COURT OF APPEALS
DECISION
DATED AND FILED

April 13, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1717-CR **Cir. Ct. No. 01CF000729**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CEDRIC BROWN, SR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Cedric Brown, Sr., appeals a judgment of conviction for child enticement and an order requiring that he register as a sex

offender pursuant to WIS. STAT. § 301.45.[1] Brown argues that it is unconstitutional to require him to register as a sex offender when he was not convicted of a sex offense.[2] We reject his argument and affirm the judgment and order.

¶2 In a three-count complaint, Brown was initially charged with repeated sexual assault of the same child, second-degree sexual assault, and delivery of THC to a person under the age of eighteen. At the preliminary hearing, a fifteen-year-old witness, Tiffany L.J., testified that she was visiting her girlfriend's home where she encountered Brown, her girlfriend's stepfather. While in the garage, Brown, d.o.b. 12/4/62, asked her and her girlfriend, Crystal M.W., if they wanted to smoke marijuana. The girls agreed and all three smoked marijuana. Brown asked Tiffany if she wanted to have sex with him, and he grabbed her hand and placed it on his penis over his pants.[3]

¶3 Following the preliminary hearing, a three-count information was filed with the same charges as the complaint. Brown entered a no contest plea to

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[2] Brown's initial brief is unclear whether he is making a facial or as-applied challenge and the attorney general expressed the same uncertainty. However, Brown clarified in his reply brief that his challenge is only as applied.

[3] Crystal M.W., his stepdaughter, also testified at the preliminary hearing. She testified that Brown introduced her to marijuana when she was thirteen years old. She testified that he gave it to her and her friends "so we could smoke it during lunch at school." She stated that on the night that Brown provided marijuana to herself and T.J., T.J. told her that Brown "was asking her if she would give him a blow job."

an amended information charging him with child enticement contrary to WIS. STAT. § 948.07(6) (1997-1998).[4] He also pled no contest to possession of THC.

¶4 At the plea hearing, Brown's defense counsel stated: "Judge, I guess I would like the court to know that we're kind of proceeding on the premises that this is really a drug case, drug offense." Defense counsel stated that the child enticement statute, WIS. STAT. § 948.07(6), "deals with the giving or selling to a child a controlled substance" and that was what the case was about.

¶5 The court withheld sentence and placed Brown on probation for five years. As a condition of probation, the court ordered Brown to serve nine months in jail and to enroll in sex offender counseling. Brown subsequently received a letter from the Department of Corrections requiring that he enroll as a sex offender pursuant to WIS. STAT. § 301.45.

¶6 Brown filed postconviction motions regarding the sex offender registry requirement. The court entered a postconviction order clarifying the probation condition to require sexual predator evaluation and treatment and that Brown be ordered to register as a sex offender pursuant to WIS. STAT. § 301.45. Brown appeals.

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[4] WISCONSIN STAT. § 948.07(6) provides:

> Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:
>
> ….
>
> (6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

¶7 WISCONSIN STAT. § 301.45 establishes "a sex-offender registry and imposes registration and reporting requirements upon persons who meet certain statutory criteria." ***State v. Martel***, 2003 WI 70, ¶10, 262 Wis. 2d 483, 664 N.W.2d 69. The statutory criteria encompasses those who have been convicted of "sex crimes against adults and children, as well as certain child abduction crimes." ***Id.***, ¶11. "The sex-offender registration statute specifies who is subject to its terms automatically, as a matter of law." ***Id.***, ¶15. It provides that "a person shall comply with the reporting requirements under this section if he or she meets any of the following criteria: Is convicted … of s. … 948.07." WIS. STAT. § 301.45(1)(a) (1997-98).

¶8 WISCONSIN STAT. § 948.07 reads in pertinent part:

> Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class BC felony:
>
> ….
>
> (6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

¶9 Brown argues that the legislation requiring he register as a sex offender due to his drug offense conviction under WIS. STAT. § 948.07(6) is unconstitutional as applied to him.[5] He claims that classifying him as a sex offender when he was convicted of an offense devoid of sexual misconduct violates his due process and equal protection rights under the Fourteenth

[5] Brown's appellate brief does not indicate that he raised his constitutional argument at the trial level. Brown's lack of citation unnecessarily complicates our review. Because the State has not argued waiver, we have not searched the record to determine whether he preserved his claim of error.

Amendment to the United States Constitution and article I, § 1 of the Wisconsin Constitution. He further contends that there is no rational relationship between the classification and the legitimate societal interests.

