

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1999**

In the Matter of the Civil Commitment of:
Tyler James Michael Tillman.

**Filed May 4, 2026
Affirmed
Segal, Judge***

Chisago County District Court
File No. 13-PR-24-45

MacKenzie Guptil, Pine City, Minnesota (for appellant Tyler James Michael Tillman)

Keith Ellison, Attorney General, James Austad, Lisa Broos, Assistant Attorneys General,
St. Paul, Minnesota; and

Janet Reiter, Chisago County Attorney, Walker, Minnesota (for respondent Chisago
County Health & Human Services)

Considered and decided by Connolly, Presiding Judge; Wheelock, Judge; and Segal,
Judge.

NONPRECEDENTIAL OPINION

SEGAL, Judge

Appellant challenges the district court's order committing him for an indeterminate period as a sexually dangerous person (SDP) under Minn. Stat. § 253D.07 (2024). He argues that the district court abused its discretion by admitting evidence that he allegedly

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

sexually assaulted two females without calling them as witnesses at the commitment hearing. Tillman also argues that the district court erred by finding that he met the criteria to be an SDP. We affirm.

FACTS

Chisago County filed a petition in April 2024 seeking the civil commitment of appellant Tyler James Michael Tillman as an SDP.¹ Tillman was 35 years old at the time of the commitment hearing. Tillman has two past convictions, one in 2010 for third-degree criminal sexual conduct and one in 2020 that occurred in Wisconsin for third-degree sexual assault. Tillman has been incarcerated since his second conviction. These are his only criminal convictions aside from traffic offenses.

At the commitment hearing, the county presented evidence of alleged sexual conduct related to six different females that occurred over a ten-year span between 2008 and 2018, including the two sex-offense convictions. Four of the females were underage, including one female who was only 14. Two of the females, A.R.C. and S.G., testified at the commitment hearing. The underlying facts related to the sexual incidents involving the other four females were submitted through law enforcement and court records. The incidents are summarized below in chronological order.²

¹ The petition also sought commitment of Tillman as a sexual psychopathic personality, but the county withdrew that portion of the petition prior to the commitment hearing.

² The incident summaries are taken from the district court's findings and the testimony of A.R.C. and S.G. In his trial testimony, Tillman does not challenge on appeal the district court's summaries of the incidents. Tillman largely denied that the sexual encounters were nonconsensual, including the two assaults to which he pleaded guilty.

C.E.M.

Tillman's first sexual-offense conviction arose out of a sexual assault that occurred in 2008. The victim in that case, C.E.M., was 16 years old at the time of the offense, and Tillman was 18. C.E.M. reported that she had dated Tillman for about five months, and that she first began having sex with him when she was 15 years old. She broke off their relationship but agreed to meet with him after he called and texted her. Tillman picked her up, drove her to his father's home, and took her to his bedroom. She said that they talked for about two hours when Tillman began kissing her and reached for the drawer where she knew he kept condoms, to which she told him no, that was not what she wanted. Tillman then laid on top of her, took his clothes off, held her arms against the headboard of the bed, pulled off a leg of her sweatpants and underwear, and penetrated her. C.E.M. repeatedly told him no and to stop. Tillman drove her home afterward, telling her he was sorry. He also called and texted her the next morning telling her he was probably going to turn himself in to the police.

Tillman was charged with third-degree criminal sexual conduct, to which he pleaded guilty in 2010. The district court sentenced him to 48 months stayed, with up to 15 years of supervised probation. While on probation, Tillman's probation officer received reports that Tillman was having sexual encounters with underage girls, including A.R.C. and S.G. The officer repeatedly directed Tillman that he was to have no contact with girls under the age of 18.

Tillman was found to be in violation of the terms of his probation three different times. The first two times were for offenses such as having pornography on his phone and

being arrested for a sex offense without notifying his probation officer. As a consequence of the violations, he was ordered to serve time in jail and complete various types of programming but was maintained on probation. After the district court found that Tillman had violated the terms of his probation for the third time in 2022 based on his second sexual-assault conviction, the district court revoked his probation and executed his sentence.

A.R.C.

In 2011, Tillman (then age 21) had a relationship with A.R.C., a 17-year-old girl who was in foster care. A.R.C. testified at the commitment hearing that Tillman was her first boyfriend and that she was a virgin until he had sex with her against her will. She said that she met him online through social media and that they then saw each other in person seven to ten times, typically in his truck at the beach where she would sit on his lap and they would kiss. She testified that Tillman would ask her if she wanted to have sex and that she told him no. One night, Tillman drove over in his truck around 10:00 p.m., and she got into his truck, and they began “making out.” She testified that he then started pushing her down in the truck seat until he was on top of her and held her arms above her head while he pulled her shorts down. A.R.C. said she told him to stop, that she “wasn’t ready for that,” but that Tillman nevertheless put his penis into her vagina. She said that when he was done, she pulled up her shorts and went into her house “dumbfounded.”

