Appendix A

Opinion of the Supreme Court of Virginia, Record No. 200955

October 7, 2021

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court building in the City of Richmond on Thursday the 7th day of October, 2021.

Present: All the Justices

Jeremy Lee Watson-Buisson,
s/k/a Jeremy Leigh Watson-Buisson, Appellant,

against Record No. 200955
Court of Appeals No. 0191-20-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and the argument of counsel, for the reasons set forth below, the Court is of opinion that the judgment below should be affirmed.

Watson-Buisson was found guilty of entering school property after conviction of a sexually violent offense. We awarded Watson-Buisson an appeal based on the following assignment of error:

> The Court of Appeals erred in: (a) concluding that treatment of any out-of-state conviction requiring registration in the state of conviction to be deemed a conviction of a "sexually violent offense" under Virginia Code § 9.1-902(F)(ii), as interpreted by this Court in *Turner v. Commonwealth*, 297 Va. 257, 826 S.E.2d 307 (2019), did not contravene the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and (b) upholding the trial court's determination that proof of the Defendant's prior Louisiana conviction of "computer-aided solicitation of a minor" in violation of La. Rev. Stat. § 14:81.3 constituted a proper predicate "sexually violent offense" within the meaning of Virginia Code §§ 9.1-902 and 18.2-370.5 establishing that requisite element of each of the three offenses of conviction.

BACKGROUND

In 2010, Watson-Buisson was convicted in Louisiana of computer-aided solicitation of a minor. The relevant statute provides as follows: "[c]omputer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years" and the purpose of this communication is "to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct or a crime of violence . . . , or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen." La. Stat. Ann. § 14:81.3(A)(1) (2020). This statute also applies when the person seventeen years of age or older contacts or communicates, through the use of electronic textual communication, with a "person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger." *Id.*

Persons convicted of computer-aided solicitation of a minor must register as sex offenders. *See* La. Stat. Ann. § 14:81.3(I) (2020) ("A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541. Whoever commits the crime of computer-aided solicitation of a minor shall be required to register as a sex offender . . . .").

In 2019, Watson-Buisson was indicted on two charges of being in proximity of children (in violation of Code § 18.2-370.2) and two charges of entry on school grounds by a violent sex offender (in violation of Code § 18.2-370.5) in the Circuit Court of the City of Norfolk. Watson-Buisson moved to dismiss on the grounds that he had not been convicted of a requisite predicate offense for any of the four charges. The trial court noted that a requisite offense for a violation of § 18.2-370.2 included any out-of-state conviction of an offense similar to conduct prohibited under Code § 18.2-370. Subsequently, the trial court conducted a similarity comparison of the statutes pursuant to *Johnson v. Commonwealth*, 53 Va. App. 608, 615 (2009). In its order of February 26, 2019, granting the motion to dismiss the two proximity of children offenses, the trial court concluded that "neither La. Stat. Ann. §§ 14:106 nor 14:81.3 is similar to Code §§ 18.2-370 or 18.2-374.1." Watson-Buisson was later indicted on a third charge of entry on school grounds by a violent sex offender (in violation of Code § 18.2-370.5). After a jury trial, Watson-Buisson was found guilty on all three counts.

Watson-Buisson moved to vacate the jury verdict on the ground that "the manner in which the Commonwealth used [Watson-Buisson's] out-of-state criminal record to establish a predicate conviction for purposes of prosecuting him for § 18.2-370.5 violates [his] right to Equal Protection of the laws under the 14th Amendment of the United States Constitution." On October 25, 2019, the trial court denied the motion to vacate, stating that "the offense in which [Watson-Buisson] was convicted in Louisiana is comparable to § 18.2-370, which is specifically included in the definition of sexual[ly] violent offense under § 9.1-902(E)." The Court of Appeals refused Watson-Buisson's appeal.

