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## COURT OF APPEALS OF NEW YORK

### People v. Knox<sup>1</sup> (decided February 17, 2009)

In a consolidated appeal, the New York Court of Appeals addressed the constitutionality of requiring individuals not convicted of sexually related crimes to register as sex offenders.<sup>2</sup> Each defendant claimed his or her due process rights were violated under both the United States Constitution<sup>3</sup> and New York Constitution<sup>4</sup> “because the crimes underlying their registration involve[d] no actual, intended or threatened sexual misconduct.”<sup>5</sup> While the defendants did “not dispute that they [had] committed crimes that warrant finding them a danger to the public, and specifically to children,” they argued that being labeled as sex offenders was false and misleading.<sup>6</sup>

In *People v. Knox*, Judy Knox pleaded guilty to attempted kidnapping after she “approached a group of children in a park, grabbed the arm of an eight-year-old girl and tried to pull her away.”<sup>7</sup> She previously lost custody of her daughter and sought to replace her with this child.<sup>8</sup> There was no evidence that Knox sexually molested the child, or attempted to kidnap her with that intent.<sup>9</sup> Similarly, the defendant in *People v. Cintron* was convicted of unlawful imprisonment of two children.<sup>10</sup> In *Cintron*, Eliezer Cintron became upset with his girlfriend and was “asked . . . to leave her apartment.”<sup>11</sup> In

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<sup>1</sup> 903 N.E.2d 1149 (N.Y. 2009).

<sup>2</sup> *Id.* at 1150.

<sup>3</sup> U.S. CONST. amend. XIV, § 1, states, in pertinent part: “No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .”

<sup>4</sup> N.Y. CONST. art. I, § 6, states, in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.”

<sup>5</sup> *Knox*, 903 N.E.2d at 1151.

<sup>6</sup> *Id.* at 1152.

<sup>7</sup> *Id.* at 1150.

<sup>8</sup> *Id.*

<sup>9</sup> *See id.*

<sup>10</sup> *Knox*, 903 N.E.2d at 1151.

<sup>11</sup> *Id.* at 1150.

retaliation and without the intent to commit sexual assault, he locked his girlfriend in her apartment with her two small children, ages one and two.<sup>12</sup> They remained falsely imprisoned against their will for several days.<sup>13</sup> Lastly, in *People v. Jackson*, Francis Jackson was an organizer of a prostitution ring.<sup>14</sup> When one of his employees threatened to quit, he forcibly abducted her young son,<sup>15</sup> and told her that he would kill him “if she did not continue to work [as a prostitute] for him.”<sup>16</sup> Pursuant to a plea agreement, Jackson pleaded guilty to attempted kidnapping.<sup>17</sup> Similar to Knox and Cintron, Jackson’s reason for kidnapping the child was not sexually motivated, but rather with the intent to force the child’s mother to continue working for him.<sup>18</sup>

Despite the fact that each defendant committed non-sexual crimes, all were required to register as sex offenders under the Sex Offender Registration Act (“SORA”).<sup>19</sup> In each case, the Appellate Division, First Department, affirmed the orders of the supreme court.<sup>20</sup> The defendants subsequently appealed to the New York Court of Appeals and argued that having to register as sex offenders violated their substantive due process rights.<sup>21</sup> The New York Court of Appeals affirmed the appellate division’s judgment and upheld the constitutionality of SORA.<sup>22</sup>

In affirming all three convictions, the New York Court of Appeals addressed whether being required to register as a sex offender amounted to a violation of the defendants’ substantive due process rights.<sup>23</sup> While the defendants may properly assert a constitutionally protected liberty interest,<sup>24</sup> the right asserted was *not* fundamental in

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<sup>12</sup> *Id.* at 1150-51.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1151.

<sup>15</sup> *Knox*, 903 N.E.2d at 1151.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Knox*, 903 N.E.2d at 1151.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1155.

<sup>23</sup> *Id.* at 1151.

