DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CLIFFORD LEE HILL, JR.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-1444

November 30, 2022

Appeal from the Circuit Court for Polk County; J. Kevin Abdoney, Judge.

Michael Hrdlicka of Gomez & Touger, P.A., Lakeland, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and C. Todd Chapman, Assistant Attorney General, Tampa; and Natalia Reyna-Pimiento, Assistant Attorney General, Tampa (substituted as counsel of record), for Appellee.

MORRIS, Chief Judge.

Clifford Lee Hill, Jr., appeals his judgment and sentences for failure to properly register as a sex offender (residence), four counts

of failure to properly register as a sex offender (vehicle registration), and resisting an officer without violence. He argues that the trial court erred by failing to conduct a hearing pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973), after he requested to discharge his counsel based on allegations that his counsel was providing ineffective assistance of counsel. He also argues that the trial court erred in denying his motion for judgment of acquittal as to the four counts of failure to properly register as a sex offender (vehicle registration) based on a double jeopardy violation. We find no merit to Hill's first argument and thus we affirm his judgment and sentences for failure to properly register as a sex offender (residence), resisting an officer without violence, and one count of failure to properly register as a sex offender (vehicle registration). However, because we conclude that a double jeopardy violation arises from the multiple convictions and sentences for the three remaining counts of failure to register as a sex offender (vehicle registration), we reverse the judgment and sentences relating to those three counts.

BACKGROUND

In the second amended information filed by the State, Hill was alleged to have committed four counts of failing to properly register as a sex offender (vehicle registration) between the dates of May 24 and June 12, 2019.[1] It is undisputed that the four vehicles in question belonged to Hill's parents whom he resided with for at least five or more consecutive days. Hill had previously registered as a sex offender numerous times; the failure to register the four vehicles in question occurred at the time of Hill's reregistration.

At trial, Hill's counsel argued for a judgment of acquittal on the four counts, contending that section 943.0435, Florida Statutes (2018),[2] only intended to penalize an individual for one count of failure to properly register a sex offender (vehicle registration) even

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[1] The information also alleged Hill's failure to properly register as a sex offender (residence) and the resisting an officer without violence. But because those counts are not pertinent to the double jeopardy violation, we need not address them further.

[2] The information alternatively cited section 944.607, Florida Statutes (2018), which contains the requirement to register "all vehicles owned" with the department of corrections as well as section 985.4815, Florida Statutes (2018), which applies a reporting requirement to juveniles. However, both parties confine their argument to section 943.0435 in this appeal.

where the offender failed to register more than one vehicle at the same time. The focus of counsel's argument was on the words "all vehicles owned" as used in section 943.0435(2)(b).[3] Counsel asserted that if the legislature had intended to penalize an individual with separate counts for each applicable vehicle, the statute would have used the word "each" instead of "all" when referring to vehicles that must be registered. Counsel further argued that the crime of failure to properly register as a sex offender (vehicle registration) is completed regardless of whether the offender fails to register one or multiple vehicles. Counsel contended that Hill should have only been charged with one count of failure to properly register as a sex offender (vehicle registration) where the counts arose from a single reporting event. The trial court disagreed and denied the motion for judgment of acquittal.

Hill was ultimately convicted and sentenced to 117 months in prison for failure to properly register as a sex offender (residence), a concurrent term of 117 months in prison for the four counts of

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[3] Sections 943.0435(14)(a)&(c)(1) deal with reregistration requirements, but the language requiring the registration of "all vehicles owned" is the same as in section 943.0435(2)(b), which deals with initial registration.

failure to properly register as a sex offender (vehicle registration), and to time served for resisting an officer without violence. This appeal follows.

ANALYSIS

"Determining whether double jeopardy is violated based on undisputed facts is a purely legal determination, so the standard of review is de novo." *Fleming v. State*, 227 So. 3d 1254, 1256 (Fla. 2d DCA 2017) (quoting *Binns v. State*, 979 So. 2d 439, 441 (Fla. 4th DCA 2008)). "[B]oth the United States and Florida Constitutions contain double jeopardy clauses that 'prohibit [] subjecting a person to multiple prosecutions, convictions, and punishments for the same criminal offense.' " *State v. Shelley*, 176 So. 3d 914, 917 (Fla. 2015) (alteration in original) (quoting *Valdes v. State*, 3 So. 3d 1067, 1069 (Fla. 2009)); *see also* Amend. V, U.S. Const.; Art. I, § 9, Fla. Const.

Here there is no dispute that the four counts arose from a single reporting event. Thus the focus of our analysis is whether a failure to register "all vehicles owned" during a single reporting event constitutes one distinct act or multiple acts based on the failure to register each vehicle.