ANALYSIS

Watson-Buisson argues that his classification as a sexually violent offender violates the Equal Protection Clause by creating more onerous registration requirements for out-of-state offenders than for Virginia offenders. Requiring out-of-state offenders to register as a "sexually violent offender" in Virginia for any offense requiring registration, even if the offense was not "sexually violent" in Virginia, he argues, infringes his constitutionally protected right to travel and burdens out-of-state offenders. He further contends that the Commonwealth has not shown a rational basis to justify this distinction between persons convicted in Virginia and persons convicted in a sister State.

The Equal Protection Clause forbids the States from depriving any person of "the equal protection of the laws." U.S. Const. amend XIV. Equal protection is essentially a direction that all persons similarly situated should be treated alike. *Saunders v. Reynolds*, 214 Va. 697, 702 (1974). "[A] plaintiff challenging a state statute on an equal protection basis must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *Kolbe v. Hogan*, 849 F.3d 114, 146 (4th Cir. 2017) (internal quotation marks omitted). "If that initial showing has been made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny." *Id.* (internal quotation marks omitted).

We described the former sex offender registration regime in *Turner v. Commonwealth*, 297 Va. 257 (2019).* We explained that "[t]he effect of" this (now repealed) "statute is to treat

* We note that the General Assembly amended the registration regime in 2020, after Watson-Buisson's conviction. As amended, Code § 9.1-902(C)(2) now states: "Any offense for which registration in a sex offender and crimes against minors registry is required under the laws

some persons convicted in another state differently than some persons convicted in Virginia, by imposing on some out-of-state convicts a more onerous registration regime." *Id.* at 261.

Turning to Watson-Buisson's equal protection challenge, we first conclude that Watson-Buisson cannot raise a facial challenge to the statute. "A facial challenge . . . is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The Supreme Court has explained why abstract facial challenges are disfavored:

> Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of "premature interpretation of statutes on the basis of factually barebones records." Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither "'anticipate a question of constitutional law in advance of the necessity of deciding it'" nor "'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that "'[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.'"

Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 450-51 (2008) (citations omitted). Watson-Buisson does not meet the criteria to mount a facial challenge to the statute. We therefore turn to whether he can prevail in an "as-applied" challenge.

We conclude that Watson-Buisson's as-applied challenge fails at the threshold. Although it may not have been originally persuaded, the trial court rejected Watson-Buisson's motion to

---

of the jurisdiction where the offender was convicted shall require registration and reregistration in accordance with" the Virginia Registry "in the manner most similar with the registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted[.]" Code Ann. § 9.1-902(C)(2) (2020) (emphasis added). This is true "unless such offense is similar to . . . any Tier I, II, or III offense . . ." in Virginia "and the registration and reregistration obligations imposed by the similar offense [in Virginia] are more stringent than those registration and reregistration obligations imposed under the laws of the jurisdiction where the offender was convicted." *Id.* "In instances where the similar offense listed or defined in this section imposes more stringent registration and reregistration obligations, the offender shall register and reregister as required by this chapter in a manner consistent with the registration and reregistration obligations imposed by the similar offense listed or defined in this section." *Id.* (emphasis added).

vacate his conviction, concluding that the Louisiana crime of computer-aided solicitation of a minor was "comparable" to the Virginia crime of taking indecent liberties with a child. We agree. Consequently, Watson-Buisson cannot show an equal protection violation.

Although both statutes contain multiple subparts, the mental state and actions required for conviction under both statutes are highly similar. To be sure, there are some differences between the two. Many of the differences are minor. The Louisiana statute allows conviction when an adult targets a minor to engage in *either* sexual conduct or "a crime of violence." La. Stat. Ann. § 14:81.3(A)(1). The indecent liberties statute, Code § 18.2-370, does not reference a "crime of violence." For purpose of equal protection review, however, "similarly situated does not mean identical." *Dalton v. Reynolds*, 2 F.4th 1300, 1310 (10th Cir. 2021). Our comparison of the Louisiana statute under which Watson-Buisson was convicted and Code § 18.2-370 leads us to conclude that the statutes are indeed similar. Therefore, Watson-Buisson was not treated differently than a Virginia defendant who is convicted of a similar crime in Virginia. Consequently, he suffered no "as-applied" equal protection violation. His Louisiana conviction of "computer-aided solicitation of a minor" in violation of La. Stat. Ann. § 14:81.3 constituted a proper predicate "sexually violent offense" for conviction.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Norfolk.