<sup>24</sup> A protected liberty interest can exist in the context of procedural due process. Damage to reputation alone, however, does not invoke a protected liberty interest. *Paul v. Davis*, 424 U.S. 693, 712 (1976). Courts commonly apply a two-tiered “stigma plus infringement” test.

the context of substantive due process.<sup>25</sup> In assessing whether the defendants' due process rights were violated, the court noted that "[a]ll infringements of liberty by the State must be tested under the [D]ue [P]rocess [C]lause, but where no fundamental right is infringed legislation is valid if it is rationally related to legitimate government interests."<sup>26</sup> The court found "[t]he right not to have a misleading label attached to one's serious crime is not fundamental," and therefore, does not amount to a violation of due process.<sup>27</sup> Finding no fundamental right, the court applied rational basis scrutiny and found a legitimate state interest in requiring those convicted of kidnapping and unlawful imprisonment of children to register as sex offenders.<sup>28</sup> The court held that

the Legislature had a rational basis for concluding that, in the large majority of cases where people kidnap or unlawfully imprison other people's children, the children either are sexually assaulted or are in danger of sexual assault. In light of this, it was plainly rational for the Legislature to provide that, as a general rule, people guilty of such crimes should be classified as "sex offenders."<sup>29</sup>

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Damage to reputation, or stigma, plus some other tangible detriment will often result in a violation of a protected liberty interest. *Valmonte v. Bane*, 18 F.3d 992, 999 (2d Cir. 1994); *Neu v. Corcoran*, 869 F.2d 662, 667 (2d Cir. 1989), *cert. denied*, 493 U.S. 816 (1989); *Connelly v. Comptroller of the Currency*, 876 F.2d 1209, 1215 (5th Cir. 1989). Moreover, the United States Supreme Court in *Vitek v. Jones* found a violation of procedural due process where an individual is stigmatized as mentally ill and involuntarily committed. 445 U.S. 480, 492 (1980). Under Nebraska law, prison officials were given the authority to identify and transfer mentally ill inmates to an institution without first awarding them a judicial hearing. *Id.* at 483. The Court clarified that the stigmatization of being mentally ill coupled with the transfer to a mental institution violated each individual's liberty interest under the Due Process Clause. *Id.* at 492. Furthermore, in *Branch v. Collier*, a federal district court applied the stigma plus infringement analysis and found that an individual, who is convicted of aggravated assault and not a sexually related offense, has a protected liberty interest in his or her name and picture being labeled as a sex offender on a public website. No. Civ. A. 302CV0021-BF, 2004 WL 942194, at \*1, \*5 (N.D. Tex. Apr. 30, 2004); *see also* *Chambers v. Colorado Dep't of Corr.*, 205 F.3d 1237, 1240 (10th Cir. 2000); *Kirby v. Siegelman*, 195 F.3d 1285 (11th Cir. 1999); *Neal v. Shimoda*, 131 F.3d 818 (9th Cir. 1997).

<sup>25</sup> *Knox*, 903 N.E.2d at 1152.

<sup>26</sup> *Id.* (citing *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997)).

<sup>27</sup> *Id.* at 1153.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1154.

Therefore, requiring defendants to register as sex offenders did not amount to a violation of substantive due process.<sup>30</sup>

In applying rational basis, the court noted that “the Legislature could rationally have relied on the fact that a great many cases of kidnapping or unlawful imprisonment of children are indeed sex offenses.”<sup>31</sup> Relying primarily on statistics, the court noted that “in [forty-six percent] of the nonfamily abductions studied, the perpetrator had sexually assaulted the child.”<sup>32</sup> Thus, even though there was no discernible risk of sexual assault or molestation in these three cases, the court determined that the Legislature could rationally have concluded that in the majority of cases, kidnapping and unlawful imprisonment of children are often motivated by sexual intentions.<sup>33</sup>

