STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1910

State of Minnesota,
Respondent,

vs.

Joseph Harrison Baynes,
Appellant.

Filed August 5, 2013
Affirmed
Willis, Judge*

Wright County District Court
File No. 86-CR-11-2662

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas N. Kelly, Wright County Attorney, Greg T. Kryzer, Mark A. Erickson, Assistant County Attorneys, Buffalo, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Willis, Judge.

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

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant challenges the district court's denial of his motion to dismiss charges that he failed to register as a predatory offender, arguing that there was insufficient probable cause to sustain the charges requiring registration. He also argues that his underlying conviction did not arise from the same set of circumstances as his alleged criminal sexual conduct. We affirm.

FACTS

Appellant Joseph Harrison Baynes was charged with criminal sexual conduct arising from events at a party at an apartment complex in Buffalo on January 20, 2008. Four of the partygoers were females under the age of 21, including the victim, who was 14 years old. Baynes, who was 19 at the time, and a friend provided marijuana and raspberry vodka. All of the underage females drank vodka, and one of the females reported that they all also smoked marijuana. The partygoers consumed alcohol in apartment 310, although the party also took place in apartment 312. As the night progressed, some of the partygoers coupled up and took their activities to different apartments in the complex. Baynes and the victim remained in apartment 312.

The day after the party, the victim's father contacted Buffalo police to report that his daughter may have been sexually assaulted. During the police investigation, one witness reported having seen Baynes and the victim "making out." Another witness saw Baynes lying on top of the victim while both had their pants lowered. Although the

victim denied to police that she had sex with Baynes, a witness told police that the victim had told her that there had been sexual contact between the two.

The police interviewed Baynes on January 29, 2008. Baynes admitted that he brought vodka to the party and consumed some of it himself. He also admitted to making out with the victim. When the police pressed him for further details about the sexual contact, Baynes said, "See when it comes to that point I think I need an attorney." Nevertheless, the police continued their questions and Baynes provided answers. He disclosed that he penetrated the victim's vagina with his finger and his penis.

Respondent State of Minnesota charged Baynes with two counts of third-degree criminal sexual conduct, one count of furnishing liquor to an underage person, and one count of underage liquor consumption. Baynes moved the district court to suppress the statements that he made to the police after he asked for counsel. The record does not show that the district court ruled on Baynes's motion. Instead, the state appears to have preemptively agreed not to use the statements in its case.

The district court held a contested omnibus hearing. After noting that the state agreed to leave out that portion of the police interview of Baynes that took place after he invoked his right to counsel, the district court examined the remaining evidence and concluded that the state lacked probable cause to pursue charges against Baynes for criminal sexual conduct. It dismissed both charges.

Following negotiations with the state, Baynes agreed to plead guilty to the charge of furnishing alcohol to an underage person. At the plea hearing, the district court noted that the parties had attempted to structure the sentence so as to avoid requiring Baynes to

register as a predatory offender, but the court commented that it had "no control over your registration for the sex offense" and "you might have the chance that you would have to register." Baynes stated that he understood that he might be required to register.

On October 8, 2009, Baynes signed a Minnesota Predatory Offender Registration Form acknowledging that he understood that he had a "duty to register as a predatory offender in accordance with [Minn. Stat.] § 243.166 and/or [Minn. Stat.] § 243.167." On October 30, 2010, Baynes completed a Minnesota Predatory Offender Change of Information Form, on which he indicated that he lived at that time in Annandale at his mother's house.

Following a traffic stop and a follow-up investigation, Baynes was charged on May 6, 2011, with two counts of failing to register as a predatory sex offender, in violation of Minn. Stat. § 243.166, subd. 5(a) (2010) (registration statute). One of the two charges arose from Baynes's failure to register the vehicle he was using to drive to and from work. The other arose from his failure to register his girlfriend's address, where he was staying four nights a week. Baynes moved the district court for dismissal of the charges for lack of probable cause and because the underlying charges of criminal sexual conduct did not arise from the same set of circumstances as his conviction of furnishing alcohol to an underage person. The district court denied Baynes's motion.

The state dismissed one of the failure-to-register charges, and Baynes pleaded not guilty to the other charge at a stipulated-facts trial, under Minn. R. Crim. P. 26.01, subd. 3. The district court sentenced Baynes to 114 days in jail and credited him with 114 days of time served. The district court also imposed a variety of other conditions,

including supervised probation and limits on Baynes's alcohol use and possession of pornography. The district court stayed imposition pending the outcome of this appeal.

D E C I S I O N

Baynes challenges the district court's denial of his motion to dismiss for lack of probable cause the failure-to-register charges, arguing that the district court erred in its determination that, as a matter of law, Baynes was charged with a crime requiring him to register as a predatory offender. He also argues that the district court erred when it concluded that the dismissed criminal-sexual-conduct charge arose from the same set of circumstances as the crime of which he was convicted.

