ELECTRONICALLY FILED AUG 24, 2021 CLERK OF SUPREME COURT

IN THE IOWA SUPREME COURT

No. 20-0963

J. JESUS CARRERAS and LOS PRIMOS AUTO SALES, LLC d/b/a LOS PRIMOS AUTO SALES,

Petitioners-Appellants,

v.

IOWA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION,

Respondents-Appellees.

THE IOWA COURT OF APPEALS DECISION WAS FILED ON AUGUST 4, 2021 IN THIS CAUSE

APPLICATION FOR FURTHER REVIEW

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QUESTION PRESENTED FOR REVIEW

Structuring, a federal banking offense, involves breaking large cash deposits into smaller deposits to avoid federal reporting requirements. The source of the structured cash is irrelevant to the crime. Iowa Code section 322.3(12) allows the revocation of motor vehicle dealer licenses for "other indictable offense[s] in connection with selling or other activity relating to motor vehicles." Does an owner of a dealership who structures cash deposits commit an "offense in connection with selling or other activity relating to motor vehicles"?

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STATEMENT SUPPORTING FURTHER REVIEW

This case requires the Court to interpret a statute in Chapter 322 for the first time. Iowa Code section 322.3(12) creates collateral consequences for motor vehicle dealers who commit one of a list of enumerated crimes or "other indictable offense[s] in connection with selling or other activity relating to motor vehicles." Relying on that catchall clause, the Respondent, the Iowa Department of Transportation (the "Department"), revoked Jesus Carreras's ("Carreras") license to operate his family-owned motor vehicle dealership, Los Primos Auto Sales ("Los Primos"). An Administrative Law Judge ("ALJ") rescinded the Department's action as unauthorized by Chapter 322. The Department challenged and reversed the ALJ's decision, and the district court upheld the Department's action. The Court of Appeals affirmed the revocation but reversed an order tolling the revocation until this appeal concludes.

The Court of Appeals' opinion made a series of critical mistakes and created a conflict with this Court's precedent. First, it purported to follow *State ex rel. Miller v. Cutty's Des Moines Camping Club*, 694 N.W.2d 51, 526 (Iowa 2005), which interpreted "in connection with" in the context of a different statute, the Consumer Fraud Act. *See* Court of Appeals Opinion

(“Opinion”) at 8. This Court has stated that Chapter 322 is meant to protect consumers of motor vehicles from fraud and deception, and the Court of Appeals acknowledged that section 322.3(12) is aimed at “fraud and deception.” *Id.* at 10. *Miller* itself cautioned that its broad definition of “in connection with” was not appropriate for statutes concerning fraud and deceit, *see* 694 N.W.2d at 527, but the Court of Appeals ignored that limitation and applied *Miller* to this case.

Second, because the definition adopted in *Miller* was highly vague, the Court of Appeals had to adopt subsidiary interpretations of it. The first of these asked whether the motor vehicle dealing activity caused the offense. *See* Opinion at 8–9. But-for causation alone leads to obvious absurdities which the Department has admitted but the Court of Appeals failed to address. And because *Miller* itself did not consider mere causation sufficient for a connection, *see Miller*, 694 N.W.2d at 527–29, the Opinion created a second conflict with this Court’s precedent.

The Court of Appeals’ second, independently sufficient, interpretation focused on whether the conviction had an “evasive nature” and was a “dishonest business practice.” Opinion at 9–10. Even if that test was met, it would not be sufficient for an offense to be “in connection with . . . motor

vehicles." The Court of Appeals confused the analysis by misapplying the *ejusdem generis* canon. It observed that many offenses explicitly listed in the statute involved fraud and concluded that all fraudulent offenses fall under the catchall provision at issue here. But *ejusdem generis*, properly understood, would instead *narrow* the catchall provision, adding an additional requirement to it, not eliminating the requirement of a conviction occur in connection with motor vehicle sales.

Overall, the Court of Appeals decision is confused and in clear conflict with this Court's precedent. Any reasonable interpretation of the statute would confirm that Carreras's conviction for a banking offense, which was only related by coincidence to motor vehicle sales, cannot be within the scope of this statute. And while the phrase "in connection with" appears over one thousand times in Iowa statutes and court rules, that phrase has seemingly been interpreted by this Court only once. If not corrected, the decision will spill over to cause problems under different statutes, just as *Miller* did here.