A.R.C. explained that for the next few years she was in a downward spiral and believed that Tillman’s actions impacted her ability to form healthy relationships and that she puts herself in a lot of dangerous situations because of it.

S.G.

In 2013, Tillman (then age 23) entered into a relationship with S.G., a 16-year-old girl. S.G. testified at the commitment hearing that she met Tillman at the beach, dated him for about nine months, and had sexual intercourse with him at least 15 times. S.G. said that it was difficult to end the relationship with Tillman because after it had ended, he would still show up in the school parking lot waiting for her and he would go to places where he knew she “hung out.” She said this conduct only stopped when he went to jail for an offense that did not involve her. S.G. testified that she believes that Tillman manipulated her and preyed upon her for sex.

A.A.J.

In the early morning hours of January 1, 2014, Tillman picked up A.A.J., a 14-year-old girl, and brought her to a party. Tillman was nine years older than A.A.J. Once at the party, A.A.J. started to feel sick and went to a bedroom in the house where the party was being held so that she could lie down. Tillman asked her if she wanted to have sex, to which she replied that she was 14 years old. Tillman told her that he would not bring her home unless she had sex with him, and A.A.J. then agreed. They began to have sexual intercourse, when A.A.J. began to cry in pain and asked him to stop, which he did. Tillman was charged with third-degree criminal sexual conduct, but the state later dismissed the case after the court granted Tillman’s motion for disclosure of certain of A.A.J.’s mental-health and chemical-dependency records.

K.S.B.

In April 2018, K.S.B., an adult female, reported that she was sexually assaulted by Tillman. K.S.B. told police that she was homeless (she had lost her housing at a halfway house) and had been staying at Tillman's house because she had nowhere else to go. K.S.B. reported that, on the day of the incident, Tillman texted her that "he was really horny" and was coming home to "bang" her. When Tillman arrived at the house, he began to kiss her, and she repeated that she was not in the mood and told him "no" and "it's not happening." Tillman told her that she wanted it and pulled down her pants and underwear. K.S.B. said that Tillman then held her down on the bed and forced himself inside her. K.S.B. submitted to a sexual-assault examination, which revealed a partial major male DNA match for Tillman. Tillman told police he could have sex with K.S.B. whenever he wanted because she was homeless and he was helping her out. Tillman was charged with third-degree criminal sexual conduct—force or coercion, but the state dismissed the case before trial, stating that they could not prove it beyond a reasonable doubt.

J.R.M.

In November 2018, Tillman (then age 24) sexually assaulted J.R.M., his 18-year-old cousin. On the night of the assault, Tillman drove an hour from Minnesota to Wisconsin where J.R.M. was working an evening shift at a group home. J.R.M. went out to his truck to have a cigarette with him and told him that she would not be able to come back out from work that night. When her shift ended a couple of hours later, she noticed that Tillman was still parked in the driveway of the group home. He asked her to smoke another cigarette with him in the truck before she went home. After finishing the cigarette,

Tillman leaned over to hug her, which was okay with J.R.M. because they were cousins. He then repositioned himself, putting his arms over hers and holding her arms down to her sides. When Tillman began kissing her neck, J.R.M. said she needed to leave and go home. Tillman, however, continued to hold her down, put down the back of the seat so that she was laying on her back, and pulled down her pants and underwear. J.R.M. attempted to resist and told him no, but he used his knees to force her legs apart and inserted his penis into her vagina.

Tillman was charged in Wisconsin with second-degree sexual assault and pleaded guilty to an amended count of third-degree sexual assault in January 2020. The Wisconsin court sentenced him to four years in prison and three years of extended supervision.

The county initiated a civil-commitment petition while Tillman was still incarcerated. The district court appointed Dr. Michael Thompson as the initial examiner and, at the request of Tillman, the district court appointed Dr. Thomas Alberg as the second examiner. Both doctors interviewed Tillman and prepared reports concluding that Tillman met the criteria for commitment as an SDP, the same conclusion reached by the county's pre-petition screener. The examiners opined that Tillman's conduct was harmful to the involved females, that Tillman suffered from unspecified paraphilic disorder which caused him to lack adequate control over his sexual conduct, and that he was highly likely to engage in harmful sexual conduct in the future. They also opined that Tillman needed intensive inpatient treatment and that the Minnesota Sex Offender Program was the only available alternative for that treatment.

