This opinion is nonprecedential except as provided by Minn.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
A21-1319

Mary Kate Nguyen,
Appellant,

vs.

Drew Evans, Superintendent,
Minnesota Bureau of Criminal Apprehension in his official capacity,
Respondent.

Filed April 25, 2022
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CV-20-1212

Bradford Colbert, Martin Sandberg (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's determination that she must register as a predatory offender based on a juvenile-delinquency adjudication that arose out of the same set of circumstances as dismissed predatory-offense charges. Appellant argues that the

dismissed charges were not supported by probable cause, that the registration requirement violates her rights to procedural and substantive due process, that the registration requirement denies her finality in sentencing, and that the predatory-offender-registration statute, as applied in this case, is an unconstitutional bill of attainder. We affirm.

FACTS

This case comes before us on appeal from the district court's grant of summary judgment in appellant Mary Kate Nguyen's lawsuit against respondent Drew Evans, superintendent of the Minnesota Bureau of Criminal Apprehension (BCA), in his official capacity. In her lawsuit, Nguyen challenged the BCA's determination that she must register as a predatory offender based on charges that were dismissed when she pleaded guilty to aiding and abetting simple robbery in juvenile court. Nguyen alleged that the registration requirement violates her rights to procedural and substantive due process and that the predatory-offender-registration statute constitutes an unconstitutional bill of attainder. She requested a declaration that the predatory-offender-registration statute was unconstitutional as applied to her. She also requested an injunction preventing the BCA from requiring her to register and directing the BCA to remove her from the predatory-offender registry.

The relevant facts are undisputed. In 2005, the State of Minnesota charged Nguyen with aiding and abetting the crimes of first-degree aggravated robbery, kidnapping, and false imprisonment, as well as commission of check forgery and offering a forged check, in Scott County juvenile court. Nguyen was 17 years old at that time, and the state moved

to certify her for prosecution as an adult. The juvenile court determined that there was probable cause to support the charges against Nguyen.

Nguyen pleaded guilty to aiding and abetting simple robbery, and the state dismissed the remaining charges. In October 2006, the juvenile court adjudicated Nguyen delinquent for simple robbery, pronounced a stayed 23-month prison sentence, and placed her on extended jurisdiction juvenile (EJJ) probation. No one told Nguyen that she would have to register as a predatory offender, and none of the documents filed with the juvenile court mentioned predatory-offender registration. Nguyen was successfully discharged from EJJ probation in 2008 when she turned 21.

In November 2016, the BCA determined that Nguyen was required to register as a predatory offender based on the dismissed charges of aiding and abetting kidnapping and aiding and abetting false imprisonment. The BCA notified Nguyen, and she registered as a predatory offender in March 2017. The BCA anticipates that Nguyen's registration requirement will expire in 2031, which is ten years from her most recent release from incarceration.

The BCA moved for summary judgment on Nguyen's claims, and the district court granted that motion. Nguyen appeals.

DECISION

On appeal from summary judgment, appellate courts "determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). If the material facts are not in dispute, appellate courts review the district court's application of the law de novo. *Id.*

I.

Nguyen contends that she should not be required to register as a predatory offender because the charges that formed the basis for the registration requirement—aiding and abetting kidnapping and false imprisonment—were not supported by probable cause.

Under Minnesota's predatory-offender-registration statute, a person must register if she was charged with aiding and abetting certain offenses 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), (2) (2020). Kidnapping and false imprisonment are offenses for which registration is required. *Id.*, subd. 1b(a)(1)(ii), (2)(ii). The BCA directed Nguyen to register as a predatory offender because she was adjudicated delinquent for aiding and abetting simple robbery, and the simple robbery arose out of the same set of circumstances as the dismissed kidnapping and false imprisonment charges.

