**REL: 12/14/2012**



# ALABAMA COURT OF CRIMINAL APPEALS

**OCTOBER TERM, 2012-2013**

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**CR-10-0540**

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**Cornelius Antoine Billingsley**

**v.**

**State of Alabama**

**Appeal from St. Clair Circuit Court**
**(CC-10-36)**

PER CURIAM.

The appellant, Cornelius Antoine Billingsley, appeals his guilty-plea conviction for failure to register as a sex

offender, see § 13A-11-200, Ala. Code 1975.[1] The circuit court sentenced Billingsley to five years' imprisonment but suspended that sentence and placed him on two years' probation. Additionally, the circuit court ordered Billingsley to pay a $50 crime-victims-compensation assessment, an attorney fee, and court costs.

On January 28, 2010, the St. Clair County Grand Jury indicted Billingsley as follows:

> "Cornelius Antoine Billingsley, whose name to the Grand Jury is otherwise unknown, having been convicted of the crime of Carnal Knowledge,[2] in the [United States] Military Court of First Region Fort Belvoir, and having been released from legal custody did fail or refuse to first register as required, in violation of [§] 13A-11-200 of the Code of Alabama, 1975, as last amended, against the peace and dignity of the State of Alabama."

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[1]Section 13A-11-200, Ala. Code 1975, was repealed on July 1, 2011, by Act No. 2011-640, § 49, Ala. Acts 2011.

[2]The crime of "carnal knowledge" is defined as follows:

> "Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person (1) who is not that person's spouse; and (2) who has not attained the age of sixteen years; is guilty of carnal knowledge and shall be punished as a court-martial may direct."

10 U.S.C. § 920 (1998), amended by 10 U.S.C. § 920 (2007).

(C. 28.) Thereafter, Billingsley filed what he styled as a "motion to dismiss indictment" and an "amended motion to dismiss indictment," in which he argued that the circuit court lacked subject-matter jurisdiction because, he said, "the legislature did not intend to include [Uniform Code of Military Justice] convictions within the control of § 13A-11-200[, Ala. Code 1975]." On December 16, 2010, the circuit court denied Billingsley's motions and Billingsley pleaded guilty, reserving for appeal the issues raised in his motions.

During the guilty-plea proceeding the State proffered the following factual basis for Billingsley's guilty plea:

> "[Billingsley] is convicted of a criminal sex offense and lived in Jefferson County and moved to the Southern Division of St. Clair County without giving notice and listed a Trails End address in St. Clair County without giving notice to the sheriff. That's all."

(R. 6.)

On appeal, Billingsley argues that the circuit court did not have "jurisdiction to convict [him] of failure to register as a sex offender under [§] 13A-11-200[, Ala. Code 1975,] when the offense [that] made the basis of the failure to register conviction is a conviction in a ... military court." (Billingsley's brief, p. 6.)

The State, relying on this Court's affirmance by unpublished memorandum in Billingsley v. State (No. CR-08-1971, Oct. 22, 2010) 92 So. 3d 814 (Ala. Crim. App. 2010) (table),[3] contends that Billingsley's argument is not preserved for review because, it says, "[a]lthough Billingsley raised the issue in a pretrial motion and reserved the right to appeal its denial, the issue is nothing more than a challenge to the sufficiency of the evidence, which is not proper in a motion to dismiss an indictment." (State's brief, p. 4.) In our previous unpublished memorandum, this Court relied on the holding in Doseck v. State, 8 So. 3d 1024 (Ala.

[3]Billingsley v. State was an appeal from an unrelated conviction involving a similar issue. Although the State's brief relies on this Court's memorandum affirmance in Billingsley's previous unrelated case, we recognize that Rule 54(d), Ala. R. App. P., provides that

> "orders of affirmance or a memorandum issued by the Court of Criminal Appeals by which a judgment ... is affirmed without an opinion ... shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court in this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Thus, we review this case without regard to this Court's previous decision in Billingsley v. State.

Crim. App. 2008). This Court subsequently overruled Doseck, however, in Ankrom v. State, [Ms. CR-09-1148, Aug. 26, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011), holding:

> "[I]n Doseck v. State, 8 So. 3d 1024 (Ala. Crim. App. 2008), this Court declined to review the merits of a similar issue because the issue had been improperly raised in the trial court by way of a motion to dismiss. This Court held that Rule 13.5(c)(1), Ala. R. Crim. P., does not permit dismissal of an indictment based on the insufficiency of the evidence and that no other 'Rule of Criminal Procedure ... provides a mechanism for a pretrial challenge to the sufficiency of the evidence.' Doseck, 8 So. 3d at 1025.
>
> "In the present case, Ankrom's attorney referenced the indictment when reserving the issue for review and styled the pleading as a 'Motion to Dismiss Indictment.' However, the motion was obviously mislabeled, because it did not challenge the validity of the indictment. Rather, Ankrom's motion and argument forthrightly raised the issue whether her conduct, as a matter of law, constituted a violation of § 26-15-3.2, Ala. Code 1975, the offense charged in the indictment. The trial court was clearly on notice of this legal issue, interpreted the language of the statute to encompass Ankrom's conduct, and accepted Ankrom's reservation of the issue for appellate review. The State did not object to the reservation of this issue.
>
> "Procedurally, Doseck appears to be nearly identical to the present case and, if followed, would require this Court to hold that Ankrom's claim is not properly before this Court for review. However, upon reexamining Doseck, we now believe that this decision conflicts with established precedent from the Alabama Supreme Court, such as Ex

parte Deramus, 882 So. 2d 875 (Ala. 2002). In Ex parte Deramus, the Alabama Supreme Court held:

> "'Indeed, the mere mislabeling of a motion is not fatal. King Mines Resort, Inc. v. Malachi Mining & Minerals, Inc., 518 So. 2d 714, 718 (Ala. 1987). This Court has stated that it is "committed to the proposition that it will treat a motion (or other pleading) and its assigned grounds according to its substance." King Mines Resort, 518 So. 2d at 718; see also Lockhart v. Phenix City Inv. Co., 488 So. 2d 1353 (Ala. 1986), and Sexton v. Prisock, 495 So. 2d 581 (Ala. 1986). Further, the Court has held that "[t]he substance of a motion and not its style determines what kind of motion it is." Evans v. Waddell, 689 So. 2d 23, 26 (Ala. 1997).'

"[W]e now hold that, in circumstances such as those presented in this case and in Doseck--where a pure question of law as to whether an accused's actions constitute a violation of the statute he or she is charged with violating is properly presented to the trial court, ruled on by the trial court, and properly reserved for appeal during the guilty-plea colloquy--the appellant should not be penalized for raising that question of law in an improperly styled pleading, such as in a motion to dismiss the indictment. To hold otherwise would result in legally meritless cases being sent to trial and would waste precious judicial resources. Additionally, it is important to note that the State and Ankrom presented this legal issue fully to the trial court. Further, all parties were clearly aware of the question presented to, and ruled upon, by the trial court. It would be procedural folly for our Court to now refuse to consider the merits of this issue. To the extent that this Court's opinion in Doseck held otherwise, it is hereby overruled. Moreover, Ankrom raised this specific issue orally

> during the guilty-plea proceeding and thereafter reserved it for review.

Ankrom, ___ So. 3d at ___ (footnote omitted).

The record here, as in Ankrom, establishes that Billingsley filed what he styled as a "motion to dismiss indictment" and an "amended motion to dismiss indictment," which do not, as the State contends, challenge the sufficiency of the State's evidence to support his conviction; rather, they present a pure question of law as to whether Billingsley's actions constitute a violation of § 13A-11-200, Ala. Code 1975. Furthermore, Billingsley specifically reserved the right to appeal "the issues of jurisdiction and void for vagueness." (C. 5.) Thus, based on this Court's holding in Ankrom, Billingsley has properly reserved and preserved this argument for review. Accordingly, we now address Billingsley's claim on appeal.

Billingsley, as stated above, contends that the circuit court was without "jurisdiction to convict [him] of failure to register as a sex offender under [§] 13A-11-200[, Ala. Code 1975.]" Specifically, Billingsley contends that a conviction in a United States military court does not "trigger[] any duty to register under [§] 13A-11-200, Ala. Code 1975."

(Billingsley's brief, pp. 3-4.). The State, on the other hand, contends that military courts are federal courts because, it says, military courts are "created by federal law under Article I of the United States Constitution" and "the Uniform Code of Military Justice -- the governing code followed by the United States military courts in criminal proceedings -- is federal law deriving directly from the United States Constitution." (State's brief, pp. 7-8.) Thus, the issue before this Court is whether § 13A-11-200, Ala. Code 1975, requires a person convicted of a qualifying offense in a United States military court to register with the sheriff of the county where he or she maintains his or her legal residence.

In Soles v. State, 820 So. 2d 163 (Ala. Crim. App. 2001), this Court stated:

> "'The first rule of statutory construction is that the intent of the legislature should be given effect. Ex parte McCall, 596 So. 2d 4 (Ala. 1992); Volkswagen of America, Inc. v. Dillard, 579 So. 2d 1301 (Ala. 1991). However, when possible, the intent of the legislature should be gathered from the language of the statute itself. Dillard, supra. Thus, where the language of the statute is plain, the court must give effect to the clear meaning of that language. Ex parte United Service

> Stations, Inc., 628 So. 2d 501 (Ala. 1993); IMED Corp. v. Systems Eng'g Associates Corp., 602 So. 2d 344 (Ala. 1992).'
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> "Beavers v. County of Walker, 645 So. 2d 1365, 1376-77 (Ala. 1994). See also Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687, 689 (Ala. 1991)('Words used in [a] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is clear and unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.' (citations omitted))."