The district court held a commitment hearing over four days in April and May 2025. At the hearing, the district court heard testimony from Tillman, A.R.C., S.G., and Drs. Thompson and Alberg. Tillman also presented testimony from a girlfriend, M.S., whom Tillman had been involved with since 2017, and M.S.'s father. M.S. and her father testified that they were aware of the allegations against Tillman, that M.S. intended to marry Tillman, that Tillman could come live with them if he was released, and that M.S.'s father had a job for Tillman. The district court issued its findings of fact, conclusions of law, and order for commitment, finding that the county had proven by clear and convincing evidence that Tillman satisfied the criteria for civil commitment as an SDP and that no less restrictive alternative was available. Tillman filed a motion for a new trial, which the district court denied.

DECISION

In his appeal, Tillman challenges the district court's order for his indeterminate commitment as an SDP, alleging that it was based on inadmissible evidence and that the district court's findings were not supported by clear and convincing evidence.

An SDP is defined as a person who “(1) has engaged in a course of harmful sexual conduct as defined in subdivision 8 [of section 253D.02]; (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. § 253D.02, subd. 16 (2024). If these three elements are established by clear and convincing evidence, the person is subject to commitment as an SDP, “unless the person establishes by clear and convincing evidence that a less restrictive treatment program is available.” Minn. Stat. § 253D.07, subd. 3.

We first address Tillman’s challenge to the admission of evidence related to A.A.J. and K.S.B.

I. The district court did not abuse its discretion when it admitted the law-enforcement investigation records and reports related to incidents of sexual conduct involving A.A.J. and K.S.B.

Tillman argues that the district court erred by admitting the law-enforcement investigation records and reports (police reports) relating to A.A.J. and K.S.B. because (a) they were unreliable, and (b) their admission violated his due-process rights.

Appellate courts “afford the district court broad discretion when ruling on evidentiary matters, and . . . will not reverse the district court absent an abuse of that discretion.” *Doe 136 v. Liebsch*, 872 N.W.2d 875, 879 (Minn. 2015). Appellate courts “review a district court’s decision to grant or deny a new trial for an abuse of discretion.” *Christie v. Est. of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). A district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law or if it resolves the question in a manner that is contrary to logic and the facts on record. *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022). De novo review is applied in assessing claims of due-process violations. *Williams v. Comm’r of Pub. Safety*, 830 N.W.2d 442, 444 (Minn. App. 2013), *rev. denied* (Minn. July 16, 2013).

The procedural provisions of the Minnesota Commitment and Treatment Act (MCTA), which are made applicable to SDP petitions by Minn. Stat. § 253D.07, subd. 2, direct that the district court “shall admit all relevant evidence” and “make its determination upon the entire record pursuant to the Rules of Evidence.” Minn. Stat. § 253B.08, subd. 7 (2024). Additionally, rule 15 of the MCTA rules provides that the district court “may admit

all relevant, reliable evidence, including but not limited to the respondent's medical records, without requiring foundation witnesses." Minn. Spec. R. Commit. & Treat. Act 15. Together, these provisions "require[] the district court to determine relevancy in accordance with the rules of evidence," but "do[] not require application of other rules of evidence." *In re Civ. Commitment of Williams*, 735 N.W.2d 727, 731 (Minn. App. 2007), *rev. denied* (Minn. Sept. 26, 2007). "A presumption of admissibility applies in commitment proceedings, and the district court has discretion to determine the admissibility of evidence." *Id.*

Here, Tillman filed a motion in limine seeking to suppress admission of the police reports. The district court reserved ruling on the motion until all witness testimony was presented. The court ultimately denied the motion, explaining that the police reports were relevant to the issues of whether Tillman engaged in a course of harmful sexual conduct and the likelihood that he would engage in such conduct in the future. The district court further noted that the police reports were created near in time to the alleged incidents, and that Tillman had the opportunity to testify about both alleged incidents. Finally, the district court stated that it "could weigh [Tillman's] credibility, weigh [Tillman's] testimony against the information in the police reports, and make a factual finding," reinforcing that it would not simply accept the challenged evidence at face value, but would independently weigh that evidence against the other evidence and testimony presented at the hearing.

