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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-495**

State of Minnesota,
Respondent,

vs.

Matthew Adam David,
Appellant.

**Filed January 11, 2011
Affirmed
Stauber, Judge**

Itasca County District Court
File No. 31CR083169

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

John J. Muhar, Itasca County Attorney, Todd S. Webb, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Chad B. Sterle, Grand Rapids, Minnesota (for appellant)

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

UNPUBLISHED OPINION

STAUBER, Judge

Following a jury trial, appellant was acquitted of two counts of fourth-degree criminal sexual conduct and convicted of two counts of furnishing alcohol to a minor and

one count of contributing to the delinquency of a minor. On appeal, appellant challenges the district court's imposition of the requirement that he register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1) (2006), arguing that (1) the offenses of which he was convicted do not “arise out of the same set of circumstances” as the criminal sexual conduct charges; (2) Minn. Stat. § 243.166, subd. 1b(a)(1), as applied to him, violates his substantive and procedural due process rights; and (3) the registration requirements violate his constitutional rights as articulated in *Apprendi* and *Blakely*. We affirm.

FACTS

Appellant Matthew David was charged with two counts of fourth-degree criminal sexual conduct, two counts of furnishing alcohol to a minor, and one count of contributing to the delinquency of a minor. The complaint alleged that in July 2008, appellant arrived at the residence of 20-year-old A.A.R., where he supplied alcoholic beverages to A.A.R. and 15-year-old A.E.K. The complaint also alleged that after becoming “very intoxicated,” A.E.K. “passed out” and that when she woke up, appellant “was touching her breasts” and had his hand down A.E.K.’s pants.

Following a jury trial, appellant was found guilty of furnishing alcohol to a minor and contributing to the delinquency of a minor, but not guilty of the two criminal-sexual-conduct charges. The state subsequently moved for an order requiring appellant to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1). The district court granted the motion, concluding that appellant is required to register as a predatory offender because “[t]he facts underlying the criminal sexual conduct charges and the convictions for

furnishing alcohol to a minor and contributing to the delinquency of a minor are sufficiently linked in time, location, and people, thus the events arose out of the ‘same set of circumstances.’” The court also concluded that Minn. Stat. § 243.166, subd. 1b(a)(1) does not violate appellant’s procedural or substantive due-process rights. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court erred by concluding that appellant was required to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1). Statutory interpretation is a question of law reviewed de novo. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002). When a statute is unambiguous, this court will apply its plain meaning. *State v. Al-Naseer*, 734 N.W.2d 679, 684 (Minn. 2007).

Minnesota law provides that a person shall register as a predatory offender if “the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit” fourth-degree criminal sexual conduct under section 609.345, and “convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.” Minn. Stat. § 243.166, subd. 1b(a)(1)(iii).

Recently, the Minnesota Supreme Court clarified that the “same set of circumstances” language contained in section 243.166,

requires registration where the same general group of facts gives rise to both the conviction offense and the charged predatory offense. In other words, the circumstances underlying both must overlap with regard to time, location, persons involved, and basic facts. Although the conviction

offense need not be based on identical facts to the charged predatory offense, the facts underlying the two must be sufficiently linked in time, location, people, and events to be considered the “same set of circumstances.”

State v. Lopez, 778 N.W.2d 700, 706 (Minn. 2010).

Appellant argues that he should not be required to register under the statute because his convictions of furnishing alcohol to a minor and contributing to the delinquency of a minor do not arise out of the “same set of circumstances” as the fourth-degree criminal sexual conduct charges of which he was acquitted. We disagree. The record reflects that the facts supporting appellant’s alcohol-related convictions are “linked in time, location, people, and events” to the factual allegations involving the criminal sexual conduct charges. *See id.* For example, all of the charged offenses allegedly occurred on the same night and at the residence of A.A.R. Moreover, the alleged victim of the criminal-sexual-conduct charges is one of the minors to whom appellant supplied alcohol. Finally, the “basic facts” of both the criminal-sexual-conduct charges and the alcohol-related offenses are the same: appellant purchased the alcohol for A.A.R. and A.E.K., both minors; he then drank alcohol with the minors at A.A.R.’s residence for most of the evening, and, after A.E.K. “passed out,” appellant allegedly sexually assaulted A.E.K. Accordingly, appellant’s alcohol-related convictions arise out of the “same set of circumstances” as the criminal-sexual-conduct charges.

Appellant also contends that he should not be required to register as a predatory offender under section 243.166 because there was insufficient probable cause to support the criminal sexual-conduct-charges. Again, we disagree. A person may be charged with

a crime only where there is probable cause to believe that the person is guilty—that is, where facts have been submitted to the district court showing a reasonable probability that the person committed the crime. Minn. R. Crim. P. 2.01; *State v. Steinbuch*, 514 N.W.2d 793, 798 (Minn. 1994). The court reviews factual findings underlying a probable cause determination using a clear error standard, but reviews the district court’s application of the legal standard of probable cause to those facts de novo. *Lopez*, 778 N.W.2d at 703.