The court in *Knox* relied on the reasoning applied in *People v. Taylor*.<sup>34</sup> In *Taylor*, the defendant was convicted of kidnapping in the first degree.<sup>35</sup> Even though the defendant did not commit any sexual misconduct, he was required to register as a sex offender pursuant to SORA.<sup>36</sup> The issue on appeal was whether the requirements of SORA applied to Taylor since he was only convicted of kidnapping in the first degree.<sup>37</sup> The county court, relying primarily on the fact that Taylor’s crime was not sexual in nature, found that the imposition of SORA “violated his constitutional right to due process of law.”<sup>38</sup> The government appealed this decision, and in opposition Taylor argued that “in light of the facts of his particular crime, it was irrational to label him a sex offender and subject him to the requirements of SORA.”<sup>39</sup>

The appellate division, however, upheld the constitutionality of SORA.<sup>40</sup> The court applied a two-tiered analysis:

Where the deprivation of a fundamental right is at issue, the governmental action in question is subject to

<sup>30</sup> *Knox*, 903 N.E.2d at 1153.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* (internal citation omitted).

<sup>33</sup> *Id.* at 1154.

<sup>34</sup> 835 N.Y.S.2d 241 (App. Div. 2d, Dep’t 2007).

<sup>35</sup> *Id.* at 242 (internal citation omitted).

<sup>36</sup> *Id.* at 243.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Taylor*, 835 N.Y.S.2d at 244.

<sup>40</sup> *Id.* at 245.

strict scrutiny, and will pass constitutional muster only if it is narrowly tailored to serve a compelling state interest. Where no fundamental right is implicated, the requirements of due process are satisfied if there is a rational basis for the governmental action.<sup>41</sup>

Concluding that the right asserted by Taylor was not fundamental—as commonly understood in the due process context—the court applied rational basis scrutiny and upheld SORA.<sup>42</sup> The court began its analysis by noting “that acts of the Legislature are presumed to be constitutional and, therefore, the defendant bears a heavy burden” in convincing the court that the Legislature lacked a rational basis to enact the legislation.<sup>43</sup> The court found that the Legislature had a rational basis for including kidnappers within the ambit of SORA.<sup>44</sup> While kidnapping and unlawful imprisonment of children are often not thought to be motivated by sexual desires, the court reasoned that these crimes often precede sexual offenses.<sup>45</sup> In other words, “the Legislature could reasonably have concluded that kidnappers should be required to register as well, if only because the absence of a sexual element from the kidnapping may be the merely fortuitous result of the interruption of the offender’s plan.”<sup>46</sup>

Other decisions indicate New York’s commitment to requiring those convicted of kidnapping and unlawful imprisonment of children to register as sex offenders under SORA.<sup>47</sup> For example, in *People v. Cassano*, the defendant was convicted of attempted kidnapping in the second degree.<sup>48</sup> Although there was no sexual component with respect to the kidnapping, his conviction classified him as a level two sex offender.<sup>49</sup> On appeal, Cassano argued that SORA was “unconstitutional as applied to him, because there is no evidence that his crime had a sexual aspect or motive, so that requiring him to

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<sup>41</sup> *Id.* at 243 (internal citations omitted).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 244.

<sup>44</sup> *Taylor*, 835 N.Y.S.2d at 245.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> See *People v. Lisle-Cannon*, 820 N.Y.S.2d 280, 280 (App. Div. 2d Dep’t 2006); *People v. Cassano*, 823 N.Y.S.2d 395, 396 (App. Div. 1st Dep’t 2006);

<sup>48</sup> *Cassano*, 823 N.Y.S.2d at 395.

<sup>49</sup> *Id.*

register as a sex offender does not serve the interests underlying SORA.”<sup>50</sup> Even without a sexual component to the kidnapping, the court held that “attempted kidnapping of a child . . . [does] not negate a possible sexual motive.”<sup>51</sup> Likewise, in *People v. Lisle-Cannon*, the Appellate Division, Second Department, upheld the lower court’s determination that the defendant must register as a sex offender even though he pleaded guilty only to attempted kidnapping in the second degree.<sup>52</sup> The court indicated that “[a]lthough the defendant’s criminal conduct was financially motivated and was entirely devoid of any sexual component, he was, by operation of . . . [SORA] certified as a sex offender.”<sup>53</sup> In each of the aforementioned cases, the court found a legitimate state interest in requiring convicted kidnappers to register as sex offenders.