Tillman argues that the police reports were unreliable because, even though criminal charges were brought against Tillman related to the sexual-assault claims of both A.A.J. and K.S.B., the county attorneys dismissed the complaints before trial. The A.A.J.

complaint was dismissed after the district court allowed discovery of certain of her mental-health and chemical-dependency records; the K.S.B. complaint was dismissed because the county attorney determined that the case could not be proved beyond a reasonable doubt. The fact that the county attorneys dismissed the cases before trial, however, is not determinative of the reliability of the evidence. See *In re Civ. Commitment of Ramey*, 648 N.W.2d 260, 268 (Minn. App. 2002) (“[T]he course of conduct need not consist solely of convictions but may also include conduct amounting to harmful sexual conduct, of which the offender was not convicted.”), *rev. denied* (Minn. Sept. 17, 2002); *In re Civ. Commitment of Stone*, 711 N.W.2d 831, 837 (Minn. App. 2006) (citing *Ramey*).

Indeed, we rejected a similar challenge to the admission of police reports in the *Williams* case, which also involved an SDP commitment. 735 N.W.2d at 732 (noting that there is “no statutory basis for” requiring that all victims must testify at a commitment hearing). In *Williams*, we found no abuse of discretion by the district court in admitting similar evidence when the documents “were generated closely in time to the events they describe, and . . . include[d] the accounts of first-hand witnesses, the victims.” *Id.* The police reports here, as in *Williams*, were generated “closely in time” to the events and include firsthand statements by both A.A.J. and K.S.B., as well as Tillman.³ Also similar to *Williams*, the district court here diligently reviewed the evidence in question and

³ We also note that the statements of A.A.J. and K.S.B. were contained in reports to police. It is a crime to make a false report to police. See Minn. Stat. § 609.505, subd. 1 (2024). Cf. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (evaluating reliability of an informant’s tip to police in a criminal case, noting that an informant’s credibility may be “enhanced because the informant is presumably aware that he or she could be arrested for making a false report”).

specified by page numbers the portions of the exhibits that were not relevant. We thus discern no abuse of discretion by the district court in admitting the police reports related to the assault allegations of A.A.J. and K.S.B.

Tillman also argues that admission of the evidence violated his right to due process because A.A.J. and K.S.B. did not testify at the hearing. We rejected that claim in *Williams*, and we are not persuaded by Tillman's arguments that there is good reason to deviate from that precedent here. *Id.* at 732-33 (rejecting a due-process challenge in an SDP civil-commitment appeal based on the admission of out-of-court statements without presenting testimony from the declarant).

We reject Tillman's due-process argument because, first, there is no right to confront witnesses in a civil proceeding as exists in criminal cases. *See, e.g., In re Irwin*, 529 N.W.2d 366, 373 (Minn. App. 1995) (noting that commitment proceedings are civil in nature and that the Confrontation Clause applies only in criminal cases), *rev. denied* (Minn. May 16, 1995). And second, Tillman had a full opportunity to rebut the county's evidence. The district court specifically noted that Tillman testified concerning the A.A.J. and K.S.B. allegations and that the district court would weigh that testimony against the police reports. And as noted in *Williams*, Tillman could have called A.A.J. and K.S.B. as witnesses himself if he wanted to cross-examine them. 735 N.W.2d at 732. We thus discern no violation of Tillman's due-process rights in admitting the A.A.J. and K.S.B. evidence.⁴

⁴ This is not to say that petitioners can prove SDP cases by relying too heavily on hearsay. As we stated in *Williams*, "we do not lightly dismiss . . . concern[s] about fairness as it regards the consideration of hearsay." 735 N.W.2d at 732. SDP commitments entail a

II. The district court did not err by determining that Tillman qualifies as an SDP.

Tillman argues that the district court erred in its determination that there is clear and convincing evidence that he meets any of the three criteria set out in the definition of an SDP in Minn. Stat. § 253D.02, subd. 16(a): that he (1) “engaged in a course of harmful sexual conduct”; (2) “has manifested a sexual, personality, or other mental disorder or dysfunction”; or (3) is “likely to engage in acts of harmful sexual conduct.”

Appellate courts “review de novo whether there is clear and convincing evidence in the record to support the district court’s conclusion that appellant meets the standards for commitment.” *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003). A district court’s civil-commitment determination “must be justified by findings based upon evidence at the hearing.” *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). Appellate courts review the district court’s findings of fact for clear error, viewing the record in the light most favorable to the district court’s findings, *see In re Civ. Commitment of Spicer*, 853 N.W.2d 803, 807 (Minn. App. 2014), and defer to a district court’s credibility determinations, *see In re Commitment of Kenney*, 963 N.W.2d 214, 222-23 (Minn. 2021).