The purpose of requiring offenders to register when they are merely charged with, but not convicted of, a predatory offense is "to ensure that true predatory offenders cannot plead out of the registration requirements." *State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010). However, "a qualifying charge may trigger the registration requirement under Minn. Stat. § 243.166 only if it is supported by probable cause." *State v. Haukos*, 847 N.W.2d 270, 274 (Minn. App. 2014); *see also Lopez*, 778 N.W.2d at 703 (stating that "[a] person may be charged with a crime only where there is probable cause to believe that the person is guilty"). The judiciary's determination of probable cause, and not the state's filing of a charge, triggers the statutory registration requirement. *Haukos*, 847 N.W.2d at

273. Thus, "the district court may relieve defendants of the registration requirement by determining that probable cause does not exist to support the triggering charge." *Id*. at 274.

"Probable cause exists where the facts would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person under consideration is guilty of a crime." *Id.* (quotation omitted). It requires "only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id.* (quotation omitted). We review the issue of probable cause de novo. *Lopez*, 778 N.W.2d at 703. When doing so, we view the evidence and all resulting inferences in favor of the state. *State v. Peck*, 773 N.W.2d 768, 770 n.1 (Minn. 2009).

The record in this case includes an affidavit that Nguyen submitted in opposition to summary judgment, which describes her version of the events underlying the charged offenses. We consider Nguyen's affidavit, as well as the verified charging document, when reviewing the issue of probable cause. *See State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976) (stating that if the state elects to rely on the verified charging document as proof of probable cause, the defendant produces exonerating witness testimony, and the state presents no rebuttal testimony, a motion to dismiss for lack of probable cause "will be granted unless there is substantial evidence admissible at trial in the record which would justify denial of a motion for a directed verdict of acquittal").

According to the charging document in this case, a delinquency petition, Nguyen participated in a robbery with her brother and another man, Joshua Meyer. The three individuals planned the robbery at Nguyen's home. They then drove to the Little Six

Casino. Nguyen drove one vehicle, and her brother and Meyer drove a separate vehicle. Meyer was armed with a handgun that came from Nguyen's house.

The trio arrived at the casino parking lot around 12:00 a.m. Meyer approached a woman who was exiting her vehicle, pointed the handgun at her, and told her that "they were going for a drive." The victim drove Meyer a few blocks away from the casino. Meyer ordered the victim to exit the vehicle and to give him her purse, cell phone, and money. Meyer then pushed the victim out of the vehicle, and he hit her in the face with the gun. He told the victim that he would drive to the end of the block and leave her vehicle there. After Meyer left the scene, the victim found her vehicle unattended, drove back to the casino, and reported the robbery.

The petition indicates that Nguyen provided multiple statements to the police regarding her involvement in the crime. She said that she, Meyer, and her brother planned the robbery at her house and that they selected the Little Six Casino because it has less security and surveillance. Nguyen said she drove to the casino parking lot in one vehicle and that her brother and Meyer drove there in another vehicle. Nguyen told the police that she watched the parking lot and saw Meyer enter the victim's vehicle. She also told the police that after the robbery, she met her brother and Meyer in another parking lot. Nguyen stated that they went through the victim's purse and that Meyer told her about the robbery. Nguyen reported that the gun that was used in the robbery was at her house, and she later turned the gun into the police. Nguyen admitted that Meyer gave her the victim's checkbook and that she used the victim's checks to purchase several items. She also admitted that she obtained $3,080 in cash from the victim's account.

In Nguyen's affidavit opposing summary judgment, she stated that she and Meyer "did not discuss getting into anyone's car or anything remotely close to kidnapping or false imprisonment." Nguyen also made several statements that contradict statements attributed to her in the charging document. For example, Nguyen's affidavit states that she drove Meyer to the casino, dropped him off, and immediately drove back to her home. It also states that the first time she heard about the robbery was at her home when Meyer returned. Nguyen argues that her affidavit raises "a material issue of fact" regarding whether there was probable cause to support the charges against her.