820 So. 2d at 164-65. "Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous." Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001). "[O]nly if there is no rational way to interpret the words stated will we look beyond those words to determine legislative intent." DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998).

Section 13A-11-200, Ala. Code 1975, provides, in part:

> "(b) If any person, except a delinquent child, as defined in Section 12-15-1, residing in Alabama, has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama, or federal court, or so convicted in another state in

> any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama for any of the offenses hereinafter enumerated, such person shall, upon his or her release from legal custody, register with the sheriff of the county of his or her legal residence within seven days following such release or within 30 days after September 7, 1967, in case such person was released prior to such date. For purposes of this article, a conviction includes a plea of nolo contendere, regardless of whether adjudication was withheld. The offenses above referred to are generally any act of sexual perversion involving a member of the same or the opposite sex, or any sexual abuse of any member of the same or the opposite sex or any attempt to commit any of these acts, and without limiting the generality of the above statement shall include specifically: Rape, as proscribed by Sections 13A-6-61 and 13A-6-62; sodomy, as proscribed by Sections 13A-6-63 and 13A-6-64; sexual misconduct, as proscribed by Section 13A-6-65; indecent exposure, as proscribed by Section 13A-6-68; promoting prostitution in the first or second degree, as proscribed by Sections 13A-12-111 and 13A-12-112; obscenity, as proscribed by Section 13A-12-131; incest, as proscribed by Section 13A-13-3; or the attempt to commit any of the above offenses."

A plain reading of § 13A-11-200, Ala. Code 1975, establishes that the statute consists of three parts. First, the statute contains a jurisdictional portion, which sets out the jurisdictions in which convictions for qualifying offenses require registration as follows:

> "If any person ... residing in Alabama, has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama, or federal

> court, or so convicted in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama ...."

§ 13A-11-200(b), Ala. Code 1975. Second, the statute explains the time frame in which an offender is required to register. § 13A-11-200(b), Ala. Code 1975 ("[s]uch person shall, upon his or her release from legal custody, register with the sheriff of the county of his or her legal residence within seven days following such release or within 30 days after September 7, 1967, in case such person was released prior to such date ...."). Finally, the statute defines the terms "conviction" and "offenses" as follows:

> "For purposes of this article, a conviction includes a plea of nolo contendere, regardless of whether adjudication was withheld. The offenses above referred to are generally any act of sexual perversion involving a member of the same or the opposite sex, or any sexual abuse of any member of the same or the opposite sex or any attempt to commit any of these acts, and without limiting the generality of the above statement shall include specifically: Rape, as proscribed by Sections 13A-6-61 and 13A-6-62; sodomy, as proscribed by Sections 13A-6-63 and 13A-6-64; sexual misconduct, as proscribed by Section 13A-6-65; indecent exposure, as proscribed by Section 13A-6-68; promoting prostitution in the first or second degree, as proscribed by Sections 13A-12-111 and 13A-12-112; obscenity, as proscribed by Section 13A-12-131; incest, as proscribed by Section 13A-13-3; or the attempt to commit any of the above offenses."

§ 13A-11-200(b), Ala. Code 1975.

On appeal, Billingsley challenges the jurisdictional portion of the statute only; namely, whether military courts are included in the jurisdictional portion of the statute making it applicable to those convicted in "federal court." § 13A-11-200(b), Ala. Code 1975.

Merriam-Webster's Collegiate Dictionary 459 (11th ed. 2003) defines "federal court" as "a court established by a federal government" or "one established under the constitution and laws of the U.S." Military courts are legislative courts, established under Art. I, § 8, Cl. 14 of the United States Constitution, which grants Congress the power "[t]o make Rules for the Government and Regulation of the land and naval Forces." See, e.g., Gosa v. Mayden, 413 U.S. 665, 686 (1973) (stating that "a military tribunal is an Article I legislative court with jurisdiction independent of judicial power created and defined by Article III"). Pursuant to its Article I authority, see Solorio v. United States, 483 U.S. 435, 438-39 (1987), Congress enacted the Uniform Code of Military Justice, 10 U.S.C. §§ 801 to 950, which established "an integrated system of military courts and review procedures." Schlesinger

v. Councilman, 420 U.S. 738, 758 (1975). Therefore, military courts are federally created courts established under the United States Constitution. Accordingly, the plain, ordinary, and commonly understood meaning of the term "federal court" includes a military court.