A. Course of Harmful Sexual Conduct

The first element of the SDP definition is that the person “has engaged in a course of harmful sexual conduct as defined in subdivision 8” of section 253D.02. Minn. Stat. § 253D.02, subd. 16(a)(1). That subdivision defines “harmful sexual conduct” as “sexual

significant intrusion on personal liberty, and “fundamental fairness is the touchstone of due process in proceedings where personal liberty is at stake.” *Id.*

conduct that creates a substantial likelihood of serious physical or emotional harm to another.” *Id.*, subd. 8(a) (2024). Criminal sexual conduct in the first through fourth degrees is rebuttably presumed to create a substantial likelihood of serious physical or emotional harm. *Id.*, subd. 8(b) (2024). The statute does not define what constitutes a “course” of harmful sexual conduct, but caselaw has defined it as a “systematic or orderly succession; a sequence.” *Stone*, 711 N.W.2d at 837 (quotation omitted). Caselaw also advises that a “course of harmful sexual conduct” includes “both conduct for which the offender was convicted and conduct that did not result in a conviction.” *Id.*

Here, the district court found that Tillman had engaged in harmful sexual conduct based on, among other things, Tillman’s own acknowledgment that he harmed C.E.M., A.R.C., S.G., A.A.J., and J.R.M. In addition, the district court credited the testimony of Drs. Thompson and Alberg that “all six women and/or girls were likely to have suffered harm as a result of [Tillman’s] behavior,” along with the testimony of A.R.C. and S.G. as to the harm they suffered due to Tillman’s conduct. As noted above, we defer to such credibility findings. *See Kenney*, 963 N.W.2d at 222-23. The district court thus found that Tillman failed to rebut the presumption that harmful sexual conduct occurred with regard to the C.E.M. and J.R.M. convictions and found clear and convincing evidence of harmful sexual conduct that created a substantial likelihood of serious physical or emotional harm with regard to A.R.C., S.G., A.A.J., and K.S.B.

The district court also found that the conduct was part of a course of conduct, noting:

The allegations span a period of approximately ten years, with five of them occurring while [Tillman] was on probation for the CEM case and in spite of his probation

agent's attempts to intervene through requiring treatment, limiting [Tillman's] contact with minors, and imposing other conditions meant to lessen the risk that he would continue to engage in harmful sexual behavior.

In support of its finding, the district court pointed to the “similar[ity of the] fact patterns,” which involved “victims under the age of 18, victims who were vulnerable, and the use of force.” Finally, the district court commented that “[t]he CEM and JRM convictions alone would be sufficient to form a course, but the allegations of [Tillman's] conduct as it relates to ARC, SG, AAJ, and KSB provide additional evidence that [Tillman] engaged in a course of harmful sexual conduct.”

Tillman challenges the district court's reliance on his conduct regarding A.A.J., K.S.B., S.G., and A.R.C. For A.A.J. and K.S.B., Tillman reiterates his arguments under the first issue—that the district court should not have admitted the police reports because the charges were dismissed and they did not testify at trial. As discussed above, the district court did not err by admitting this evidence.

Regarding S.G., Tillman argues that his conduct should not have been considered as evidence of a “course of harmful sexual conduct” because there was no evidence that he ever sexually assaulted her. Although it is true that S.G. did not allege that she was assaulted, the fact remains that S.G. was only 16 years old at the time that Tillman—who was 23—initiated a sexual relationship with her. She testified that she was too young at the time to know what she was getting into and that it made her upset and angry. She stated: “I feel like the relationship was only for sex, and for him, I was an easy target for

that.” She also testified that after she broke off the relationship, he continued to follow her, showing up in the parking lot of her high school and the places that she “hung out.”

In addition to S.G.’s testimony, both Drs. Thompson and Alberg testified that S.G. likely suffered psychological and emotional harm as a consequence of the sexual relationship with Tillman. And nothing in the definition of “harmful sexual conduct” requires a physical assault for conduct to be considered harmful. Moreover, the evidence related to S.G. was just one of six examples of harmful sexual conduct in the record. Thus, even if the S.G. evidence was to be set aside, five other examples remain.

As to A.R.C., Tillman argues that his conduct should not have been included because she testified that she “does not blame [Tillman]” and that she “put herself in a lot of dangerous situations.” Tillman’s reliance on this testimony is disingenuous. A.R.C. testified that Tillman sexually assaulted her when she was only 17 and living in foster care. Tillman was 21. She testified that she thought she loved him and repeatedly told him that she was not ready to engage in sex in the days prior to the assault and while the assault was occurring. She further testified that the assault caused her to become more vulnerable and put herself in dangerous situations because she did not know what a healthy relationship looked like. And significantly, Tillman acknowledged in his testimony that A.R.C. was “probably” hurt by his actions, because they involved “sex without dating,” declaring that he was not in a boyfriend-girlfriend relationship with her.