A Copy,

Teste:

Acting Clerk

Appendix B

Opinion of the Court of Appeals of Virginia, Record No. 0191-20-1

May 14, 2020

VIRGINIA:

In the Court of Appeals of Virginia on **Thursday** *the* **14th** *day of* **May, 2020.**

Jeremy Leigh Watson-Buisson, Appellant,

against Record No. 0191-20-1
Circuit Court Nos. CR18002762-00, CR18002762-02 and CR19000501-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Norfolk

Per Curiam

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

I. In a jury trial, appellant was convicted for three counts of entering school property after conviction of a sexually violent offense in violation of Code § 18.2-370.5. Appellant argues that the trial court erred in denying his motion to dismiss the charges. He claims the trial court erred in finding that, under Virginia law, he properly was classified as a sexually violent offender and that the classification did not violate his constitutional rights.

In December 2010, appellant was convicted for computer-aided solicitation of a juvenile in Louisiana. See La. Stat. Ann. § 14:81.3. Under applicable law in Louisiana, appellant's conviction of computer-aided solicitation required him to register as a sex offender in that jurisdiction. See La. Stat. Ann. § 14:81.3(I) (conviction under that statute requires the defendant to register as a sex offender).

Under Code § 18.2-370.5(A)(iii),

> [e]very adult who is convicted of a sexually violent offense, as defined in § 9.1-902, shall be prohibited from entering or being present . . . upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity.

"The Sexual Offender and Crimes Against Minors Registry Act . . . requires any person convicted after July 1, 1994 of a sexual offense as described in Code § 9.1-902 in the courts of the United States or any of its political subdivisions to register as a sex offender in Virginia." Shannon v. Commonwealth, 289 Va. 203, 205 (2015) (citing Code § 9.1-901). Moreover, "[t]hose convicted of violent sex offenses must remain on the [sex offender] registry for life." Id. at 205-06 (citing Code § 9.1-908).

Code § 9.1-902(A) provides:

> For purposes of this chapter: "Offense for which registration is required" includes:
>
> 1. Any offense listed in subsection B;
>
> 2. Criminal homicide;
>
> 3. Murder;
>
> 4. A sexually violent offense;
>
> 5. Any offense similar to those listed in subdivisions 1 through 4 under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof; and
>
> 6. Any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

Code § 9.1-902(B) lists Virginia crimes that require registration as a sex offender. Code § 9.1-902(E) specifies the Virginia and federal offenses that qualify as "sexually violent" crimes. Furthermore, subsection (F) states:

> Any offense listed in subsection B, "criminal homicide" as defined in this section, "murder" as defined in this section, and "sexually violent offense" as defined in this section includes (i) any similar offense under the laws of any foreign country or any political subdivision thereof, the United States or any political subdivision thereof or (ii) any offense for which registration in a sex

> offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.[1]

Code § 9.1-902(F).

Appellant argues the language and structure of Code § 9.1-902 requires that the more stringent registration requirements apply to individuals specifically classified by offense as "sexually violent offenders," or out-of-state offenders whose convictions are similar to a Virginia sexually violent offenses, but not to every out-of-state offender who is required to register in his state of conviction. The Supreme Court of Virginia expressly rejected this contention in Turner v. Commonwealth, 297 Va. 257, 260 (2019). Finding the statutory language clear and unambiguous, the Court concluded in Turner that because the defendant was required to register as a sex offender in Idaho, by operation of Code § 9.1-902(F)(ii), "he was required to register as a sexually violent offender in Virginia." Id. at 261.