While it seems clear that New York finds no constitutional violation in requiring those convicted of kidnapping and unlawful imprisonment to register as sex offenders, at least one New York trial court has held otherwise.<sup>54</sup> In *People v. Bell*, the defendant, along with others, unsuccessfully “attempted to rob a man outside of the man’s apartment.”<sup>55</sup> The victim of the robbery escaped and returned to his apartment, “but in doing so he left his three[-]year[-]old daughter and his friend behind in the hallway.”<sup>56</sup> Bell and his accomplices “took the child and then concocted a scheme to blackmail the victim and his wife.”<sup>57</sup> Their scheme failed and the child was returned unharmed.<sup>58</sup> Bell was convicted of kidnapping in the first degree.<sup>59</sup> When Bell was released on parole in 2001, he was immediately deemed a sex offender under SORA.<sup>60</sup> Similar to the arguments presented in the prior cases, Bell claimed that his substantive due process rights were violated in being labeled as a sex offender be-

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<sup>50</sup> *Id.* at 395-96.

<sup>51</sup> *Id.* at 396.

<sup>52</sup> *Lisle-Cannon*, 820 N.Y.S.2d at 280.

<sup>53</sup> *Id.*

<sup>54</sup> *People v. Bell*, 778 N.Y.S.2d 837 (Bronx County Ct. 2003).

<sup>55</sup> *Id.* at 839.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Bell*, 778 N.Y.S.2d at 839.

<sup>60</sup> *Id.*

cause he was only convicted of kidnapping in the first degree.<sup>61</sup> Finding the existence of a fundamental right, the court applied strict scrutiny to determine if the Legislature had a compelling state interest in subjecting kidnappers to the requirements of SORA.<sup>62</sup> In applying strict scrutiny, the court held that requiring Bell to “register as a ‘sex offender’ is completely arbitrary and unreasonable [and has] no substantial relation to the public morals or general sexually-charged safety issues which . . . [SORA] was enacted to safeguard against.”<sup>63</sup> The court enunciated that “[n]one of Mr. Bell’s actions in kidnapping the three[-]year old child were done for the purpose of sexual victimization of the child, and there is no assertion that during the period in which she was held ransom the child was in any way molested or sexually abused.”<sup>64</sup> While the decision in *Bell* is not aligned with the majority of New York cases, its reasoning provides some insight into how future courts *should* address the issue.

In our society, being labeled as a sex offender is not only harmful to one’s reputation, but results in becoming a social outcast. Once labeled as a sex offender, life with respect to schooling, employment, housing, and many other areas becomes exceedingly difficult. In *E.B. v. Verniero*, the Third Circuit Court of Appeals noted that having to register as a sex offender results in “profound humiliation and isolation,” and loss of employment as well as housing opportunities.<sup>65</sup> Moreover, the court noted that often “[f]amily and other personal relationships [are] destroyed or severely strained” as a result of having to register as a sex offender.<sup>66</sup> Perhaps the New York Court of Appeals should have taken a closer look at the harmful effects of having to register as a sex offender under SORA. By failing to analyze the issue in this light, many individuals will be forced to endure lives of social isolation and despair without having committed a sexually related crime.

For those who have committed a sexual offense against a child, the resulting stigmatization as a sex offender is just. Essentially, if one has been convicted of a sex offense, the cost-benefit analy-

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<sup>61</sup> *Id.* at 842.

<sup>62</sup> *Id.*

<sup>63</sup> *Bell*, 778 N.Y.S.2d at 847.