We thus discern no error by the district court in its determination that there was clear and convincing evidence that Tillman engaged in a course of harmful sexual conduct.

B. Sexual, Personality, or Other Mental Disorder Causing a Lack of Control over Sexual Impulses

The second element of the definition of an SDP is that the person “has manifested a sexual, personality, or other mental disorder or dysfunction.” Minn. Stat. § 253D.02, subd. 16(a)(2). The person’s mental disorder must make it “difficult, if not impossible, for the person to control his dangerous behavior.” *In re Linehan (Linehan IV)*, 594 N.W.2d 867, 875 (Minn. 1999) (emphasis omitted) (quotation omitted). “[A]n offender’s history of harmful sexual conduct and a high likelihood of future dangerousness, coupled with a mental illness or dysfunction, demonstrates that an offender will find it difficult to control behavior.” *Ramey*, 648 N.W.2d at 268.

In support of its determination that Tillman met the second element, the district court relied on the testimony of Drs. Thompson and Alberg, who both diagnosed Tillman with unspecified paraphilic disorder and testified that this caused Tillman to lack adequate control over his sexual behavior. Dr. Thompson testified that the fact that Tillman was implicated in at least four sexual assaults, and that he continued to offend despite being sanctioned for violating the terms of his probation, supported his conclusion that Tillman lacked control over his sexual behavior. The district court found the opinions of both doctors on this issue to be credible. Quoting Dr. Thompson, the district court noted that Tillman’s history, as demonstrated by the incidents involving the six females, “illustrates a lack of control over his sexual behavior that appears immune to legal consequences or court imposed sanctions.”

Tillman argues that the evidence does not sufficiently distinguish him from a “typical offender that can be dealt with in the prison system.” Tillman relies on *In re Martinelli*, where this court reiterated the constitutional requirement that “serious difficulty in controlling behavior” must distinguish the dangerous sexual offender from the typical criminal recidivist. 649 N.W.2d 886, 890 (Minn. App. 2002) (quoting *Kansas v. Crane*, 534 U.S. 407, 413 (2002)). But in *Martinelli*, we concluded that “a judicial finding of ‘lack of control’ based on expert testimony tying that ‘lack of control’ to a properly diagnosed mental abnormality or personality disorder . . . adequately distinguishes the offender subject to commitment from the ‘typical recidivist’ offender.” *Id.* Here, the district court did exactly that. It made a finding of “lack of control” based on the opinions of both Drs. Thompson and Alberg that Tillman’s diagnosis caused him to lack adequate control over his sexual behavior.

Tillman argues that the district court did not place adequate weight on the fact that he had reached the age of 35, which reduces his actuarial risk of re-offense, and that he was incarcerated for a “substantial” period of time (approximately four years) immediately prior to the commitment petition, asserting that the prison time could serve as an effective deterrent to re-offense. But the district court was within its discretion to weigh this consideration against the expert’s opinions and Tillman’s history of probation violations. As an appellate court, we are not at liberty to reweigh that evidence. *See Kenney*, 963 N.W.2d at 222-23; *see also In re Civ. Commitment of Ince*, 847 N.W.2d 13, 24 (Minn. 2014) (“[T]he district court is in the best position to weigh the evidence and assess credibility . . .”).

The district court did not err by determining that there was clear and convincing evidence that Tillman has a sexual, personality, or other mental disorder that causes him to lack adequate control of his sexual impulses.

C. Likely to Engage in Acts of Harmful Sexual Conduct

The third element of the definition of an SDP is that the person “is likely to engage in acts of harmful sexual conduct.” Minn. Stat. § 253D.02, subd. 16(a)(3). The Minnesota Supreme Court has interpreted “likely” under this statute to mean “highly likely.” *Ince*, 847 N.W.2d at 22. There are six factors (the *Linehan* factors) to be considered when determining whether a person is likely to engage in acts of harmful sexual conduct:

(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.

In re Linehan (Linehan I), 518 N.W.2d 609, 614 (Minn. 1994).

Here, the district court, again relying on the opinions of Drs. Thompson and Alberg, found that all six factors supported that Tillman was highly likely to engage in harmful sexual conduct in the future. And while it considered Tillman’s argument that he is no different from the typical recidivist who can be deterred by prison, it noted that Tillman has continued to reoffend while on probation, despite being sanctioned twice by the court

for probation violations before his probation was finally revoked after his conviction for the sexual assault involving J.R.M.

Tillman challenges the district court's determinations under each factor.