Sections 943.0435(2)(b) and 943.0435(14)(a)&(c)(1) require sex offenders to register "the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned" at initial registration and to make any changes to that information at reregistration. Sex offenders are also required to report to the sheriff's office within forty-eight hours after any change in vehicles owned. § 943.0435(2)(b)(3). Section 943.0435(1)(i) provides that "Vehicles owned" has the same meaning as provided in section 775.21, Florida Statutes (2018). Section 775.21(2)(p), in turn, defines "Vehicles owned" as:

> any motor vehicle as defined in s. 320.01, which is registered, coregistered, leased, titled, or rented by a sexual predator or sexual offender; a rented vehicle that a sexual predator or sexual offender is authorized to drive; or a vehicle for which a sexual predator or sexual offender is insured as a driver. The term also includes any motor vehicle as defined in s. 320.01, which is registered, coregistered, leased, titled, or rented by a person or persons residing at a sexual predator's or sexual offender's permanent residence for 5 or more consecutive days.

(Emphasis added).

Hill contends that based on the statutory language of section 943.0435, an ambiguity exists as to whether the legislature intended for an individual to be charged with only one count or

separate counts of failure to properly register as a sex offender (vehicle registration) where the offender fails to register more than one vehicle at the same time. Thus he asserts that this court should apply the rule of lenity in his favor and that his convictions and sentences should be reversed. We agree as to three of the four counts.

In analyzing the statute, we must attempt to discern whether the legislature intended only one unit of prosecution or multiple units when an offender violates section 943.0435 during a single reporting event.

> The "allowable unit of prosecution" standard recognizes that the Double Jeopardy Clauses are offended if multiple punishments are imposed for the same offense. The Legislature defines whether offenses are the same by prescribing the "allowable units of prosecution," which is the aspect of criminal activity that the Legislature intended to punish.

McKnight v. State, 906 So. 2d 368, 371 (Fla. 5th DCA 2005). "In other words, it is a distinguishable discrete act that is a separate violation of the statute. The discovery of the allowable unit of prosecution is a task of statutory construction." *Id.* (first citing *Bautista v. State*, 863 So. 2d 1180 (Fla. 2003); and then citing *Wallace v. State*, 724 So. 2d 1176 (Fla. 1998)). "If the Legislature

fails to establish the unit of prosecution clearly and without ambiguity, we must resolve any doubt as to legislative intent by application of the rule of lenity." *Id.* (first citing *Bautista*, 863 So. 2d 1180; then citing *Wallace*, 724 So. 2d 1176; and then citing *Grappin v. State*, 450 So. 2d 480 (Fla. 1984)). Thus the ambiguity would be resolved "against turning a single transaction into multiple offenses." *Gammage v. State*, 277 So. 3d 735, 740 (Fla. 2d DCA 2019) (quoting *Bautista*, 863 So. 2d at 1183). But "[w]here legislative intent as to punishment is clear, . . . the rule of lenity does not apply." *Grappin*, 450 So. 2d at 482; *see also Bell v. State*, 122 So. 3d 958, 960 (Fla. 2d DCA 2013).

> Legislative intent is the polestar that guides a court's statutory construction analysis. *State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002). In attempting to discern legislative intent, we first look to the actual language used in the statute. *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000). If the statutory language is unclear, we apply rules of statutory construction and explore legislative history to determine legislative intent. *Id.*; *Weber v. Dobbins*, 616 So. 2d 956, 958 (Fla. 1993). "To discern legislative intent, courts must consider the statute as a whole, including the evil to be corrected, the language, title, and history of its enactment, and the state of law already in existence on the statute." *State v. Anderson*, 764 So. 2d 848, 849 (Fla. 3d DCA 2000) (citing *McKibben v. Mallory*, 293 So. 2d 48, 52 (Fla. 1974)).

Bautista, 863 So. 2d at 1185-86; *see also McKnight*, 906 So. 2d at 371. "Included within the ambit of this common-sense approach is the 'a/any test,' which is a 'valuable but nonexclusive means to assist courts in determining the intended unit of prosecution.' " *McKnight*, 906 So. 2d at 371 (quoting *Bautista*, 863 So. 2d at 1188). "When the article 'a' is used by the Legislature in the text of the statute, the intent of the Legislature is clear that each discrete act constitutes an allowable unit of prosecution." *Id.* (first citing *Bautista* generally) and then citing *Bryan v. State*, 865 So. 2d 677 (Fla. 4th DCA 2004)). "Use of the adjective 'any' indicates an ambiguity that may require application of the rule of lenity," *id.* (citing *Bautista* generally), though the use of that word should not be interpreted to mean that the intended unit of prosecution is automatically rendered ambiguous, *Bautista*, 863 So. 2d at 1188.

