Washington County Attorney, Stillwater, Minnesota (for
respondent Washington County)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from the district court's decision to civilly commit him as a sexually dangerous person (SDP), appellant Harley Beverly Morris challenges the sufficiency of evidence to support his commitment, arguing that (1) his pimping behavior was not sexually motivated and did not constitute harmful sexual conduct; and (2) the district court erred by relying on evidence from a 1968 incident in which he allegedly aided and abetted a rape, because that evidence is unreliable hearsay and because the incident was

too remote to demonstrate a course of harmful sexual conduct. We conclude that the district court erred by relying on the unsubstantiated 1968 allegation of rape. But because we conclude that the later pimping behavior had a sexually harmful component and that that behavior, coupled with appellant's conviction for attempted second-degree criminal sexual conduct, demonstrated a course of harmful sexual conduct, we affirm.

D E C I S I O N

This court reviews a district court's findings in a civil commitment case for clear error and determines de novo whether the findings satisfy the statutory requirements for civil commitment. *In re Civil Commitment of Stone*, 711 N.W.2d 831, 836 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

As a preliminary matter, respondent Washington County contends that appellant waived any evidentiary issues because he did not move for a new trial or amended findings in the district court. *See., e.g., Continental Retail, LLC v. County of Hennepin*, 801 N.W.2d 395, 399 (Minn. 2011) (upholding general rule that in order to preserve evidentiary rulings for appeal, party must move the district court for a new trial or amended findings). While this is the general rule, it does not apply in civil commitment proceedings. *In re Matter of Gonzalez*, 456 N.W.2d 724, 727 (Minn. App. 1990). “[T]he special nature of commitment . . . proceedings, coupled with the deprivation of liberty, compels a broader scope of review encompassing review of evidentiary issues on appeal from the order or judgment on the merits.” *Id.* In *Gonzalez*, this court noted that “[r]equiring a motion for a new trial to preserve evidentiary issues for appeal would prolong a proceeding which the legislature meant to expedite.” *Id.* Because appellant

was not required to move for a new trial or amended findings before seeking review in this court, he did not waive his evidentiary issues.

Within the meaning of the civil commitment statute, Minn. Stat. § 253B.02 (2010), a person is a “sexually dangerous person” if he or she “(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.” *Id.*, subd. 18c. “Harmful sexual conduct” is defined to include “sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.” *Id.*, subd. 7a(a).

“The statute does not define ‘course’ [in the statutory phrase ‘course of harmful sexual conduct’] or specify the number of incidents necessary to qualify as a course.” *Stone*, 711 N.W.2d at 837. But “course” is defined in caselaw as “a ‘systematic or orderly succession; a sequence.’” *Id.* (quoting *In re Civil Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002), *review denied* (Minn. Sept. 17, 2002)). The course of harmful sexual conduct is not limited to convictions, but “may also include conduct amounting to harmful sexual conduct [for] which the offender was not convicted.” *Ramey*, 648 N.W.2d at 268.

Appellant does not challenge the district court’s determinations that he has met the second and third criteria for determination as an SDP.¹ Rather, he challenges the first

¹ Appellant is a 60-year-old man with a psychopathic personality who has a lengthy criminal history that began in his youth; he has spent much of his life incarcerated or on probation or parole; he has committed many violent crimes, including murder; and he has a history of sexual misconduct. In agreement with the four expert witnesses who

criterion, claiming that he has not engaged in a course of harmful sexual conduct. He argues that respondent failed to offer clear and convincing evidence to satisfy this statutory factor because (1) his pimping behavior should not have been included as part of a course of harmful sexual conduct because it was motivated by a desire for financial gain and not for sexual gratification; and (2) the 1968 juvenile records of his aiding and abetting a rape were unreliable and therefore inadmissible, and the 1968 incident was too old to be included as part of a course of harmful sexual conduct.