"The evidence necessary to support a finding of probable cause is significantly less than that required to support a conviction." *State v. Harris*, 589 N.W.2d 782, 790 (Minn. 1999). "Unlike proof beyond a reasonable doubt or preponderance of the evidence, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Id*. at 790-91 (quotation omitted). Thus, the production of "exonerating evidence by a defendant at the probable cause hearing does not justify the dismissal of the charges if the record establishes that the prosecutor possesses substantial evidence that will be admissible at trial and that would justify denial of a motion for a directed verdict of acquittal." *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984). If "the facts before the district court present a fact question for the jury's determination," the district court should not dismiss the case for lack of probable cause. *Lopez*, 778 N.W.2d at 704 (quotation omitted). In sum, although Nguyen's affidavit raises a factual dispute regarding her guilt or innocence, it does not prevent a determination that there was probable cause for the dismissed charges.

We now turn our attention to the contested charges. We first consider, de novo, whether there was probable cause to believe that Meyer committed the offenses of kidnapping and false imprisonment, as alleged in the petition. We then consider whether there was probable cause to believe that Nguyen aided and abetted those offenses.

Kidnapping

As charged in this case, a person commits kidnapping if he confines or removes a person from one place to another, without the person's consent, for the purpose of committing great bodily harm or terrorizing the victim or another. Minn. Stat. § 609.25, subd. 1(3) (2004). To constitute a kidnapping, the confinement or removal must be "more than merely incidental to the underlying crime." *State v. Earl*, 702 N.W.2d 711, 722 (Minn. 2005) (quotation omitted).

Nguyen argues that there is no evidence that Meyer acted with a purpose to terrorize the victim. She therefore argues that there was no probable cause for the charge of aiding and abetting kidnapping with the intent to terrorize.

Minnesota's criminal statutes use the terms "intent" and "purpose" synonymously. *See* Minn. Stat. § 609.02, subd. 9(4) (2004) ("'With intent to' or 'with intent that' means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result."). The state rarely establishes a defendant's state of mind through direct evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). Because intent is a state of mind, it is usually proved "circumstantially—by drawing inferences from the defendant's words and actions in light of the totality of the

circumstances." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). It may be inferred that "a person intends the natural and probable consequences of his actions." *Id*.

The supreme court has defined "terrorize" as "to cause extreme fear by use of violence or threats." *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975) (discussing the term in the context of making threats of violence); *see also State v. Franks*, 765 N.W.2d 68, 73-74 (Minn. 2009) (interpreting the statutory phrase "feel terrorized" as to "feel extreme fear resulting from violence or threats"). According to the petition, Meyer approached the victim in a casino parking lot late at night, pointed a gun at her, entered her vehicle, ordered her to drive away from the parking lot, took her property, hit her in the face with the gun, and forced her out of the vehicle. Extreme fear is the natural and probable consequence of Meyer's actions. Thus, the petition sets forth circumstantial evidence that would support an inference that Meyer intended to terrorize the victim.

Nguyen also argues that the kidnapping charge was not supported by probable cause because the victim's confinement was "incidental" to the robbery. Nguyen cites *State v. Smith* as support, a case in which the supreme court reversed a conviction of first-degree murder while committing kidnapping because the only evidence to support the kidnapping component was an accomplice's act of blocking the doorway when the victim tried to flee the room during a deadly assault. 669 N.W.2d 19, 23, 32-33 (Minn. 2003), *overruled on other grounds by State v. Leake*, 699 N.W.2d 312 (Minn. 2005). In doing so, the supreme court stated, "[b]ecause a conviction for the crime of kidnapping now carries with it significant consequences," the "confinement or removal must be criminally significant in the sense of being more than merely incidental to the underlying crime" and that if "the

confinement or removal of the victim is completely incidental to the perpetration of a separate felony, it does not constitute kidnapping." *Id*. at 32.