STATEMENT OF THE CASE

The Appellants, Carreras and Los Primos, seek judicial relief from the Department's revocation of their motor vehicle dealer license. The underlying facts are not disputed. When customers paid cash at Los Primos,

Carreras structured his bank deposits to be under $10,000, avoiding a federal reporting requirement. The practice, which began with a prior owner, did not facilitate or affect any car sales, which occurred regardless of how the funds from the sales were deposited. Carreras could have put the money in a safe rather than a bank with no effect on the business. Bank employees understood Carreras's practice. While structuring is criminalized as a prophylactic to assist detection of other financial crimes, it turned out that Carreras's sole benefit was avoiding paperwork. In September 2018, Carreras pleaded guilty to only one count of structuring in violation of 31 U.S.C. § 5324(a)(1) and (a)(3) and was sentenced to probation.

As state courts do not regularly encounter federal criminal law, the nuances of the offense caused some understandable confusion below. Structuring is not fraud. It is a regulatory offense. Its *mens rea* is the knowledge of and intent to evade a reporting requirement, and while it formerly required that the violation be willful, it no longer does. *See* Joel Androphy, 2 White Collar Crime § 10:12 (2d ed.). Indeed, the Supreme Court has explained that, in the absence of willfulness, structuring is *mala prohibitum* that people regularly commit to avoid incidental regulatory burdens like publicity and paperwork, not to deceive the government. *See*

Ratzlaf v. United States, 510 U.S. 135, 144 (1994) (subsequently abrogated by Congress removing the willfulness element). On the other hand, the characteristic *mens rea* of fraud is *scienter*, the specific intent to defraud or deceive. *See* Otto G. Obermaier & Robert G. Morvillo, White Collar Crime: Business and Regulatory Offenses § 9.03.

In April 2019, the Department issued notice that it would revoke Carreras's motor vehicle dealer license due to his conviction for structuring. The revocation was based on Iowa Code section 322.3(12) (emphasis supplied):

> A person who has been convicted of a fraudulent practice, has been convicted of three or more violations of section 321.92, subsection 2, or section 321.99, has been convicted of three or more violations of subsection 16 of this section in the previous three-year period, or has been convicted of any other indictable offense in connection with selling or other activity relating to motor vehicles, in this state or any other state, shall not for a period of five years from the date of conviction be an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer or represent themselves as an owner, salesperson, employee, officer of a corporation, or representative of a licensed motor vehicle dealer.

The Appellants timely appealed the revocation. On September 10, 2019, ALJ Joseph Ferrentino issued a proposed decision holding that the Department misinterpreted "in connection with selling or other activity relating to motor vehicles" in section 322.3(12). That decision found that a

conviction with no connection to motor vehicle sales beyond that it involved a bank account holding their proceeds did not suffice. The ALJ further determined that because the revocation had no other statutory basis, it was invalid.

The Department appealed the ALJ's proposed decision (unintuitively, to itself). On October 28, 2019, the Department predictably issued a minimally reasoned "Ruling on Appeal" reversing the ALJ's proposed decision and reinstating the revocation without even supplying a supporting definition for the relevant statutory terms.

On October 31, 2019, the Appellants filed a Petition for Judicial Review in the Iowa District Court for Polk County. On July 14, 2020, the district court issued an Order on Judicial Review that denied and dismissed the Appellants' Petition. On September 20, 2020, the district court ordered the tolling of the statutory revocation period until the conclusion of the Appellants' appeals.

On August 4, 2021, after hearing oral argument, the Court of Appeals affirmed the district court's order as to the validity of the Department's revocation but reversed the district court's tolling order. *See generally* Opinion.

<u>**ARGUMENT**</u>

This case turns on the meaning of "an indictable offense in connection with selling or other activity relating to motor vehicles." Iowa Code § 322.3(12). The Court of Appeals held that "in connection with" means "related, linked to, or associated with" such that there is "some relation or nexus" between the activities. Opinion at 8 (quoting *Miller*, 694 N.W.2d at 526). That definition, and particularly the Court of Appeals' secondary interpretations of it, creates an unreasonable and unworkable mess.