Here, appellant was charged with criminal sexual conduct under Minn. Stat. § 609.345, subd. 1(b), (d) (Supp. 2007). Section 609.345, subdivision 1(b), provides that a person is guilty of fourth-degree criminal sexual conduct if the “complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant.” Section 609.345, subdivision 1(d), provides that a person is guilty of fourth-degree criminal sexual conduct if the “actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless.”

The record reflects that A.E.K. was between the ages of 13 and 16, and appellant was 31-years-old at the time of the alleged offense. A.E.K. also claimed that she awoke to find appellant kissing her breast, and DNA tests revealed the presence of saliva on A.E.K.’s breast. Thus, there was probable cause to charge appellant with criminal sexual conduct under Minn. Stat. § 609.345, subd. 1(b). Moreover, the record reflects that A.E.K. admitted having several drinks containing rum, along with three shots of rum and a couple of “pulls” from the bottle of rum, and appellant admitted that he could tell that A.E.K. was intoxicated. Consequently, there was also probable cause to charge appellant

with criminal sexual conduct in violation of Minn. Stat. § 609.345, subd. 1(d), and the district court did not err by concluding that appellant was required to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 1b(a)(1).

II.

Appellant also challenges the constitutionality of Minn. Stat. § 243.166, subd. 1b(a)(1), on both procedural and substantive due process grounds. Challenges to the constitutionality of a statute are reviewed de novo. *State v. Shattuck*, 704 N.W.2d 131, 135 (Minn. 2005). The power of an appellate court “to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). The party challenging the constitutionality of a statute has the burden of demonstrating beyond a reasonable doubt that the statute violates a constitutional provision. *Id.*

A. Substantive due process

The due-process clauses of the United States and Minnesota Constitutions prohibit the state from depriving any person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. “[S]ubstantive due process protects individuals from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (quotations omitted). If a fundamental right is implicated, the state must show a legitimate and compelling interest in abridging that right. *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999). But if a fundamental right is not implicated, “judicial scrutiny is not exacting and substantive due process requires only that the statute not be

arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective.” *Id.*

Appellant argues that Minn. Stat. § 243.166, subd. 1b(a)(1) violates his constitutional right to substantive due process by implicating his fundamental right to (1) privacy; (2) be presumed innocent; (3) confront witnesses; and (4) present a complete defense. But in *Boutin*, the supreme court rejected a similar challenge to section 243.166, subd. 1b(a)(1). 591 N.W.2d at 716–17. In that case, the defendant was charged with third-degree assault and third-degree criminal sexual conduct. *Id.* at 713. The defendant pleaded guilty to third-degree assault and the criminal sexual conduct charge was dismissed. *Id.* at 713-14. However, the defendant was required to register as a predatory offender pursuant to section 243.166. *Id.* at 714. On appeal, the defendant argued that section 243.166 violated his constitutional right to substantive due process by infringing on his presumption of innocence because the statute presumed that he was guilty of an enumerated predatory offense even though he was not convicted of such an offense. *Id.* at 716. Our supreme court disagreed, noting that (1) the predatory offender registration statute does not require an affirmative restraint; (2) historically, similar registration statutes have not been regarded as punishment; (3) the statute does not promote the traditional aims of punishment because it does not involve confinement and is not intended to exact retribution; and (4) the primary purpose of the statute is to create an offender registry to assist in law enforcement investigations. *Id.* at 717 (recognizing the presumption of innocence as a fundamental right that only applies to statutes which are punitive or criminal in nature). The court held the registration statute did not implicate

the defendant's fundamental rights because it "is a civil, regulatory statute" and not punitive in nature. *Id.*

Appellant argues that his case is distinguishable from *Boutin* because *Boutin* involved a plea agreement in which the defendant pleaded guilty to the non-predatory offense and the predatory offense was dismissed as part of the plea agreement, whereas appellant went to trial and was convicted of only the non-predatory offense and acquitted of the predatory offenses. We disagree. Based on the analysis set forth in *Boutin*, appellant's attempt to distinguish his case from *Boutin* is a distinction without a substantive difference. Regardless of whether a plea was negotiated or appellant was found not guilty of the predatory offense, the statute does not implicate appellant's fundamental rights because the statute is regulatory in nature. *See id.*

Because a fundamental right is not implicated, the statute's registration requirements need only be rationally related to a legitimate government purpose. *Boutin*, 591 N.W.2d at 717–18. In *Boutin*, the court concluded that Minn. Stat. § 243.166 passes constitutional muster because it is "rationally related to the legitimate state interest of solving crimes." *Id.* at 718. Thus, section 243.166 comports with the requirements of substantive due process.