In *State v. Juarez*, the supreme court concluded that the defendant's act of dragging a victim 209 feet from an area outside of a bar where she had been with friends to an alley where he attempted to sexually assault her was not "completely incidental to his criminal sexual conduct." 837 N.W.2d 473, 478, 484-85 (Minn. 2013). The supreme court reasoned that the act of removing the victim to the alley constituted "culpable conduct separate and distinct from [the] criminal sexual conduct," noting that the defendant moved the victim away from "a safe location—in which she was out in the open and close to her friends—and transported her to a place that was confined and isolated, and where she would be more vulnerable to him." *Id*. at 484-85. The petition in this case alleges a removal that is similar to the one in *Juarez*, and it was not merely incidental to the robbery.

In sum, there was probable cause to believe Meyer kidnapped the victim with the purpose to terrorize.

False Imprisonment

A person commits false imprisonment if he "intentionally confines or restrains" another person without that person's consent. Minn. Stat. § 609.255, subd. 2 (2004). Nguyen concedes that "there was at least some evidence that Meyer committed the crime of false imprisonment" because he entered the victim's vehicle and told her to drive. There was probable cause to believe that Meyer falsely imprisoned the victim.

Aiding and Abetting

We now consider whether there was probable cause to believe that Nguyen aided and abetted the alleged kidnapping and false-imprisonment offenses. "A person is criminally liable for a crime committed by another if [she] intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2004). For the defendant to have the requisite intent for accomplice liability, she must (1) know that her alleged accomplices were going to commit a crime, and (2) intend her presence or actions to further the commission of that crime. *McAllister*, 862 N.W.2d at 52. The requisite state of mind for accomplice liability may be inferred from circumstantial evidence, including the defendant's presence at the scene of the crime, a close association with the principal offender before and after the crime, a lack of objection or surprise under the circumstances, and flight from the scene of the crime with the principal offender. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011).

Under Minnesota's aiding and abetting statute, a person is also liable "for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended." Minn. Stat. § 609.05, subd. 2 (2004). Reasonable foreseeability is an objective standard based on the perspective of a person in the defendant's position. *McAllister*, 862 N.W.2d at 56.

Nguyen argues that even if she, her brother, and Meyer planned to commit robbery, it was not reasonably foreseeable that Meyer would kidnap or falsely imprison someone in pursuance of the intended crime and that, therefore, the charges of aiding and abetting the

offenses of kidnapping and false imprisonment were not supported by probable cause. Based on the following caselaw, we disagree.

In *McAllister*, the supreme court concluded that the state presented sufficient evidence that a murder was reasonably foreseeable as a probable consequence of an aggravated robbery. *Id.* The defendant had argued that the ultimate cause of death—a shooting during the robbery—was not reasonably foreseeable because he did not know that one of his accomplices was carrying a gun and would use it during the robbery. *Id.* at 57. The supreme court rejected that argument, reasoning that even if the defendant did not initially know that his accomplice had a gun, one of his accomplices fired at least one shot at the victim before they fled from the crime scene. *Id.* Thus, it was reasonable to infer that the defendant knew that the victim would die of a gunshot wound. *Id.*

Similarly, in *State v. Atkins*, the supreme court concluded that there was "more than sufficient evidence to conclude that [a] murder was a reasonably foreseeable consequence of [an] aggravated robbery." 543 N.W.2d 642, 647 (Minn. 1996). The supreme court described as "crucial" the fact that, even if one of the accomplices did not know the other was armed, he surely knew the other was armed "from the moment [the first] shot was fired." *Id.*

Under the reasoning of *McAllister* and *Atkins*, we conclude that once Nguyen allegedly observed Meyer enter the victim's vehicle with a gun intending to rob her, it was reasonably foreseeable that Meyer would falsely imprison the victim, that is, intentionally confine or restrain her without her consent. *See* Minn. Stat. § 609.255, subd. 2. And for the reasons explained above, the evidence supports an inference that Meyer would do so

for the purpose of terrorizing the victim. *See* Minn. Stat. § 609.25, subd. 1(3). Thus, the kidnapping was also a reasonably foreseeable consequence of the planned robbery. We therefore conclude that the charges of aiding and abetting kidnapping and false imprisonment were supported by probable cause.