First, it is contrary to *Miller*, its only basis. In *Miller*, the Court interpreted the Iowa Consumer Fraud Act, which prohibits "unfair practice[s] . . . in connection with the . . . sale of merchandise." *Id.* at 525 (quoting Iowa Code § 714.16(2)(a)). The Court chose an interpretation that could include post-sale conduct because "unfair practices" conventionally include post-sale activity. *See id.* at 527. The Court explicitly distinguished statutes that concerned "fraudulent" or "deceptive" practices, which are conventionally limited to pre-sale activity, as opposed to merely "unfair" ones. *See id.* (internal citations omitted).

Section 322.3(12), though, does not concern "unfair practices." Indeed, it does not ban *any* practices. It merely creates collateral

consequences for "indictable offenses in connection with . . . motor vehicles." Iowa Code § 322.3(12). Thus, *Miller*'s reasoning is not on point.

Moreover, the Court of Appeals created an actual conflict, rather than a mere mistaken application, by also interpreting section 322.3(12) "to embrace . . . offense[s with an] evasive nature," such as "fraud" or "falsification," following from "the purpose of chapter 322 . . . to protect consumers from 'fraud and deception.'" Opinion at 10 (quoting *State v. Miner*, 331 N.W.2d 683, 687 (Iowa 1983)). But remember that *Miller* explicitly relied on the Consumer Fraud Act's prohibition of unfair practices rather than fraud and deception. The Court of Appeals' interpretation of section 322.3(12) is thus incoherent: If it is right that the statute focuses on fraud, then under *Miller* it is wrong that the statute embraces non-consumer-facing, post-sale conduct, such as Carreras's method for making currency deposits.

Second, the Court of Appeals' interpretation is so vague that it sheds no light on the questions presented in borderline cases like this one. "[R]elated, linked to, or associated with" (Opinion at 8) is no clearer than "in connection with." The question just becomes whether a conviction of an

offense with no factual predicate involving motor vehicles can nevertheless be "related to," et cetera, motor vehicles.

Third, as a result, the Court of Appeals had to go beyond the vague *Miller* interpretation to address the Appellants' facts. Its two subsidiary interpretations that justify revoking Appellants' license, one "causal" and one "anti-fraud," both fail.

On the one hand, the Court of Appeals held that there was a "nexus," meaning a "connection or link, often a causal one," Opinion at 8 (quoting *Nexus*, Black's Law Dictionary (11th ed. 2019)), because Carreras used "dealership accounts to commit the [structuring] offense," Opinion at 10–11. This causal reading again conflicts with the Supreme Court's in *Miller*. *Miller* concerned a private campground that allegedly unfairly sought dues from shareholders who had long since stopped using the facility. *See Miller*, 694 N.W.2d at 522–23. The Court identified two potential "connections" between the alleged unfair practice and the sales of club shares. First, the opportunity to engage in unfair practices may have motivated the sales of shares. *See id.* at 528 ("[A] trier of fact . . . could find the Developer established this entire elaborate arrangement . . . from the outset to the substantial detriment of consumers."). Second, more "narrow[ly]," the sale

"g[ave] rise to ongoing rights and obligations" that "vested at the time of sale" that the seller breached. *Id.* at 528–29 (citing *Hines v. Evergreen Cemetery Assoc.*, 865 S.W.2d 266, 269 (Tex. App. 1993)).

What *Miller* did <u>not</u> say was that the defendant could be liable because its sales of shares caused the collection attempts. If that theory worked, the case would have been easy, because they obviously did. Instead, the Court required a meaningful connection between the fraud and the sales beyond just but-for causation. And it viewed the case as creating "difficult factual question[s]" that were just enough for the state to "get its day in court," not a slam dunk. *Id.* at 528.

The Court of Appeals, though, held exactly what *Miller* declined to: that but-for causation is sufficient for a connection. *See* Opinion at 2, 10–11. In other words, when interpreting *Miller*, the Court of Appeals failed to examine the evident limits of *Miller*'s interpretation. As a result, the Court of Appeals decision expands the substantive reach of the statute to offenses with no meaningful relationship to actual motor vehicles.