In Esters v. State, 480 So. 2d 615 (Ala. Crim. App. 1985), we held that a prior court-martial conviction could be used to enhance a sentence pursuant to the provisions of the Alabama Habitual Felony Offender Act, see § 13A-5-9, Ala. Code 1975, so long as that conviction otherwise qualified as a felony pursuant to Rule 6(b)(3)(iv), Ala. R. Crim. P. (Temp.) (now Rule 26.6(b)(3)(iv), Ala. R. Crim. P.). In so holding, this Court recognized that "[t]he Uniform Code of Military Justice, under which appellant was previously convicted, is a law of the United States and has the force and effect of federal statutes. People v. Benjamin, [7 A.E.2d 410, 184 N.Y.S.2d 1 (1959)]; 10 U.S.C.A. § 801, et seq.; 6 C.J.S. Armed Services § 155 (1975)." Esters, 480 So. 2d at 617.

As in Esters, a conviction for violating provisions of the Uniform Code of Military Justice -- a law of the United States -- carries consequences under Alabama law. In the

instant case, the use of the term "federal court" in § 13A-11-200(b), Ala. Code 1975, encompasses the military court tribunals created by Congress. Because convictions in "federal court" as used in § 13A-11-200(b) include convictions in military courts, Billingsley's guilty-plea conviction for failing to register as a sex offender is due to be affirmed.

Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Kellum, J., concurs. Windom, P.J., and Burke, J., concur in the result. Welch, J., concurs in the result, with opinion. Joiner, J., dissents, with opinion.

WELCH, Judge, concurring in the result.

The majority affirms Cornelius Antoine Billingsley's guilty-plea conviction for failure to register as a sex offender, a violation of § 13A-11-200, Ala. Code 1975. I concur only in the result reached in the Court's opinion for the same reasons I stated in my special writings in Ankrom v. State, [Ms. CR-09-1148, August 26, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011) (Welch, P.J., concurring in the result and dissenting in part), and in Hicks v. State, [Ms. CR-09-0642, Nov. 4, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011)(Welch, J., concurring in the result). I believe that the indictment here, like the indictments in Ankrom and Hicks, properly charged an offense within the circuit court's jurisdiction and that the circuit court correctly denied Billingsley's pretrial motions seeking dismissal of the indictment, because to rule otherwise would have been an impermissible pretrial determination as to the sufficiency of the evidence. Continuing to adhere to this view, I also disagree with the Ankrom court's decision to overrule Doseck v. State, 8 So. 3d 1024 (Ala. Crim. App. 2008), for the reasons fully explained in my special writing in Ankrom, including that "allowing a

trial court to conduct a pretrial review of the underlying substantive issue presented here -- whether the defendant's actions constitute a violation of the statute" "modified the Alabama Rules of Criminal Procedure and engrafted into the rules a form of summary judgment as found in the Alabama Rules of Civil Procedure. See Rule 56, Ala. R. Civ. P." Ankrom v. State, ___ So. 3d at ___ (Welch, P.J., concurring in the result and dissenting in part).

Moreover, here, as in Ankrom and in Hicks, Billingsley pleaded guilty after the circuit court denied his motions to dismiss the indictment, but now seeks to challenge the State's evidence that supported the conviction. Because Billingsley pleaded guilty, an appellate challenge to the sufficiency of the evidence would be resolved adversely to him. Lawrence v. State, 953 So. 2d 431, 433 (Ala. Crim. App. 2006) ("'A guilty plea serves as an admission to all elements of the offense charged.'" (quoting Mitchell v. State, 495 So. 2d 738, 739 (Ala. Crim. App. 1986))).

Therefore, I believe that Billingsley's conviction is due to be affirmed. However, in this case I can concur only in the result because the analysis relies on Ankrom. I believe

that the circuit court's proper denial of Billingsley's motions to dismiss the indictment rendered unnecessary the majority's determination that convictions in military courts are convictions in "federal court" as that term is used in § 13A-11-200(b), Ala. Code 1975.

For the foregoing reasons, I respectfully concur in the result.

JOINER, Judge, dissenting.

Although I agree with the main opinion to the extent that it addresses the merits of this case, see Ankrom v. State, [Ms. CR-09-1148, Aug. 26, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011), I respectfully dissent from the main opinion's conclusion that the term "federal court" as it is used in § 13A-11-200, Ala. Code 1975, plainly includes a military court.

Billingsley argues that the circuit court did not have "jurisdiction to convict [him] of failure to register as a sex offender under [§] 13A-11-200[, Ala. Code 1975,] when the offense [that] made the basis of the failure to register conviction is a conviction in a ... military court." (Billingsley's brief, p. 6.) The State, on the other hand, contends that military-court convictions are encompassed within the term "federal court" as that term is used in § 13A-11-200, Ala. Code 1975. Thus, the main opinion correctly frames the issue as follows:

> "[T]he issue before this Court is whether § 13A-11-200, Ala. Code 1975, requires a person convicted of a qualifying offense in a United States military court to register with the sheriff of the county where he or she maintains his or her legal residence."