1. Relevant Demographic Characteristics

The first factor is “the person’s relevant demographic characteristics (*e.g.*, age, education, etc.).” *Id.*

Here, the district court determined that Tillman’s demographics—male, unstable relationship history, unstable work history, and history of chemical dependency—supported that he was highly likely to engage in harmful sexual conduct in the future. It also noted that Tillman’s age of 35 “slightly minimized” the risk.

Tillman argues that his age should have outweighed the other concerns. But Tillman fails to demonstrate that his age so significantly reduced his actuarial risk that the district court erred by not according it greater weight. “The district court is free to determine the weight to be attributed to any particular piece of evidence, . . . based on the record in an individual case.” *Ince*, 847 N.W.2d at 24. We thus discern no error by the district court in according less weight to the fact that Tillman had reached the age of 35.

2. History of Violent Behavior

The second factor is “the person’s history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts).” *Linehan I*, 518 N.W.2d at 614. Here, the district court pointed to Tillman’s two sexual-assault convictions, noting that both involved physical restraint of the two victims, and that several of the other incidents also involved physically restraining the victims so that he could sexually

penetrate them against their will. The district court further noted that the most recent assault, the conviction related to J.R.M., involved an escalation because, in addition to holding her down, Tillman forced her legs apart. The court noted that “[t]his escalation, combined with the fact that [Tillman’s] victims have been primarily young and/or vulnerable, gives the Court great concern.” The district court also credited the opinions of Drs. Thompson and Alberg, who both testified that Tillman’s history demonstrates violent behavior and supports that he is highly likely to engage in harmful sexual conduct in the future.

Tillman argues that there was no evidence that he used violence regarding A.A.J.—the 14-year-old he had sex with at a New Year’s party as a condition of driving her home. He contends that his conduct toward A.A.J. should not have been considered under this factor. It is not clear, however, that the district court placed much if any reliance on Tillman’s interactions with A.A.J. in connection with this factor. The district court referenced Dr. Thompson’s opinion in his report that Tillman utilized “instrumental violence” as “an aspect of the offenses against AAJ, KSB, and JRM,” but the court does not mention this elsewhere in its analysis of this factor. In addition, the A.A.J. incident is only one of six examples of harmful sexual conduct presented by the county. And the district court credited the evidence that Tillman forcibly removed clothing and physically restrained his victims to accomplish sexual penetration with C.E.M., A.R.C., K.S.B., and J.R.M.—providing evidence of a history of violent behavior. Thus, if there was an error with regard to consideration of A.A.J., we would consider it a harmless error. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

Tillman also makes a series of additional arguments under this factor which are unpersuasive. He argues once again that the district court should not have admitted evidence regarding A.A.J. and K.S.B., but as discussed above, we discern no abuse of discretion in the admission of this evidence. He argues that there was no use of weapons or “additional physical assaults,” but the factor does not require that “violent behavior” include weapons or “additional physical assaults.” He argues that he had no history of “nonsexual violence,” but this fact was noted and was weighed in Tillman’s favor by both Drs. Thompson and Alberg. Finally, Tillman attempts to attack the credibility of Drs. Thompson and Alberg, but the district court found their testimony to be “credible and of significant weight,” and we defer to such findings. *Kenney*, 963 N.W.2d at 222-23.

The district court did not err by determining that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

3. *Base Rate Statistics*

The third factor is “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.).” *Linehan I*, 518 N.W.2d at 614.

Here, the district court considered Tillman’s scores on several actuarial measures and risk-assessment tools, and the testimony by Drs. Thompson and Alberg about these tools. The district court referenced the following actuarial and risk-factor assessments utilized by Drs. Thompson and Alberg, including the Static-99R, the Stable-2007, the Sex Offender Risk Appraisal Guide, the Sexual Violence Risk-20, and the Hare Psychopathy Checklist-Revised 2nd Edition. The district court noted that both examiners opined that

the scores from these assessments support that Tillman is “highly likely to reoffend.” The district court found that both examiners “credibly testified regarding how they scored [Tillman] on their respective assessments” and “that both examiners have credibly testified and provided other information that would indicate that [Tillman’s] base rate statistics reflect that [Tillman] is highly likely to reoffend.” The district court expressly noted that in evaluating “the actuarial measures and other risk assessment tools and risk factors . . . [t]he Court is mindful of and does not overemphasize or double count risk factors that may be considered in multiple assessments.”