The Court of Appeals also failed to address absurd results that follow from allowing a merely causal connection to trigger revocation. For instance, if motor vehicle sale proceeds were used to purchase a firearm that

someone fired to kill an endangered animal, the environmental crime would trigger a license revocation under the Department's logic and the Court of Appeals' decision. Indeed, the Department conceded at oral argument that its interpretation of section 322.3(12) is that broad—it encompasses any crime that can be traced to the proceeds of motor vehicle sales. The Court of Appeals ignored the problem. *See also Gavin v. AT&T Corp.*, 464 F.3d 634 (7th Cir. 2006) (Posner, J.) ("[T]he fraud . . . is connected to the merger, without which there would not have been such a fraud . . . [b]ut in the same sense the fraud is connected to the Big Bang. . . . [A] mere 'but for' cause . . . does not make the injury 'in connection with.'").

Reflecting its untenable position, the Court of Appeals backed out and held alternatively that the structuring was "in connection with" sales of motor vehicles because it had an "evasive nature" and was a "dishonest business practice." Opinion at 9–10. If that does not sound right, it is because it is not.

The Court of Appeals relied on *ejusdem generis*. *Ejusdem generis* narrows broadly worded catchall clauses at the ends of lists to match the category of the prior items, so applying it here is reasonable. *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* § 32

(2012) (explaining that the canon adds the implicit limiter "*similar* after the word *other*"); 2A Sutherland Statutory Construction § 47:17 (7th ed.) (describing the canon's "restrict[ing]" and "limiting effect"). Because the prior items in the section 322.3(12) all involve fraud, as the Court of Appeals explained, *ejusdem generis* directs the Court to read "any other indictable offense in connection with . . . motor vehicles" as "any other indictable *fraudulent* offense in connection with . . . motor vehicles"—a narrowing of the catchall clause. Opinion at 10. But that is not what the Court of Appeals did. It used the canon to *broaden* the catchall clause to capture *all* fraudulent offenses, missing the original question of whether the offenses were "in connection with . . . motor vehicles." The Court of Appeals confused the interpretive analysis and misapplied *ejusdem generis* to broaden the statute to cover *all* fraudulent offenses, not to narrow the statute to cover *only* fraudulent offenses.

The mistakes did not end there. The Court of Appeals claimed, essentially without reasoning, and without briefing or argument on the question, that structuring is similar to the other offenses in section 322.3(12) because of its "evasive nature." *Id*. But the level of generality problem that arises when applying *ejusdem generis* makes the question much more

complex. “[T]he doctrine often gives rise to the question of how broadly or narrowly to define the class delineated by the specific items listed.” Scalia & Garner, *Reading Law* at § 32.

Many distinctions exist between structuring and the other offenses listed in section 322.3(12). The others are all *mala in se*, obviously contrary to public morals and with no legitimate purpose, while structuring is *mala prohibitum*, wrong as a side effect of a regulatory regime. *See Ratzlaf*, 510 U.S. at 144. Structuring has legitimate purposes and virtually identical conduct is legal to avoid other regulatory regimes. *See id.*

Further, the other listed offenses all at least indirectly harm consumers, while structuring harms (at most) the federal government.[1] Even the most borderline case, fraudulent practices from false public or business records, *see* Iowa Code section 714.8 (4), prohibits only actions intended to deceive the public or shareholders for gain, *see State v. Hoyman*, 863 N.W.2d 1, 9 (Iowa 2015).

The other offenses are also more akin to true fraud than structuring. *See* Iowa Code § 714.8 (prohibiting “fraudulent practice[s]”); *id.* at §

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[1] In this case, even the federal government was not harmed because the structuring did not actually conceal any improper transactions and all the deposited funds were properly reported for tax purposes.

321.92(2) (requiring "the purpose of concealing or misrepresenting"); *id.* at § 321.99 (prohibiting "[f]raudulent use[s] of registration"); *id.* at § 322.3(16) (requiring "the purpose of allowing the person to engage in the business of selling motor vehicles" without being issued a license).

The Department has relied on the liberal construction statute, Iowa Code section 322.15(1), but that statute is irrelevant here. As the Court of Appeals recognized, Carreras's conviction was not related to preventing "fraud in the sale, barter, or disposition of motor vehicles at retail." Opinion at 9 (quoting Iowa Code § 322.15). Carreras's conviction did not involve fraud or consumer-facing conduct. While it pointed to the alternative purpose to bar "irresponsible, unreliable, or dishonest persons," the Court of Appeals wisely did not rely on that portion of the statute to do any argumentative work. *Id*. Even if structuring makes a person irresponsible or dishonest without an additional offense—something the Appellants contest—the statute cannot give the Department *carte blanche* to interpret the statute to bar whoever it considers dishonest regardless of the text.