B. Procedural due process

Appellant also claims that his procedural-due-process rights were violated when he was required to register as a predatory offender. In order to successfully challenge state action as violative of procedural due process, an appellant must first demonstrate that a protectable liberty interest is at stake. *See In re Conservatorship of Foster*, 547

N.W.2d 81, 85 (Minn. 1996). “[A] liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest.” *Boutin*, 591 N.W.2d at 718.

Appellant argues that his liberty interests have been violated because he has suffered a loss of reputation as a result of being compelled to register as a predatory offender. But this argument was also rejected in *Boutin*. *Id.* Although the *Boutin* court acknowledged that being labeled a predatory offender is injurious to one’s reputation, it held that requiring registration does not violate procedural due process because a challenge based on harm to reputation alone did not implicate a sufficient liberty interest under the stigma-plus test. *Id.* at 718.

Appellant recognizes the “stigma-plus” test, and argues that “[i]n addition to the stigma associated with being labeled a predatory offender, the imposition of registration requirement on appellant, who has neither been convicted of a predatory offense nor taken advantage of a negotiated plea agreement but acquitted at trial, implicates his status as an exonerated criminal defendant.” To support his claim, appellant cites *State v. Jackson*, a Georgia case in which the defendant was indicted on five counts of child molestation. 496 S.E.2d 912, 914 (Ga. 1998). Although the defendant was acquitted on all five counts following a trial, the Department of Family and Children Services requested that the defendant be placed on a registry of child abusers. *Id.* The defendant subsequently challenged the constitutionality of the registry statute. *Id.* The Georgia Supreme Court held that the defendant’s status as an exonerated criminal defendant was implicated because the state was attempting to take further official action against him based on the same alleged acts that underlay his criminal prosecution. *Id.* at 915. Thus,

the court concluded that the registration requirement indeed violated the defendant's due process rights because more than the defendant's reputation was involved. *Id.*

Appellant's reliance on *Jackson* is misplaced because *Jackson* is readily distinguishable. Unlike the defendant in *Jackson*, who was acquitted of all the charges, appellant was convicted of the companion counts of furnishing alcohol to a minor and contributing to the delinquency of a minor. And, unlike the defendant in *Jackson*, appellant was not exonerated of all the charges against him. Because appellant was not completely exonerated, appellant cannot meet the "plus" portion of the "stigma-plus" test. Moreover, *Jackson* is a Georgia case and *Boutin* is still the controlling precedent in Minnesota. *Boutin* held that there was no procedural-due-process violation where a defendant was required to register as a predatory offender even though the defendant was convicted of third-degree assault and the criminal-sexual-conduct charges were dismissed as part of a plea agreement. *Boutin*, 591 N.W.2d at 718-19. Therefore, under *Boutin*, appellant cannot meet the "plus" part of the "stigma-plus" test.

Appellant further argues that imposition of the registration requirement implicates his right to travel and, therefore, he satisfies the second half of the stigma-plus test. But in specifically contemplating whether the registration statute limited a person's ability to travel, the supreme court in *Boutin* stated that

registration does not require an affirmative disability or restraint, it only requires that the person register with law enforcement and inform the state of any change of address. In addition, the registration statute does not restrict [the defendant's] ability to change residences at will or even to move out of state. Nor is registering a permanent

requirement; [the defendant] is only required to register and update his address for 10 years.

581 N.W.2d at 717. Appellant cannot satisfy the stigma-plus test, and the district court did not err in concluding that the registration statute did not violate appellant's right to procedural due process.

III.

Appellant finally argues that his rights as articulated in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), were violated by the imposition of the registration requirements. Under *Apprendi*, “any fact that increases the *penalty* for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. at 490, 120 S. Ct. at 2362-63 (emphasis added). Similarly, the Supreme Court held in *Blakely* that the statutory maximum sentence a judge may impose is the maximum sentence permitted without the necessity of additional factual findings. 542 U.S. at 303-04, 124 S. Ct. at 2537.

Here, the principles articulated in *Apprendi* and *Blakely* do not apply to invalidate the statute at issue or its application to appellant. As addressed above, our supreme court ruled that section 243.166 is not punitive, but rather a civil, regulatory law enacted for the purpose of “creat[ing] an offender registry to assist law enforcement with investigations.” *Boutin*, 591 N.W.2d at 717. Accordingly, the statute is not violative of *Apprendi* or *Blakely* because the registration requirement does not implicate punishment.

Affirmed.