A person who is required to register and who knowingly violates any of the provisions of the registration statute is guilty of a felony. Minn. Stat. § 243.166, subd. 5(a). Thus, the first element of the crime of failing to register requires a showing that the defendant was required to register at all. *Id.*; *accord* 10 *Minnesota Practice*, CRIMJIG 12.100 (2006). A person is required to register if "the person was charged with [a qualifying crime] . . . and convicted of . . . that offense or another offense arising out of the same set of circumstances." Minn. Stat. § 243.166, subd. 1b(a)(1) (2010).

"A motion to dismiss for lack of probable cause should be denied where 'the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict of acquittal if proved at trial.'" *State v. Lopez*, 778 N.W.2d 700, 703–04 (Minn. 2010) (quoting *State v. Florence*, 306 Minn. 442, 459, 239 N.W.2d 892, 903 (1976)). The interpretation of the predatory sex-offender registration statute is a

question of law, which we review de novo. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 247 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

I. The district court did not err by determining that the failure-to-register charges were supported by probable cause.

The district court examined the basis for dismissing the charges in the underlying case and concluded that "because Minn. Stat. § 243.166 is a civil/regulatory matter, the exclusionary rule does not apply" and that the dismissal of the underlying criminal-sexual-conduct charges for lack of probable cause as a result of application of the exclusionary rule "is of no consequence to [Baynes's] requirement to register." Baynes, relying on our supreme court's decision in *Lopez*, contends that the district court erred because, when charges are dismissed for lack of probable cause, a defendant is considered to have never been charged for the purposes of the registration statute. The state argues that the district court correctly concluded that the exclusionary rule does not apply in the context of the civil requirements of the registration statute.

The exclusionary rule operates to prevent evidence obtained after a defendant invokes his right to counsel during an interrogation from being admitted against the defendant. *State v. Chavarria-Cruz*, 784 N.W.2d 355, 360-61 (Minn. 2010). By engaging in their analyses of the exclusionary rule, the parties here press on this court the notion that a district court weighing a failure-to-register charge is in a position to scrutinize the facts giving rise to the underlying qualifying offenses. This approach is not supported by a plain reading of the registration statute.

"When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2012). If a statute, construed according to ordinary rules of grammar, is unambiguous, a court may engage in no further statutory construction and must apply its plain meaning. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

The registration statute requires a person to register as an offender if he "was charged" with a qualifying crime and was subsequently convicted of that crime or another arising from the same circumstances. Minn. Stat. § 243.166, subd. 1b(a)(1). Absent ambiguity in the words "was charged," there is no room for further construction of the statute. Neither the parties nor the district court explain the ambiguity that justifies addressing the exclusionary rule in order to interpret the statute.

Even when read in conjunction with the Minnesota Rules of Criminal Procedure, the statute remains unambiguous. Baynes contends that the charges he faced in the underlying case did not comply with the rules of criminal procedure and were therefore void ab initio. Under Minn. R. Crim. P. 2.01, subd. 4, a valid complaint requires a judge to "determine whether probable cause exists to believe an offense has been committed and the defendant committed it." A district-court judge signed the complaint in the underlying case here, affirming that the probable-cause statement was sufficient to support the charges. The parties do not dispute that, at the time that the district court reviewed the complaint, it was unknown to the district court and to the prosecution that the probable-cause statement contained evidence that the police obtained from Baynes

after he invoked his right to counsel. Consequently, at the time that the charging documents were signed by the district court, they were valid, and they only became deficient through the usual course of developments that occur before a criminal trial. We are aware of no case in Minnesota that has held that charges that have been dismissed are to be considered retroactively nonexistent. And Minnesota statutes do not support such a conclusion. *See* Minn. Stat. § 609A.02, subds. 1, 3 (2012) (providing for the sealing of criminal records, including charges that have been dismissed).

Relying on *Lopez*, Baynes contends that our supreme court has acknowledged that a charge dismissed for lack of probable cause does not exist for purposes of the registration statute. We are not persuaded that *Lopez* stands for that proposition. In that case, the state charged Gabriel and José Carlos Lopez (the Lopez brothers) each with one count of aiding and abetting a controlled-substance crime and two counts of aiding and abetting kidnapping, a charge requiring registration. 778 N.W.2d at 701-02. After the charges were filed, one witness provided information that was largely exculpatory of the Lopez brothers regarding the kidnapping charges. *Id.* at 702-03. Gabriel unsuccessfully moved the district court to dismiss the kidnapping charges for lack of probable cause. *Id.* at 703. The kidnapping charges were later dismissed, and the Lopez brothers were convicted of the drug crimes at stipulated-facts trials. *Id.* The district court ordered both Lopez brothers to register as predatory offenders. *Id.*

