

SUPREME COURT OF NORTH DAKOTA

State of North Dakota v. Craig Randall Backlund

2003 ND 184 (N.D. 2003) · No. No. 20030044 · Decided December 2, 2003

SUMMARY

The Supreme Court of North Dakota affirmed Craig Backlund's conviction for luring a minor by computer based on Internet communications with an undercover police officer posing as a minor. The court held that North Dakota had jurisdiction because Backlund solicited conduct within the state and later traveled there, and that the luring statute did not violate the Commerce Clause or the First Amendment. The court also upheld the statute's registration and notification provisions against procedural due process and double jeopardy challenges.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Kapsner, Justice; Gerald W. Vande Walle, Chief Justice; William A. Neumann, Justice; Mary Muehlen Maring, Justice; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	December 2, 2003
DOCKET	No. 20030044
DISPOSITION	affirmed
PROCEDURAL POSTURE	Backlund appealed from a conviction entered after he entered a conditional guilty plea to luring a minor by computer, preserving his jurisdictional and constitutional challenges under North Dakota Rule of Criminal Procedure 11(a)(2).
STANDARD OF REVIEW	The Supreme Court reviewed the preserved jurisdictional and constitutional challenges to the conviction and statutes; the opinion does not state a separate formal standard-of-review formulation.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential under North Dakota law.
PARTIES	Craig Randall Backlund v. State of North Dakota

TOPICS

criminal procedure

statutory interpretation

first amendment

commerce clause

double jeopardy

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether North Dakota had jurisdiction to prosecute Backlund when he initiated the Internet communications from Minnesota but the communications were received in North Dakota and he traveled to North Dakota to meet the person he believed was a minor.
2. Whether N.D.C.C. § 12.1-20-05.1 violates the dormant Commerce Clause.
3. Whether N.D.C.C. § 12.1-20-05.1 violates the free-speech provisions of the First Amendment and the North Dakota Constitution when applied to communications with an adult police officer posing as a minor.
4. Whether the registration and notification provisions of N.D.C.C. § 12.1-32-15 violate procedural due process.
5. Whether the registration and notification provisions of N.D.C.C. § 12.1-32-15 violate the federal and state constitutional prohibitions against double jeopardy.

HOLDINGS

1. North Dakota had jurisdiction to prosecute Backlund because he solicited criminal action within North Dakota while outside the state, the communication was received in North Dakota, and he was later found in North Dakota.
2. The luring-by-computer statute is not a strict-liability offense; conduct not otherwise assigned a culpability level requires willful conduct, meaning intentional, knowing, or reckless conduct.
3. N.D.C.C. § 12.1-20-05.1 does not violate the dormant Commerce Clause.
4. N.D.C.C. § 12.1-20-05.1 does not violate the free-speech provisions of the federal or North Dakota Constitutions because it criminalizes willful luring conduct, not protected pure speech.
5. Backlund's criminal conviction supplied procedural due process for mandatory sex-offender registration under N.D.C.C. § 12.1-32-15.
6. The registration and notification provisions of N.D.C.C. § 12.1-32-15 do not violate the federal or state prohibitions against double jeopardy because they are part of the sentencing scheme for the single conviction, not a separate criminal punishment or proceeding.

KEY QUOTATIONS

"We hold North Dakota had jurisdiction to prosecute Backlund, N.D.C.C. § 12.1-20-05.1 does not violate the Commerce Clause or the First Amendment, and the registration and notification provisions of N.D.C.C. §

12.1-32-15 do not violate procedural due process or double jeopardy. We affirm.” (672 N.W.2d at 431; 2003 ND 184, ¶ 1)

“Rather, N.D.C.C. § 12.1-20-05.1, like the statutes at issue in Foley, Ruppenthal, Powell, and Bailey, is premised on criminalizing "luring" conduct and is "a preemptive strike against sexual abuse of children by creating criminal liability for conduct directed toward the ultimate acts of abuse."” (672 N.W.2d at 442; 2003 ND 184, ¶ 32)

“We hold the registration and notification provisions of N.D.C.C. § 12.1-32-15 do not violate the double jeopardy provisions of the state and federal constitutions.” (672 N.W.2d at 445; 2003 ND 184, ¶ 42)

FACTUAL BACKGROUND

While using a computer in Moorhead, Minnesota, Backlund exchanged sexually explicit messages with an individual using the screen name "Fargobabe22," whom he believed to be a fourteen-year-old girl. He solicited the person to engage in a sexual act, offered to pick her up afterward, and arranged to meet at a convenience store in West Fargo, North Dakota. The person was actually an undercover West Fargo police officer, and Backlund was arrested in West Fargo after appearing at the designated location.

PROCEDURAL HISTORY

Backlund was charged with violating N.D.C.C. § 12.1-20-05.1 based on Internet communications with an undercover police officer posing as a fourteen-year-old girl. The trial court rejected his pretrial challenges to North Dakota's jurisdiction and to the constitutionality of the luring statute and sex-offender registration and notification provisions. Backlund entered a conditional guilty plea and appealed the resulting conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Knowels, 2002 ND 62, ¶¶ 12-13, 643 N.W.2d 20
- People v. Ruppenthal, 331 Ill. App. 3d 916, 771 N.E.2d 1002, 1005-1008 (2002)
- Wagner v. Miskin, 2003 ND 69, ¶ 20, 660 N.W.2d 593
- D.D.I., Inc. v. State ex rel. Clayburgh, 2003 ND 32, ¶ 4, 657 N.W.2d 228
- American Libraries Ass'n v. Pataki, 969 F. Supp. 160, 163, 169, 179, 183-184 (S.D.N.Y. 1997)
- People v. Foley, 94 N.Y.2d 668, 731 N.E.2d 123, 127-133 (2000)
- People v. Hsu, 82 Cal. App. 4th 976, 99 Cal. Rptr. 2d 184, 190, 194 (2000)
- Pike v. Bruce Church, Inc., 397 U.S. 137 (1970)
- Ashcroft v. Free Speech Coalition, 535 U.S. 234, 239, 246-254, 258 (2002)
- Reno v. ACLU, 521 U.S. 844, 859-860, 874-879, 882 (1997)
- New York v. Ferber, 458 U.S. 747, 761-762 (1982)
- United States v. Bailey, 228 F.3d 637, 639 (6th Cir. 2000)

- United States v. Powell, 1 F. Supp. 2d 1419, 1422 (N.D. Ala. 1998)
- State v. Robins, 253 Wis. 2d 298, 646 N.W.2d 287, 297 (2002)
- State v. Kelly, 2001 ND 135, ¶¶ 10-11, 631 N.W.2d 167
- State v. Burr, 1999 ND 143, ¶¶ 8, 36, 42, 98, 598 N.W.2d 147

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