___ So. 3d at ___. This is an issue of first impression.

As a threshold matter, I note that with regard to the construction of criminal statutes we have held:

> "'"The touchstone of legislative construction is to ascertain and effectuate the intent of the legislature as expressed in the statute." Horn v. Citizens Hosp., 425 So. 2d 1065, 1070 (Ala. 1982) (emphasis added). This Court gives effect to the intent of the legislature as expressed in the plain, unambiguous language of the statute. Jefferson County Comm'n v. Edwards, 32 So. 3d 572, 586 (Ala. 2009).'
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> "Ex parte Catlin, 72 So. 3d 606, 607-08 (Ala. 2011) (Cobb, C.J., concurring specially).
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> "'It is a well established principle of statutory interpretation that "[w]here the meaning of the plain language of the statute is clear, it must be construed according to its plain language." Ex parte United Serv. Stations, Inc., 628 So. 2d 501, 504 (Ala. 1993). "Principles of statutory construction instruct this Court to interpret the plain language of a statute to mean exactly what it says and to engage in judicial construction only if the language in the statute is ambiguous." Ex parte Pratt, 815 So. 2d 532, 535 (Ala. 2001).
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> "'"'"[C]riminal statutes must be strictly construed, to avoid ensnaring behavior that is not clearly proscribed."' United States v. Bridges, 493 F.2d 918, 922 (5th Cir. 1974).
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> "'"'In United States v. Boston & M. RR Co., 380 U.S. 157, 85 S.

Ct. 868, 870, 13 L. Ed. 2d 728 (1965), the Supreme Court stated:

> "'"'"A criminal statute is to be construed strictly, not loosely. Such are the teachings of our cases from United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37 [(1820)], down to this day. Chief Justice Marshall said in that case:
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> "'"'"'The rule that penal laws are to be construed strictly, is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial

> department.'
> Id., p. 95.
>
> "'"'"The fact that a particular activity may be within the same general classification and policy of those covered does not necessarily bring it within the ambit of the criminal prohibition. United States v. Weitzel, 246 U.S. 533, 38 S. Ct. 381, 62 L. Ed. 872 [(1918)]."
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> "'"'Moreover, "one 'is not to be subjected to a penalty unless the words of the statute plainly impose it[.]' Keppel v. Tiffin Savings Bank, 197 U.S. 356, 362, 25 S. Ct. 443, 49 L. Ed. 790 [(1905)]. '[W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.' United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222, 73 S. Ct. 227, 229-230, 97 L. Ed. 260 [(1952)]." United States v. Campos-Serrano, 404 U.S. 293, 297, 92 S. Ct. 471, 474, 30 L. Ed. 2d 457 (1971).'
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> "'"Bridges, 493 F.2d at 923."'

> "Crawford v. State, [Ms. CR-09-1227, April 29, 2011] ___ So. 3d ___, ___ (Ala. Crim. App. 2011)."

J.D.I. v. State, 77 So. 3d 610, 616 (Ala. Crim. App. 2011). Thus, in other words, it is important that this Court not construe criminal statutes too broadly; instead, we must construe criminal statutes narrowly to avoid criminalizing actions the legislature did not specifically intend to criminalize.

According to our standard of review, we must first determine whether the language of § 13A-11-200, Ala. Code 1975, is plain or ambiguous.

To determine whether a statute is plain,

> "'this Court looks to the plain meaning of the words as written by the legislature. As we have said:
>
> > "'"'Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'"'"

Munnerlyn v. Alabama Dep't of Corr., 946 So. 2d 436, 438 (Ala. 2006) (quoting DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275-77 (Ala. 1998) (internal citations

omitted)). "'Therefore, only if there is no rational way to interpret the words as stated will we look beyond those words to determine legislative intent.'" Id. We must be careful, however, to avoid finding, as the main opinion does, that a criminal statute is plain merely because the words used in the statute can be easily defined. See, e.g., United States v. Monia, 317 U.S. 424, 431 (1943) ("The notion that because the words of a statute are plain, its meaning is also plain, is merely a pernicious over-simplification." (Frankfurter, J., dissenting)).

Regarding statutory ambiguity, on the other hand, it is well settled that "[s]tatutory language is ambiguous if it is susceptible to more than one reasonable interpretation. See Atlantic States Legal Found., Inc. v. Tyson Foods, Inc., 897 F.2d 1128, 1138 (11th Cir. 1990) (statutory language unambiguous because 'capable of only a single reasonable interpretation')." Medical Transp. Mgmt. Corp. v. Comm'r of I.R.S., 506 F.3d 1364, 1368 (11th Cir. 2007). Thus, if there exists more than one rational way to interpret the meaning of a statute, the statute is ambiguous.