<sup>64</sup> *Id.*

<sup>65</sup> 119 F.3d 1077, 1102 (3d Cir. 1996).

<sup>66</sup> *Id.*



sis comes out in favor of society and the need to protect children from sexual predators. Society must therefore be on notice for the obvious reason that sex offenders threaten the health and safety of children. Moreover, many fear living among or associating with sexual predators. However, when the individual is *not* convicted of a sexually related offense, the cost-benefit analysis must favor the individual. In other words, the scale must be tipped in favor of individual liberties, or more specifically, not being mislabeled as a sex offender.

As discussed, after finding that the right asserted is not fundamental, New York courts consistently apply rational basis review. While there is a legitimate state interest in protecting children from sexual predators, the means employed are overly inclusive. The state's interest in protecting children is not furthered by labeling kidnapers and those who falsely imprison children as sex offenders under SORA. Even under a highly deferential rational basis scrutiny, the connection between sexual offenses and kidnapping or false imprisonment is simply too attenuated to support finding a legitimate state interest. While an over inclusive law will often survive an application of rational basis,<sup>67</sup> SORA is simply too broad to withstand such scrutiny.

The court in *Bell* mentioned *State v. Washington*, an Ohio case that found that the link between the need to protect children from sexual predators and labeling those convicted of kidnapping or false imprisonment of children as sex offenders was weak.<sup>68</sup> In its decision, the court stated that “[w]hile the General Assembly had a legitimate reason to enact the sexual predator statute, we fail to see how the purpose of the statute is furthered when there is absolutely *no evidence* that the offense committed was sexual in nature.”<sup>69</sup> In *Washington*, the defendant kidnapped “his infant daughter during a domestic dispute.”<sup>70</sup> The court noted that it is not clear “how the adjudication of [the] defendant [in this case] . . . protects the public from sex[] offenders.”<sup>71</sup> Applying rational basis scrutiny, the court held that “there is no rational relationship between this legitimate governmental interest and the imposition of the sexually oriented of-

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<sup>67</sup> See *N.Y. City Transit Auth. v. Beazer*, 440 U.S. 568, 592 (1979).

<sup>68</sup> No. 99-L-015, 2001 WL 1415568, at \*1,\*3 (Ohio Ct. App. Nov. 14, 2001).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* (footnote omitted).

fense label upon” the defendant.<sup>72</sup> The reasoning applied in *Washington* is worthy of being transplanted into New York case law with respect to this issue. While there is well established precedent that being mislabeled as sex offender does not implicate a fundamental right, perhaps it is time for this long standing rule to be reevaluated.

Furthermore, while the New York Court of Appeals argues that the intent of those who kidnap or falsely imprison children is often sexually motivated, it is necessary to take a more nuanced approach. In some cases, individuals will kidnap children with the intent to sexually abuse or molest them. However, this is not always the case. For example, in *Knox*, the defendant kidnapped a young girl because she was mentally ill and wanted a child of her own.<sup>73</sup> Moreover, in *Cintron*, the defendant falsely imprisoned his girlfriend and her young child because he was angry and sought revenge.<sup>74</sup> Lastly, in *Jackson*, the motivation for taking the child was to ensure that the young boy’s mother continued to work for him as a prostitute.<sup>75</sup> While all three defendants present a danger to society and should be fully prosecuted, they are *not* sex offenders. The legislative intent in enacting SORA is well founded, but its application is widely over inclusive. SORA should include kidnapers and those who falsely imprison children *only if* there is sufficient evidence that the crime committed was sexually motivated. Arguably, moving away from a bright line rule to a more case by case analysis will increase litigation and require courts to determine the motivation of each defendant. While this may consume additional time and resources, it will ensure that the constitutional rights of each defendant are not violated.

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<sup>72</sup> *Id.*

<sup>73</sup> *Knox*, 903 N.E.2d at 1150.

<sup>74</sup> *Id.* at 1150-51.

<sup>75</sup> *Id.* at 1151.