¶10 We are satisfied that WIS. STAT. § 301.45 withstands Brown's equal protection challenge as applied to him. When considering an equal protection challenge that does not involve a suspect or quasi-suspect classification, as here, the fundamental determination to be made is whether "there is a rational basis which justifies a difference in rights afforded." ***State v. Joseph E.G.***, 2001 WI App 29, ¶8, 240 Wis. 2d 481, 623 N.W.2d 137 (citation omitted). The purpose of § 301.45 is to protect the public and assist law enforcement. ***State ex rel. Kaminski v. Schwarz***, 2001 WI 94, ¶41, 245 Wis. 2d 310, 630 N.W.2d 164. It provides registration for not only persons convicted of sex offenses, but also persons convicted of certain abduction crimes against children. ***Martel***, 262 Wis. 2d 483, ¶11. We are satisfied that the legislature could rationally conclude that Brown's conduct, which was causing a child to enter a secluded place to give the child a controlled substance leading to a sexual assault, poses a threat to public safety.

> Enticement of a child to a vehicle, building, room or other secluded place isolates a child from the protections of the public. It also provides the opportunity, with substantially less risk of detection, for the person to exercise force and control over the child for purposes of sexual gratification.
>
> … The crime being addressed is the luring and secluding of children. The statute recognizes that multiple motives may exist. That some of these motives are arguably less harmful than others does not affect the seriousness of the crime of enticing the child into the secluded place.

State v. Hanson, 182 Wis. 2d 481, 487, 513 N.W.2d 700 (Ct. App. 1994).

¶11 We find persuasive the reasoning of ***People v. Fuller***, 756 N.E.2d 255, 257 (Ill. App. Ct. 2001). The Illinois sex offender registration law defined sex offense to include kidnapping and aggravated kidnapping. ***Id.*** at 258. The defendant was convicted of aggravated kidnapping and objected to the registration requirements applied to him. The appellate court rejected the defendant's constitutional challenge, explaining:

> It is particularly disingenuous for the defendant to argue that there is no rational relationship between the kidnaping of a child and the purpose of protecting children from the increasing incidence of sexual assault and sexual abuse.

Id. at 260.

¶12 The same reasoning is appropriate here. It is disingenuous for Brown to argue that there is no rational relationship between enticing a child to a secluded place to ply him or her with illegal drugs and the purpose of protecting children from sexual assault or sexual abuse. That is exactly what happened here.

¶13 At the plea hearing, the court indicated that it would rely on the facts recited in the complaint as a fact basis for the no contest plea. The complaint describes a sequence of events during which Brown enticed a child to a secluded place, provided her with marijuana and sexually assaulted the child. The complaint states that while the victim and Brown "were smoking weed, the defendant asked her, 'Have you ever had a … dick before?' … She stated that he was wearing boxer shorts and he placed her hand on his penis."

¶14 In light of the facts underlying Brown's conviction, there is no basis for finding an "as-applied" due process or equal protection violation in this case. The facts of Brown's case fall precisely within the type of offense against which the statutory scheme is designed to protect. The classification created by WIS.

STAT. § 301.45 is rationally related to protecting the public, meets a legislative objective of registration, and does not violate equal protection or due process as applied to Brown. *See* ***Joseph E.G.***, 240 Wis. 2d 481, ¶12. We reject Brown's "as-applied" constitutional challenge.

¶15 Next, Brown claims that the registration requirement violates his due process rights.[6] A due process challenge requires the court to determine whether the means chosen by the legislature to effect a valid legislative objective bear a rational relationship to the purpose sought to be achieved. ***Id.***, ¶13. Brown does not dispute that protecting children from child enticers who would ply them with illegal drugs is a valid legislative objective. Nor does Brown dispute that the registry requirement bears a rational relationship to the purpose sought to be achieved. Rather, Brown's contention is that WIS. STAT. § 301.45 is overly broad because its purpose is limited to protecting victims from sexual offenses and, by including child enticers who provide drugs to children, the act fails to do so. We disagree.

¶16 As previously discussed, the facts of this case demonstrate a rational relationship between protecting children from abduction and enticement for the purpose of plying them with controlled substances and protecting children from being vulnerable to sexual assault. *See* ***Fuller***, 756 N.E.2d at 260. Thus, the means chosen by the legislature to effect a valid legislative objective bears a rational relationship to the purpose sought to be achieved. ***Joseph E.G.***, 240 Wis. 2d 481, ¶13. Brown's as-applied due process challenge fails. The facts of this

[6] Brown does not set out a separate due process analysis.

case belie Brown's assertion that the legislative scheme is irrational as applied to him.

By the Court.— Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.