Additionally, if a criminal statute is ambiguous the rule of lenity applies, which "requires that "ambiguous criminal statute[s] ... be construed in favor of the accused."'" See Ex parte Bertram, 884 So. 2d 889, 892 (Ala. 2003) (quoting Castillo v. United States, 530 U.S. 120 (2000)).

Here, the main opinion defines the term "federal court" using Merriam-Webster's Collegiate Dictionary, which defines "federal court" as "a court established by a federal government; esp: one established under the constitution and laws of the U.S." Merriam-Webster's Collegiate Dictionary 459 (11th ed. 2003). Based on that definition, the main opinion concludes that "the plain, ordinary, and commonly understood meaning of the term 'federal court' includes a military court" because "military courts are federally created courts established under the United States Constitution." ___ So. 3d at ___. The main opinion's interpretation of the term "federal court" as it is used in § 13A-11-200, Ala. Code 1975, is broad and would require registration of an individual convicted of any qualifying offense in every court as long as that court was, in some way, created by a federal government--regardless of where that federal government is located.

To support this broad interpretation, the main opinion looks to the Habitual Felony Offender Act and cites Esters v. State, 480 So. 2d 615 (Ala. Crim. App. 1985), in which, as the main opinion states, "'we held that a prior court-martial conviction could be used to enhance a sentence pursuant to the provisions of the Alabama Habitual Felony Offender Act, see § 13A-5-9, Ala. Code 1975, so long as that conviction otherwise qualified as a felony pursuant to Rule 6(b)(3)(iv), Ala. R. Crim. P. (Temp.) (now Rule 26.6(b)(3)(iv), Ala. R. Crim. P.).'" ___ So. 3d at ___. Reliance on Esters and the Habitual Felony Offender Act, however, is not appropriate when trying to determine whether a military court is subsumed into the term "federal court" in § 13A-11-200, because § 13A-5-9, Ala. Code 1975, and § 13A-11-200 are two distinct statutes with two distinct structures.

Specifically, as the main opinion points out, § 13A-11-200 consists of three portions, including a jurisdictional portion that refers only to those jurisdictions in which a qualifying conviction has occurred. In other words, § 13A-11-200 specifically requires that, before the duty to register arises, an individual must have been convicted of a qualifying

offense in a specific jurisdiction--that is, "in any state or municipal court in Alabama, or federal court, or so convicted in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama." If an individual had previously been convicted of a qualifying offense outside these jurisdictional limits no duty to register arises.

Section 13A-5-9, on the other hand, has no language requiring an individual's previous felony conviction to have been in a specific jurisdiction before the individual could be sentenced as an habitual felony offender. This Court has held that "[§] 13A-5-9, [Ala. Code 1975,] specifically says, '[P]reviously convicted of any felony.' (Emphasis added.) Clearly, this language means that all felonies come within the purview of the habitual felony offender statute, regardless of their origin." Watson v. State, 392 So. 2d 1274, 1279 (Ala. Crim. App. 1980). Thus, in the habitual-felony-offender context it does not matter whether the prior felony conviction occurred in a military court because that statute, as written, contemplates all felony convictions.

Thus, § 13A-11-200 is more narrowly tailored than § 13A-5-9, and to interpret § 13A-11-200 in the same manner as § 13A-5-9 to include military-court convictions construes § 13A-11-200 too broadly and gives § 13A-11-200 the same jurisdictional limitation as § 13A-5-9--that is, none. Thus, the main opinion's construction of § 13A-11-200 ignores the requirement that we not construe criminal statutes too broadly and that, instead, we must construe criminal statutes narrowly to avoid criminalizing actions the legislature did not specifically intend to criminalize. See, J.D.I., supra.

Furthermore, the main opinion's construction of § 13A-11-200 overlooks the context of the term "federal court" as it is used in that statute. Specifically, the term "federal court" is contained in the jurisdictional portion of the statute and it is used in the context of federal court jurisdiction. The main opinion's construction of the term "federal court"--"a court established by a federal government"--improperly focuses on the governing body that created the court, not the jurisdiction the court has. With regard to the jurisdictional context of the term "federal court," however, it is unclear whether the legislature intended the term "federal court" to

mean all federal courts or to mean only specific federal courts with specific federal jurisdiction--for example, a federal district court created under Article III of the United States Constitution. Because the term "federal court" is unclear, the statute is not plain; rather, it is ambiguous, and we must determine what the legislature intended when it used the term "federal court."

Because the language of § 13A-11-200 is ambiguous this Court can "'examine extrinsic materials, including legislative history, to determine [legislative] intent.'" Pinigis v. Regions Bank, 977 So. 2d 446, 451 (Ala. 2007) (quoting Federal Reserve Bank of Atlanta v. Thomas, 220 F.3d 1235, 1239 (11th Cir. 2000)). The legislative history of this statute establishes that a military court is not subsumed in the term "federal court" in § 13A-11-200.