Tillman asserts error in the use of the Static-99R tool. Tillman argues that his risk for re-offense under the Static-99R would have been higher if some of his victims were male or he had non-sexual offenses. But the absence of these potential factors does not detract from Tillman’s other risk factors. Tillman also argues that he was considered under the wrong category. Dr. Thompson testified that, under the methodology of the tool, Tillman was compared to other sex offenders in the “high risk” or “high needs” pool because the county petitioned for him to be committed. If Tillman had been categorized as being in the “routine needs” group, his risk for re-offense would have been lower. But this does not mean that it was error for the examiners to place Tillman in the “high needs” category.

Dr. Thompson explained in his testimony that he placed Tillman in the “high needs” category based on the design of the tool. And Tillman presented no evidence that either

examiner used the tool incorrectly.⁵ The district court had the opportunity to hear and evaluate Tillman’s cross-examination of Dr. Thompson on this issue and had discretion to weigh the credibility of the experts’ testimony and the methods they used. We thus discern no abuse of discretion in the district court’s findings related to the Static-99R, which was just one of the five assessment tools utilized by the examiners.

The district court did not err by determining that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

4. *Sources of Stress in the Environment*

The fourth factor is “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).” *Id.*

Here, the district court relied on testimony that it found credible from Drs. Thompson and Alberg regarding Tillman’s predicted difficulties with finances, housing, employment, and chemical use.⁶ It also expressed doubts about Tillman’s post-release plans that involved him moving in with M.S.’s family and, while M.S.’s father testified that he had a job waiting for Tillman on his release, the district court noted that it was not clear how long the job would be available, whether it would involve year-round work, and whether the rate of pay would be sufficient to cover Tillman’s expenses. The

⁵ It should be noted that both examiners revised their Static-99R scores from a five to a four when Tillman turned 35, because his age reduced his actuarial risk of re-offense.

⁶ The record shows that Tillman had been previously assessed as having a severe alcohol-dependency problem, for which he had been through treatment.

court also expressed doubt about the ability of M.S. to hold Tillman accountable because he had engaged in “sexual offending behavior while he was dating” her—the sexual assaults of K.S.B. and J.R.M.—and that the evidence showed that Tillman “has been unable to hold himself accountable for his own actions.” The district court determined that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

Tillman argues that the Minnesota Department of Corrections would provide intensive monitoring if he were released into the community and that, because he is now older, he is likely able to handle stress more effectively. These arguments, however, just ask this court to reweigh the evidence, and do not establish an abuse of discretion by the district court. *See Kenney*, 963 N.W.2d at 222-23.

We thus discern no error by the district court in its determination on this factor.

5. *Similarity of Present or Future Context*

The fifth factor is “the similarity of the present or future context to those contexts in which the person has used violence in the past.” *Linehan I*, 518 N.W.2d at 614.

Here, the district court observed that, although Tillman may change his living situation, his exposure to young adult females would be no different. The district court noted that Tillman had used social media in the past to make connections with young females, even though his probation officer instructed him not to have contact with underage girls, and that this avenue would still be available to him while living with M.S.’s family. The district court also expressed skepticism concerning the re-offense prevention plan that Tillman had prepared. The district court commented that, although the “plan somewhat

lowers the Court's concerns, because [Tillman] has failed to make meaningful efforts at treatment and cannot articulate what he has learned in past treatment," the plan was "superficial and unlikely to address his needs to sufficiently lower the risk he poses to the community." The district court thus determined that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

Tillman argues that the district court failed to consider that the statutorily required "intensive supervised release" would be more effective than his past probation conditions. But the district court was within its discretion to weigh this against Tillman's history and known risk factors. *See, e.g., Ince*, 847 N.W.2d at 24.

The district court did not err by determining that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

6. *Record in Sex Therapy Programs*

The sixth factor is "the person's record with respect to sex therapy programs." *Linehan I*, 518 N.W.2d at 614.

Here, the district court relied on the expert's classification of Tillman as an "untreated sex offender" because he had failed to complete several treatment programs, having been terminated for absences and re-offenses and, for the programs he did complete, he could not articulate what he had learned in the program. The district court noted that Tillman "consistently failed to prioritize his participation in sex offender treatment and what treatment he has participated in has made little to no impact on him." Accordingly, the district court determined that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.

Tillman argues that the district court failed to consider his completion of chemical-dependency treatment and “demonstrated” intent to participate in sex-offender treatment. But the district court was within its discretion to rely instead on Tillman’s failure to complete sex-offender treatment. *See Ince*, 847 N.W.2d at 24.

The district court did not err by determining that this factor supported that Tillman was highly likely to engage in harmful sexual conduct in the future.⁷ Consequently, we discern no error in the district court’s determination that the third SDP criterion was satisfied.

Affirmed.

⁷ Tillman also reiterates here his argument that he has not been sufficiently distinguished from the typical recidivist offender, which we addressed above.