While we are focused on the word "all" in this case, rather than "a" or "any," the "a/any" test is helpful when analyzing the phrase "all vehicles owned" as used in section 943.0435. Within the very definition of "Vehicles owned," both "a" and "any" are used when referring to what vehicles a sex offender must register. § 775.21(2)(p). That internal inconsistency is one of several factors

leading us to conclude that section 943.0435 is ambiguous as to whether the legislature intended for a sex offender to be charged with only one count or multiple counts of failure to properly register as a sex offender (vehicle registration) where the offender fails to register all applicable vehicles owned during a single reporting event.[4] Even if the definition of "Vehicles owned" in section 775.21(2)(p) had only used the word "any," we would reach the same result. As this court has previously explained, because the word "any" can mean "one, some, every, or all without specification," it is "by definition . . . linguistically ambiguous." *Bell*, 122 So. 3d at 961 (quoting *American Heritage Dictionary of the English Language* 81 (4th ed. 2000)).

Turning to the pivotal word in this case, "all" is defined as "[b]eing or representing the entire or total number, amount, or

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[4] In *Bautista*, the court explained that it is only where a statute uses the article "a" that the "legislative intent as to the intended unit of prosecution [can] actually [be] determined by the a/any test." 863 So. 2d at 1188 n.9. The court further explained that that is because "a" is unambiguous whereas when "any" is used in a statute, "an ambiguity of legislative intent arises." *Id.* The "a/any" test involves the application of the rule of lenity to resolve the ambiguity in the defendant's favor and "precludes more than one unit of prosecution." *Id.*

quantity." *American Heritage Dictionary of the English Language* 45 (5th ed. 2018). But that word cannot be considered in isolation. Rather, it must be construed as a modifier of "vehicles owned," which, as we have explained, is defined in an internally inconsistent manner.

The legislative purpose of the vehicle registration requirements is to protect the public by ensuring that a registered sex offender has provided all necessary current information. *See* § 943.0435(12). But the protection of the public is at risk when a sex offender fails to register one or many applicable vehicles during a single reporting event. *Cf. Gammage*, 277 So. 3d at 741 (explaining that the intent of the tampering with jurors statute "is to prevent obstruction of the administration of justice" but noting that that "can be accomplished by a defendant whether he or she tampers with one juror or multiple jurors"). And there is simply no clear indication that the legislature intended for a sex offender to be charged with multiple counts of failure to properly register as a sex offender (vehicle registration) when he or she fails to register more than one applicable vehicle during a single reporting event.

We note too that both sections 775.21 and 943.0435 were enacted after the "a/any" test was established in *Grappin*. *See* Ch. 93-277, § 1, Laws of Fla.; Ch. 97-299, § 8, Laws of Fla. And both statutes were last amended in 2021. *See* Ch. 2021-156, §§ 2, 14, Laws of Fla.; Ch. 2021-189, §§ 7, 8, Laws of Fla. While we have found no caselaw specifically construing the sex offender reporting statute under the "a/any" test, courts have applied the test under many other statutes. Despite this, the legislature has not taken any steps to amend or clarify the definition of "all vehicles owned" in section 943.0435. Thus because section 943.0435 relies on the definition of "Vehicles owned" set forth in section 775.21(2)(p) and because section 775.21(2)(p) uses both "any" and "a" in the definition, "it can be safely presumed that the legislature agrees with the court's application of the 'a/any' test and understands and accepts the interpretation of the [sex offender reporting] statute that will result from its application." *Gammage*, 277 So. 3d at 741. This is especially so here where the very definition of "Vehicles owned" uses both "a" and "any." If courts have previously construed the use of the word "any" in statutes as ambiguous, then surely it must be presumed that the legislature understands and accepts that the

use of both "a" and "any" in the same statutory context as is present in this case would also lead to an interpretation of a statute as ambiguous.

We conclude that the plain language of sections 775.21(2)(p) and 943.0435, when read together, is ambiguous as to whether the legislature intended for a sex offender to be charged with one or multiple counts of failure to properly register as a sex offender (vehicle registration) when the offender fails to register more than one applicable vehicle during a single reporting event. And the rule of lenity requires us "to construe [section 943.0435] in the manner most favorable to" Hill. *Bell*, 122 So. 3d at 961. Thus we reverse three of the four convictions for failure to properly register as a sex offender (vehicle registration) and remand for resentencing. *See Gammage*, 277 So. 3d at 744.

Affirmed in part, reversed in part, and remanded for resentencing.

NORTHCUTT and SMITH, JJ. Concur.

Opinion subject to revision prior to official publication.