In Radney v. State, 840 So. 2d 190, 196 (Ala. Crim. App. 2002), Radney argued that "[b]ecause he was convicted in federal court, not a state or municipal court ... he was not required to register as a sex offender under § 13A-11-200[, Ala. Code 1975]," 840 So. 2d at 195 (emphasis added), which, at that time, provided, in part:

> "'If any person ... residing in Alabama, has heretofore been convicted, or shall be convicted in any state or municipal court in Alabama or so convicted in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama for any of the offenses hereinafter enumerated ....'"

Id. at 196 (emphasis in original). This Court then concluded:

> "Nothing in the plain language of the statute suggests that the Legislature intended to impose a registration requirement on a federally convicted sex offender. The phrases 'in any state or municipal court in Alabama' and 'in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama' are clear on their face and do not include convictions in federal court. Radney was convicted in a federal district court in Alabama; he was not convicted in a 'state or municipal court in Alabama' and he was not convicted 'in another state in any court having jurisdiction similar to the jurisdiction of state and municipal courts in Alabama.' Therefore, Radney was not required to register as a sex offender under § 13A-11-200; his conviction for violating § 13A-11-200 must be reversed."

Id.

In Radney, when this Court held that nothing in the statute "suggests that the Legislature intended to impose a registration requirement on a federally convicted sex offender" and further held that § 13A-11-200 did not include "convictions in federal court," this Court was referencing only Radney's conviction in a federal district court.

After Radney was decided, the legislature, in 2005, amended § 13A-11-200 by adding the phrase "or federal court" to the list of courts enumerated in the jurisdictional portion of the statute. Act No. 2005-301, Ala. Acts 2005. The addition of the phrase "or federal court," appears to remedy only the issue addressed by this Court in Radney--that is, whether § 13A-11-200, Ala. Code 1975, required registration of those individuals convicted of a qualifying offense in a federal district court. Thus, it appears the legislature intended to overrule our decision in Radney and to require registration of only those individuals convicted of a qualifying offense in a federal district court.

This conclusion is supported by the recently enacted Alabama Sex Offender Registration and Community Notification Act ("SORNA"), which repealed and replaced § 13A-11-200 and which is codified at §§ 15-20A-1 et seq. See generally Blockbuster, Inc. v. White, 819 So. 2d 43, 46 (Ala. 2001) ("Courts must consider subsequent acts passed by the Legislature to clarify previously ambiguous provisions.").

Section 15-20A-10, Ala. Code 1975, requires an individual who has been convicted of a qualifying offense to register

with the sheriff of the county where he maintains his legal residence. Failure to do so is a Class C felony. § 15-20A-10(j), Ala. Code 1975. The term "conviction," as it is used in § 15-20A-10, is defined as follows:

> "A determination or judgment of guilt following a verdict or finding of guilt as the result of a trial, a plea of guilty, a plea of nolo contendere, or an Alford plea. Conviction includes, but is not limited to, a conviction in a United States territory, a conviction in a federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian reservation or other federal property, a conviction in any state of the United States or a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) of Public Law 109-248. Cases on appeal are deemed convictions until reversed or overturned."

§ 15-20A-4(4), Ala. Code 1975 (emphasis added). Thus, the legislature clearly understood when it enacted SORNA that there is a jurisdictional distinction between a federal court and a military court. When the legislature amended § 13A-11-200 in response to Radney, it could have included the phrase "or military court" as it did in § 15-20A-4(4), Ala. Code 1975; the legislature, however, did not. Thus, the legislative history of this statute establishes that a

military court is not plainly encompassed within the term "federal court" in § 13A-11-200.

Moreover, because we must, as discussed above, look at the term "federal court" as a jurisdictional term, we must consider whether a military court is a federal court for jurisdictional purposes, and would, therefore, bring a military-court conviction under the purview of § 13A-11-200.

Jurisdictionally, the term "military court" is defined as "[a] court that has jurisdiction over members of the armed forces and that enforces the Code of Military Justice." Black's Law Dictionary 409-10 (9th ed. 2009). Additionally, "[m]ilitary courts are Article I courts of limited jurisdiction, with powers defined entirely by statute," United States v. Campbell, 71 M.J. 19, 26 (C.A.A.F. 2012) (Stucky, J., concurring in the result) (citing United States v. Wuterich, 67 M.J. 63, 70 (C.A.A.F. 2008)), and cannot "exercise jurisdiction beyond that granted by the applicable statutes." Willenbring v. Neurauter, 48 M.J. 152, 157 (C.A.A.F. 1998). Furthermore,

> "the Supreme Court has held that Congress may not extend court-martial jurisdiction to cover civilians who have no military status in peacetime, even if they are accompanying United States forces overseas

> as employees or dependents. Likewise, a court-martial may not exercise jurisdiction over a former servicemember whose relationship with the armed forces has been severed completely as a result of a valid discharge and who is not otherwise in a status that is subject to court-martial jurisdiction. See United States ex rel. Toth v. Quarles, 350 U.S. 11, 14-15, 76 S. Ct. 1, 3-4, 100 L. Ed. 8 (1955); Smith v. Vanderbush, 47 M.J. 56, 58-59 (1997)."