Applying the holding in Turner to the facts of this case, the trial court did not err in finding that, because appellant was required to register as a sex offender in Louisiana, he was required to register as a sexually violent offender in Virginia pursuant to Code § 9.1-902(F)(ii).[2] See Roane v. Roane, 12 Va. App. 989, 993 (1991) (finding that "we are bound by the decisions of the Supreme Court of Virginia and are without authority to overrule [them]").

Appellant argues that he was denied equal protection of the law because he was subjected to more stringent reporting requirements than those applicable to individuals convicted for the same criminal conduct under Virginia law. However, "[t]he Fourteenth Amendment does not absolutely prohibit a legislative enactment from classifying and treating one person differently from another. . . . [W]hen such a classification 'involves a fundamental constitutional right, a suspect classification (such as race or national origin), or the

---

[1] Code § 9.1-902(F) was amended, effective July 1, 2019, to delete a comma and add the word "or" in subsection (i), but we apply the version of the statute in effect at the time of appellant's crimes in 2018. See 2019 Va. Acts c. 617. In any event, these minor changes would not affect the analysis in this case.

[2] In light of this conclusion, we need not consider appellant's alternative argument that his Louisiana conviction was not similar to a crime under Virginia law that would require him to register as a sexually violent offender under Code § 9.1-902(F)(i). See Turner, 297 Va. at 261 n.3.

characteristics of alienage, sex or legitimacy, [it is] subject to close judicial scrutiny.'" Commonwealth v. Ramey, 19 Va. App. 300, 302 (1994) (quoting Salama v. Commonwealth, 8 Va. App. 320, 322-23 (1989)). In this case, the classification that appellant challenges does not involve a fundamental right or an inherently suspect classification. The classification involved here thus "does not violate the equal protection requirement so long as it bears a '"reasonable" relation to a "legitimate" governmental objective.'" Id. (quoting Orleans v. Dukes, 427 U.S. 297, 303 (1976)). "Such a legislative classification is presumed valid, and our review of it is highly deferential." Id.

"Further, the legislature establishing such a distinction is not required to 'actually articulate at any time the purpose or rationale supporting its classification.'" Gray v. Commonwealth, 274 Va. 290, 308 (2007) (quoting Nordlinger v. Hahn, 505 U.S. 1, 15 (1992)). "Indeed, the classification 'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" Id. (quoting FCC v. Beach Communications, Inc., 508 U.S. 307, 315 (1993)). "The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Id. at 309 (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973)).

The Sex Offender and Crimes Against Minors Registry is maintained by the Virginia State Police, Code § 19.2-390.1, to "assist the efforts of law-enforcement agencies and others to protect their communities and families from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being allowed to work directly with children." Code § 9.1-900. "That purpose evinces clear recognition by the General Assembly of the unfortunate tendency of many sex offenders to recidivate, even long after release from incarceration." Shannon, 289 Va. at 206.

Classifying as sexually violent all out-of-state offenders required to register in their state of conviction provides a further level of protection for Virginia residents, especially children, from the danger of recidivism among sexual offenders. In this way, the classification furthers the purpose of Virginia's sex offender registry. Accordingly, a rational basis exists for the classification created by Code § 9.1-902(F)(ii).

Appellant failed to carry his burden to negate every rational basis for the classification, and the trial court did not err in rejecting appellant's equal protection claim.

II. Appellant challenges the sufficiency of the evidence to sustain his conviction of violating Code § 18.2-370.5 on September 28, 2018.[3] Appellant maintains that the evidence did not prove that he entered property as prohibited by the statute. When reviewing a challenge to the sufficiency of the evidence, this Court considers the evidence in the light most favorable to the Commonwealth, the prevailing party below, and reverses the judgment of the trial court only when its decision is plainly wrong or without evidence to support it. See Farhoumand v. Commonwealth, 288 Va. 338, 351 (2014). "[I]f there is evidence to support the conviction, the reviewing court is not permitted to substitute its judgment, even if its view of the evidence might differ from the conclusions reached by the finder of fact at the trial." Linnon v. Commonwealth, 287 Va. 92, 98 (2014) (quoting Lawlor v. Commonwealth, 285 Va. 187, 224 (2013)).