Our finding of probable cause is buttressed by evidence indicating that Nguyen did not abandon the planned robbery. *See* Minn. Stat. § 609.05, subd. 3 (2004) ("A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons that purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed."). The record evidence indicates that Nguyen met with Meyer and her brother after the robbery as planned, and that Meyer told Nguyen about the robbery. It is reasonable to infer that Meyer told Nguyen that he forced the victim to drive away from the casino parking lot. Nguyen nonetheless accepted the victim's stolen checkbook from Meyer and used the victim's checks to make purchases and to obtain cash from the victim's account.

In sum, although Nguyen's recent affidavit professes her innocence and contradicts admissions that she reportedly made to the police around the time of the crime, "the production of exonerating evidence by a defendant . . . does not justify the dismissal of the charges if the record establishes that the prosecutor possesses substantial evidence that will be admissible at trial and that would justify denial of a motion for a directed verdict of acquittal." *Rud*, 359 N.W.2d at 579. The petition in this case sets forth such evidence, and that evidence could lead a person of ordinary care and prudence to entertain an honest and

strong suspicion that Nguyen aided and abetted the charged offenses of kidnapping and false imprisonment. Because those charges were supported by probable cause and Nguyen was adjudicated delinquent for an offense arising out of the same set of circumstances, she is required to register as a predatory offender.

II.

Nguyen contends that the BCA violated her right to procedural due process. The United States and Minnesota Constitutions provide that the state may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Appellate courts review an alleged procedural-due-process violation de novo. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

Nguyen's briefing asserts that the state deprived her of her right to due process by requiring her to register based on "non-existent" procedures. But at oral argument, Nguyen agreed that this court's de novo review of the existence of probable cause for kidnapping and false-imprisonment charges would provide procedural due process. We agree.

In fact, Nguyen has now had two opportunities to challenge probable cause for kidnapping and false-imprisonment charges. The first was in the underlying juvenile-court proceeding, in which the state moved to certify Nguyen for prosecution as an adult. That motion triggered a statutorily required probable-cause determination: "[T]he juvenile court may order a certification only if . . . the court finds that there is probable cause, as defined by the Rules of Criminal Procedure . . . , to believe the child committed the offense alleged by [the] delinquency petition." Minn. Stat. § 260B.125, subd. 2(5) (2020). The relevant rules of criminal procedure require the district court to "determine whether probable cause

exists to believe that an offense has been committed and that the defendant committed it." Minn. R. Crim. P. 11.04, subd. 1(a). The rules further provide that "[t]he prosecutor and defendant may offer evidence at the probable cause hearing." *Id.*, subd. 1(b). Lastly, the rules provide that "[t]he court may find probable cause based on the complaint or the entire record, including reliable hearsay." *Id.*, subd. 1(c).

In addition, the rules governing juvenile-delinquency proceedings provide that "[u]nless waived by the child or based upon an indictment, a hearing and court determination on the issue of probable cause shall be completed within fourteen (14) days of filing the certification motion." Minn. R. Juv. Delinq. P. 18.05, subd. 3(A). "A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11." *Id.*, subd. 3(B).

Consistent with the procedures mandated in statutes and rules, the juvenile court held a pretrial hearing on the charges against Nguyen in November 2005, at which "the parties requested that the petition be reviewed for probable cause in relation to the [s]tate's motion for certification." The juvenile court found probable cause for all of the charges against Nguyen, based on the allegations in the petition.