Id. at 157-58. Thus, military courts have jurisdiction only over servicemembers who violate the provisions of the Uniform Code of Military Justice.

Federal district courts, on the other hand, are created under Article III of the United States Constitution and are also courts of limited jurisdiction. See U.S. Const. art. III, § 1; see also Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994). Although federal district courts have jurisdiction over cases involving federal crimes, violations of the Uniform Code of Military Justice are not within the statutorily defined jurisdictional limits of federal district courts and federal courts of appeal. See §§ 28 U.S.C. 1291-1369.

Additionally, as the United States Supreme Court has explained, "a military tribunal is an Article I legislative court with jurisdiction independent of the judicial power

created and defined by Article III. Ex parte Quirin, 317 U.S. 1, 39 (1942); Whelchel v. McDonald, 340 U.S. 122, 127 (1950); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 165 (1963)." Gosa v. Mayden, 413 U.S. 665 (1973) (emphasis added).

It is logical to conclude that the legislature did not intend to include a military court when it used the term "federal court" in § 13A-11-200 because servicemembers subject to the jurisdiction of military courts are not afforded the same rights as civilians subject to the jurisdiction of federal courts. In Philips v. Perry, 106 F.3d 1420 (9th Cir. 1997), a case in which Philips was challenging the constitutionality of his discharge under the "don't ask/don't tell" policy, Judge Noonan, in a concurring opinion, explained:

> "In peace as in war, in the Pentagon as on the battlefield, the military services are treated as a universe distinct from the civilian world ruled by the ordinary decisions of courts. See Rostker v. Goldberg, 453 U.S. 57, 68, 101 S. Ct. 2646, 2653-54, 69 L. Ed. 2d 478 (1981).
>
> "In acknowledgment of the special constitutional status of the military, the courts have drawn back from a literal application of all parts of the Constitution to military activities. Not only are the armed services a world where classes of citizens are distinguished by law, but they constitute a world in which justice is afforded on different

> terms than it is provided to civilian citizens. Parker[ v. Levy], 417 U.S. [733] at 750, 94 S. Ct. [2547] at 2559 [(1974)].
>
> "Before a military tribunal, a defendant's constitutional rights are not the same as before a civilian court. There is no right to a trial by a jury of one's peers. Kahn v. Anderson, 255 U.S. 1, 8-9, 41 S. Ct. 224, 225-26, 65 L. Ed. 469 (1921). The right of appeal from a criminal conviction is channelled and restricted. 28 U.S.C. § 1259 (certiorari to the Supreme Court from Court of Appeals for the Armed Forces); 10 U.S.C. § 867 (review by Court of Appeals for the Armed Forces); 10 U.S.C. § 866 (review by Court of Criminal Appeals). Habeas corpus does not exist in its full robustness. Burns v. Wilson, 346 U.S. 137, 138-40, 73 S. Ct. 1045, 1046-48, 97 L. Ed. 1508 (1953). The protections of the Fourth Amendment are limited. See Kurtz v. Moffitt, 115 U.S. 487, 504-05, 6 S. Ct. 148, 154-55, 29 L. Ed. 458 (1885); United States v. Stuckey, 10 M.J. 347, 357, 361 (C.M.A. 1981); United States v. Middleton, 10 M.J. 123, 126-27 (C.M.A. 1981); United States v. Jacoby, 11 C.M.A. 428, 430-31, 29 C.M.R. 244, 246-47, ... (1960); Mil. Rul. Evid. 311-317 (governing searches and seizures in armed forces proceedings). The vagueness test of the Fifth Amendment applies less strictly. Parker, 417 U.S. at 756, 94 S. Ct. at 2561-62. The remedies for racial discrimination are sharply and unpleasantly limited. Chappell v. Wallace, 462 U.S. 296, 303-05, 103 S. Ct. 2362, 2367-68, 76 L. Ed. 2d 586 (1983).

106 F.3d at 1431-32.

Because military courts and federal district courts have different jurisdictional limits, the term "federal court" in the jurisdictional portion of § 13A-11-200 does not include a military court. To read the statute to include a military-

court conviction would be an overly broad construction and would ensnare behavior that is not "clearly proscribed."

Accordingly, I would reverse the judgment of the circuit court and remand this case to the circuit court for that court to vacate Billingsley's conviction and sentence for failure to register under § 13A-11-200, Ala. Code 1975.