The district court relied on three major incidents to reach its conclusion that appellant had exhibited a course of harmful sexual conduct. In the first, appellant was alleged to have aided and abetted the commission of a rape on July 15, 1968, when appellant was 16 years old. However, no original documents from this alleged incident are included in the district court record, and the record does not show whether the incident resulted in an adjudication of delinquency. Appellant testified at his commitment trial that he did not participate in the 1968 rape and that he actually attempted to help the victim escape, but he did admit that he went into juvenile custody after the event. We conclude that the district court erred by relying on this unsubstantiated allegation in making its commitment decision. *See Addington v. Texas*, 441 U.S. 418, 432-33, 99 S. Ct. 1804, 1812-13 (1979) (holding that constitutionally minimum burden of proof for

conducted psychological evaluations in this case, the district court concluded that appellant “will, without a doubt, reoffend in a dangerous way. The only debate has been whether [appellant] is sexually dangerous; that is whether he will engage in sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another.”

civil commitment cases is clear and convincing evidence); Minn. Stat. § 253B.09, subd. 1 (2006) (enumerating standard of proof for civil commitments).

In the second event, appellant worked as a pimp for approximately seven years during the late 1970's and early 1980's,² until he went to prison for manslaughter for the 1982 death of D.F., one of his prostitutes. Appellant identified different prostitutes who worked for him during the criminal investigation of D.F.'s death, and several of his prostitutes spoke to police during the murder investigation. D.F. suffered a violent death from asphyxiation from her own vomit after suffering blunt force trauma; a bone in her neck was broken from choking that occurred during the assault, and her autopsy showed that she was beaten both before and after her death. Police found the victim's blood, towels containing her blood and vomit, some of her missing fingernails, and, notably, her bloody missing underwear at appellant's residence; some of the items were buried in the back yard. One witness informed police that D.F. had been prostituting herself when she was not working for appellant, and this suggested a motive for her murder. C.L., a woman interviewed in Minnesota by California police, stated that she had worked for appellant as a prostitute, that he beat her in the face and choked her on numerous occasions, and that she quit working for him in 1982. According to C.L., appellant's "trademark" was that he always beat his girls in the face and choked them. Appellant was also charged with pimping in 1990 in Minnesota.

² During a July 1998 civil commitment review assessment, appellant stated that he was involved in pimping over a seven-year period. The record also includes many references to appellant offering his wives as prostitutes. Appellant was not civilly committed as a result of this assessment.

In the third sexually based assault, which occurred in 1995, appellant pleaded guilty to attempted second-degree criminal sexual conduct for the sexual assault of his former wife's sister. Appellant became angry with the victim and choked her until she became unconscious, causing her to defecate. When she awoke, appellant pulled off her clothes and raped her. Her physical injuries included scratches around her neck, a reddened neck, and vaginal swelling. Appellant concedes that this offense was sexually harmful.

As to the pimping behavior, we conclude that the evidence was sufficient to show that this was part of appellant's sexually harmful course of conduct. Although D.F. was murdered by appellant and her murder investigation did not focus primarily on whether she, a prostitute, was sexually assaulted, there was evidence that appellant caused D.F. sexual trauma contemporaneously with the murder. When appellant was questioned about the murder, he admitted that he and D.F. had just had sexual intercourse before she went missing. Her bloody underwear was also found in his possession after the murder. Conduct that does not result in a conviction may be included as evidence to establish a course of harmful sexual conduct. *Ramey*, 648 N.W.2d at 268. Appellant's conduct in causing D.F.'s death had a sexual component that was very similar to appellant's later conviction for attempted second-degree criminal sexual conduct.

Further, even though appellant claims that his pimping behavior was motivated solely for financial gain, Harry Hoberman, Ph.D., the psychologist who evaluated appellant and upon whose report the district court primarily relied in reaching its decision, concluded that appellant's pimping behavior demonstrated that appellant had

participated in a course of harmful sexual conduct. Dr. Hoberman's report states that in addition to his direct criminal sexual conduct offenses, appellant "has been involved in supporting and promoting prostitution across considerable periods of time and jurisdictions. There is a similarity of coercing women into sexual behavior for personal gain and gratification." Dr. Hoberman noted that appellant refused to be personally interviewed for his psychological examination and thus "no objective measure of his sexual arousal/interest pattern is available." He also noted that appellant "has a well-delineated pattern of physical violence towards his prostitutes and intimate partners, including choking/strangling them to unconsciousness. As others have identified this behavioral pattern has significant sadistic elements; however, there is not definitive evidence . . . that [appellant] is, in fact, characterized by Sexual Sadism."

While appellant's ongoing pimping behavior does not establish a course of harmful sexual conduct in the same way that his participation in the 1995 sexual assault or the 1982 murder did, we conclude that the district court did not err by considering all of appellant's proved conduct in arriving at its conclusion that appellant has demonstrated a course of harmful sexual conduct.

Affirmed.