On appeal, the supreme court commented that the registration statute "applies to persons charged with certain crimes even if they are not convicted. . . . For this reason, Gabriel challenges the propriety of the charge." *Id.* The court then engaged in a review

of the probable cause underlying the charges, in which it noted that sufficient probable cause requires showing that the facts in the record will survive a motion for directed verdict of acquittal if proved at trial. *Id.* at 703-04. The supreme court determined that "the aiding and abetting case against Gabriel at the charging stage was weak" and observed that the witness "gave an exculpatory statement and the charge of aiding and abetting kidnapping was eventually dismissed." *Id.* at 704. Nonetheless, the court found that "the district court did not err in concluding that the charge was supported by probable cause." *Id*.

The inference that Baynes draws from the supreme court's analysis is that had the supreme court ruled that there was insufficient probable cause supporting the charge, Gabriel Lopez would not be required to register as a predatory offender. But this deduction is unsupported by the premises. Because the supreme court concluded that sufficient probable cause supported the kidnapping charge at the charging stage, it did not directly address the question of whether charges dismissed for lack of probable cause require registration. Without this analysis by the supreme court, *Lopez* cannot be said to hold that a charge dismissed for lack of probable cause does not require registration. Moreover, at the initial charging stage here, the complaint was supported by probable cause. *See* Minn. R. Crim. P. 2.01, subd. 4; *accord Lopez*, 778 N.W.2d at 704 (weighing the evidence before the district court at the charging stage).

Our interpretation of the registration statute is consistent with the approaches adopted in other cases that have addressed failure-to-register charges. In *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999), Boutin argued that the registration requirement

did not apply to him because he pleaded guilty only to nonqualifying charges, and the qualifying charges were dismissed. This argument was rejected by the supreme court, which concluded that Boutin was required to register because he was charged with a qualifying crime that arose from the same set of circumstances as the nonqualifying crimes of which he was convicted. *Boutin*, 591 N.W.2d at 716.

In *Gunderson v. Hvass*, the Eighth Circuit Court of Appeals interpreted the Minnesota registration statute to require Gunderson to register even though the state had entirely dismissed the initial complaint against Gunderson in which the qualifying crime was charged. 339 F.3d 639, 641-43 (8th Cir. 2003). Although the complaint under which Gunderson was eventually convicted did not contain a qualifying charge, "his conviction for third degree assault clearly arose from the same set of circumstances as the original charge for criminal sexual conduct." *Id.* at 643.

To summarize, the rule being proposed by Baynes—that a charge dismissed for lack of probable cause cannot form the basis of a requirement to register—is irreconcilable with the plain language of the registration statute and the caselaw interpreting the statute.

II. The charge of furnishing alcohol to an underage person arose from the same set of circumstances as the charges of criminal sexual conduct.

The predatory-offender registration statute requires an offender to register if he was charged with and convicted of a qualifying crime "or another offense arising out of the same set of circumstances." Minn. Stat. § 243.166, subd. 1b(a)(1).

> The "same set of circumstances" provision in the statute 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."

Lopez, 778 N.W.2d at 706. "Related circumstances" do not constitute the "same set of circumstances" required by the statute. *Id.*

Baynes argues that the circumstances underlying the charge of furnishing alcohol to an underage person do not overlap with those of the charges of criminal sexual conduct because (1) Baynes's act of furnishing alcohol to an underage person was complete before the alleged sexual contact; (2) no act relating to the assault was required to prove the charge of furnishing alcohol to an underage person; and (3) the facts underlying the charge of furnishing alcohol to an underage person do not mention assault.

Unlike *Lopez*, in which only one common circumstance connected the kidnapping charge with the drug crime, multiple circumstances here link the charges. It is undisputed that the alleged assault occurred after the party began and before everyone left the next morning. Thus the two charges are linked by time and events. Although portions of the party took place in a different apartment from that where the alleged sexual assault occurred, the apartments were located in the same complex. The charges are thereby linked by location. The charges are also linked by the persons involved. The victim of the assault was one of the underage partygoers to whom Baynes furnished alcohol. We

conclude that the charges are "sufficiently linked in time, location, people, and events." *Id.*

Baynes's argument that no act relating to the assault was required to prove the charge of furnishing alcohol to an underage person is unpersuasive. Neither the supreme court's decision in *Lopez* nor the registration statute requires that the elements of the charges of both crimes have a commonality. Nor do we find persuasive his argument that, because he completed the act of providing alcohol to the underage partygoers before the alleged assault occurred, the acts are separate events. It is likely that the act of providing the alcohol to the underage guests contributed to an atmosphere conducive to an assault. Even if we determined that the events were separate from each other, the alcohol charge is "sufficiently linked" to the criminal-sexual-conduct charges that the standard described in *Lopez* is met.

Affirmed.