In sum, the record refutes Nguyen's assertion that she "was never given the opportunity to challenge the dismissed charges" and, therefore, the registration requirement. Moreover, this court has now determined—de novo and based on a record that Nguyen developed in the underlying proceeding—that the charges of aiding and abetting kidnapping and false imprisonment were supported by probable cause. Because

Nguyen has now had two opportunities to challenge the charges that triggered her registration requirement, we reject her procedural-due-process argument on its face, without determining whether she has been deprived of a protected liberty interest. *See Sawh*, 823 N.W.2d at 632 (setting forth two-step process that considers "whether the government has deprived the individual of a protected life, liberty, or property interest" and if so, whether the government's procedures were constitutionally sufficient); *Boutin v. LaFleur*, 591 N.W.2d 711, 718 (Minn. 1999) (applying the "stigma-plus" test, which provides that "a liberty interest is implicated when a loss of reputation is coupled with the loss of some other tangible interest").

III.

Nguyen contends that the registration requirement violates her right to substantive due process. The Due Process Clauses of the United States and Minnesota Constitutions prohibit "certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them." *Boutin*, 591 N.W.2d at 716 (quotation omitted). The level of judicial scrutiny for a substantive-due-process challenge depends on whether the statute at issue implicates a fundamental right. If the statute involves a fundamental right, "the state must show a legitimate and compelling interest for abridging that right." *Id.* But if the statute does not affect a fundamental right, the statute merely "must provide a reasonable means to a permissible objective" and must "not be arbitrary or capricious." *Id.*

In *Boutin*, the supreme court concluded that the predatory-offender-registration statute did not implicate fundamental rights because it was a civil, regulatory statute and that the rational-basis test was the proper standard for determining the constitutionality of

the statute. *Id.* Nguyen recognizes that *Boutin* is binding on this court and that the statute need only satisfy the rational-basis test. Under the rational-basis standard of review, the statute must "serve to promote a public purpose"; the statute must "not be an unreasonable, arbitrary or capricious interference with a private interest"; and "the means chosen [must] bear a rational relation to the public purpose sought to be served." *Id.* at 718 (quotations omitted).

Nguyen argues that there is no rational basis for requiring her to register as a predatory offender. She claims that (1) registration does not serve a public purpose because it is based on the erroneous assumption that people who commit sex crimes are significantly more likely to commit another sex crime in the future; (2) the statute is arbitrary because it requires people to register when they have been charged with, but not convicted of, an offense; and (3) there is no rational relation between assisting police investigations and requiring her to register.

In *Boutin*, the supreme court upheld the predatory-offender-registration statute against a substantive-due-process challenge. It explained that "the primary purpose of the statute is to create an offender registry to assist law enforcement with investigations" and that keeping a list of offenders was "rationally related to the legitimate state interest of solving crimes." *Id.* at 717-18. Moreover, the purpose of requiring people to register as predatory offenders based only on charges is "to ensure that true predatory offenders cannot plead out of the registration requirements." *Lopez*, 778 N.W.2d at 704.

Given recent expansions of the predatory-offender-registration statute, *Boutin* does not foreclose all constitutional challenges. *Werlich v. Schnell*, 958 N.W.2d 354, 374

(Minn. 2021). But Nguyen does not point to any of those expansions as support for her substantive-due-process claim or explain how those expansions have affected her.

In sum, the Minnesota Supreme Court has held that the registration requirement satisfies the rational-basis test, and Nguyen has not persuaded us to conclude otherwise in this case.

IV.

Nguyen contends that the requirement to register as a predatory offender nearly a decade after she was discharged from EJJ probation violates her right to substantive due process by denying her finality in sentencing. Nguyen relies on caselaw regarding sentence modifications. "[T]here are due process limits on a court's ability to modify a sentence to correct an error." *State v. Calmes*, 632 N.W.2d 641, 647 (Minn. 2001). A defendant's due-process rights may be violated if her sentence is enhanced after she "has developed a crystallized expectation of finality in the earlier sentence." *Id.* at 645.