On the evening of September 28, 2018, Larchmont Elementary School in Norfolk held its annual fundraiser, the Larchmont Rat Race. Sponsored by the school, the event included a one-mile fun run for children and a 5K race, for which the school PTA obtained a special event permit from the city. There were nearly 900 participants in the race, which was open to the public, and the event drew a large crowd of spectators. The event was publicized for months in advance. Advance notices were distributed to neighbors about street closures surrounding the school during the event. The event started and ended at Brick Field, which was located directly across the street from the school. Before the races began, children congregated on Brick Field.

Andrew Hund, whose son was participating in the race, noticed appellant "very excitedly" riding his bicycle around Brick Field before the race started. After the race, Hund saw appellant, who was then carrying

[3] Appellant does not challenge the sufficiency of the evidence to sustain his convictions for violating Code § 18.2-370.5 on October 3 and 4, 2018. Thus, we limit our recitation of the evidence at trial to that relevant to appellant's guilt of the September 28, 2018 offense.

his bike, socializing with children on "the other side of Brick Field." Appellant, with his bicycle on his shoulder, had walked onto the field.

Melody Keddrell, a pizza vendor at Larchmont Rat Race, saw appellant four times riding his bicycle around the event as it occurred. Like Hund, Keddrell saw appellant on Brick Field during the fundraising event.

As noted above, by virtue of his status as a sexually violent offender, appellant was prohibited from "entering or being present . . . upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity." Code § 18.2-370.5(A)(iii). The evidence proved that appellant rode his bicycle on and around the grounds where Larchmont Elementary School was holding its fundraising race. The event had been widely publicized as a school-sponsored activity, and resulted in the closure of streets nearby. Brick Field, located across the street from the school, was used for the start and finish of the race. Two witnesses observed appellant on Brick Field during the event, and Hund stated that appellant socialized with children while he was there. Upon this evidence, a reasonable finder of fact could conclude beyond a reasonable doubt that on September 28, 2018, appellant entered upon property solely being used for a school-sponsored activity and that he was guilty of violating Code § 18.2-370.5(A)(iii).

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

It is ordered that the Commonwealth recover of the appellant the costs in this Court, which costs shall include a fee of $400 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

This Court's records reflect that the Office of the Public Defender for the City of Norfolk is counsel of record for appellant in this matter.

Costs due the Commonwealth
by appellant in Court of
Appeals of Virginia:

Public Defender $400.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Marty K P. Ring

Deputy Clerk

Appendix C

Rehearing of the Court of Appeals of Virginia, Record No. 0191-20-1

June 29, 2020

VIRGINIA:

In the Court of Appeals of Virginia on **Monday** *the* **29th** *day of* **June, 2020.**

Jeremy Leigh Watson-Buisson, Appellant,

against Record No. 0191-20-1
Circuit Court Nos. CR18002762-00, CR18002762-02 and CR19000501-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Norfolk

Before Judges Russell, Malveaux and Senior Judge Clements

For the reasons previously stated in the order entered by this Court on May 14, 2020, the petition for appeal in this case hereby is denied.

It is ordered that the Commonwealth recover of the appellant an additional fee of $100 for services rendered by the Public Defender on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses. The Commonwealth shall also recover of the appellant the costs reflected in this Court's May 14, 2020 order.

This order shall be certified to the trial court.

Additional costs due the Commonwealth
by appellant in Court of Appeals of Virginia:

Public Defender $100.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By: Kristen M. McKenzie

Deputy Clerk