Nguyen's argument is unpersuasive because the supreme court has consistently held that the requirement to register as a predatory offender is not a component of a criminal sentence. The predatory-offender-registration statute is a "civil, regulatory statute" and "does not promote the traditional aims of punishment." *Boutin*, 591 N.W.2d at 717. In *Kaiser v. State*, the supreme court stated that because the registration requirement is regulatory and not punitive, it is a collateral consequence of a sentence. 641 N.W.2d 900, 907 (Minn. 2002). The supreme court has reaffirmed that principle and declined to overrule *Kaiser*. *Taylor v. State*, 887 N.W.2d 821, 826 (Minn. 2016).

In sum, because the registration requirement is not a component of a criminal sentence, Nguyen's registration requirement does not deny Nguyen finality in sentencing.

V.

Finally, Nguyen contends that requiring compliance with Minnesota's predatory-registration law based only on a charge, and not a conviction, results in an unconstitutional bill of attainder. Both the United States and Minnesota Constitutions prohibit bills of attainder. U.S. Const. art. I, § 9, cl. 3; Minn. Const. art. I, § 11. A bill of attainder is a statute that "specifically singles out an identifiable group or individual for the infliction of punishment by other than judicial authority." *Rsrv. Mining Co. v. State*, 310 N.W.2d 487, 490 (Minn. 1981). Nguyen argues that by requiring individuals to register when they have been charged with, but not convicted of, predatory offenses, "the legislature is determining that these persons are guilty and imposing punishment without any judicial process."

The primary issue here is whether the registration requirement constitutes punishment. To determine whether a law has a punitive purpose, the court considers "(1) whether the law imposes punishment such as death, imprisonment, banishment, confiscation of property, or barring participation in certain employment or occupations; (2) whether the law furthers a non-punitive legislative purpose; and (3) whether the legislative body had a punitive motive in passing the law." *Council of Indep. Tobacco Mfrs. of Am. v. State*, 685 N.W.2d 467, 474-75 (Minn. App. 2004), *aff'd*, 713 N.W.2d 300 (Minn. 2006); *see also Rsrv. Mining Co.*, 310 N.W.2d at 490 (stating that, when determining whether a statute is a bill of attainder, courts look to the "historical experience

with laws similar to the statute in question," the function of the statute, and the legislative intent to punish).

As discussed above, the supreme court has stated that the registration requirement is regulatory, and not punitive. Registration does not promote the traditional purposes of punishment. *Boutin*, 591 N.W.2d at 717. Indeed, it does not impose a punishment such as death, imprisonment, banishment, or confiscation of property. As for barring participation in certain employment or occupations, Nguyen claimed in her affidavit that her status as a predatory offender prevents her from participating in a work-release program and will make it more difficult to obtain employment. We disagree that those outcomes make registration punitive. *Cf. Werlich*, 958 N.W.2d at 367-69 (concluding that a defendant's ineligibility for the Challenge Incarceration Program, based on his status as a predatory offender, was not punitive and therefore did not violate due process).

Additionally, the purpose of the registration requirement is to assist law enforcement with investigations and to help solve crimes. *Boutin*, 591 N.W.2d at 717-18. Despite the recent expansions of the predatory-offender-registration statute, the supreme court has indicated that the registration requirement is regulatory rather than penal. *See Taylor*, 887 N.W.2d at 825-26. Accordingly, the predatory-offender-registration statute furthers a non-punitive legislative purpose, and that purpose does not reflect a punitive motive. In sum, application of the predatory-offender-registration statute based on a charge supported by probable cause does not result in an unconstitutional bill of attainder.

In conclusion, courts have recognized that the predatory-offender-registration statute "may lead to unfair results in some cases." *Gunderson v. Hvass*, 339 F.3d 639, 645

(8th Cir. 2003). Even if that may seem to be the case here, we are not persuaded that Nguyen's registration is unlawful or unconstitutional. The BCA is therefore entitled to judgment as a matter of law in Nguyen's action to avoid predatory-offender-registration requirements.

Affirmed.