The Court can take any of three alternative routes instead. First, the Court could adopt the ALJ's "engaging and well-researched" opinion, which relied on an original textualist analysis rather than *Miller*. Opinion at 7. The

best definition of "in connection with" in the context is "with reference to; concerning." Appendix ("App.") 28–34 (Proposed Decision at 5–6 (quoting *In connection with*, Lexico)). Unlike other alternatives, this definition accounts for the phrase "in connection with," rather than merely "connection," and aligns with legal uses of the phrase in similar contexts to section 322.3(12):

> The construction follows a simple template: so-and-so was convicted of x in connection with y, where y = a plain statement of facts and x = an obvious criminal charge that would flow from those facts. For example: "Frank was convicted of manslaughter in connection with Sharrine's death." *In re Wilson's Estate*, 202 N.W.2d 41, 42 (Iowa 1972). "Fisher was convicted of murder in connection with the death of his girlfriend." *More v. State*, 880 N.W.2d 487, 503 (Iowa 2016). "Appellant Wayne E. Ates (Ates) was convicted of grand larceny in connection with the theft of a camera belonging to Thomas Paull (Paull)." *State v. Ates*, 377 S.E.2d 98, 98 (S.C. 1989). "The respondent was convicted of criminal offenses in connection with a conspiracy to defraud an insurance carrier." *In re Perwin*, 287 A.2d 3, 3 (N.J. 1972). This appears to be the most common way "convicted of . . . in connection with . . ." is used.

App. 33.

The Department mocked the ALJ's use of syntax and multiple sources as "resembl[ing] something by Rube Goldberg," App. 199, but such tools are at the cutting edge of textualist theory. "[O]rdinary meaning . . . requires . . . the syntactic, semantic, and pragmatic context in which an utterance

occurs." Thomas R. Lee & Stephen C. Mouritsen, *The Corpus and the Critics*, 88 U. Chi. L. Rev. 275, 344 (2021) (internal citation omitted).

Under the ALJ's interpretation, the Appellants win because the federal structuring statute has no reference to and does not concern sales or activities relating to motor vehicles. The statute is agnostic with respect to the source of the structured cash deposits. *See* App. 33–34.

The Appellants suggested in the alternative an interpretation of the phrase "in connection with" from case law interpreting United States Sentencing Guidelines § 2K2.1(b)(6)(B), which enhances sentences for people who illegally possess firearms "in connection with" another offense. Because the firearms charge is the subject of the sentence, the structure of the enhancement is [offense] in connection with [factual circumstances], just like section 322.3(12). The enhancement applies when the firearm possession "embolden[s]" the other crime, has "some purpose or effect with respect to" it, or "facilitate[s], or ha[s] the potential of facilitating" it. *United States v. Jeffries*, 587 F.3d 690, 695 (5th Cir. 2009); *United States v. Regans*, 125 F.3d 685, 686 (8th Cir. 1997).

This definition matches the two connections identified in *Miller* better than that of the Court of Appeals. First, *Miller* considered that the unfair

practices may have motivated the sales. 694 N.W.2d at 528. In other words, the unfair practices emboldened the sales. Second, *Miller* considered that the unfair practices may have breached rights created by the sales. *See id.* at 528–29. In other words, the unfair practices had an effect with respect to the sales by violating their provisions.

Under that alternative definition, the Appellants win because the structuring did not embolden, have some purpose or effect with respect to, or facilitate vehicle sales. No party contends that the structuring of cash deposits impacted the Los Primos business. To be sure, the Court of Appeals concluded that Carreras's structuring of bank deposits "sustained the dealership for years." Opinion at 10. There is no support for that finding in the record, however. The Department has never alleged, much less proven, that Carreras or his company received a pecuniary benefit from the structuring activity. Indeed, the Department did not discredit Carreras's explanation that he structured to avoid paperwork. *Compare* Opinion at 11 *with* App. 29, 198, 261 (Proposed Decision at 2; Ruling on Appeal at 1; Order on Judicial Review at 6 n.1.).

Third, the Court could keep the Court of Appeals' loose definition of "in connection with" derived from *Miller* but fix its misapplication of

ejusdem generis by narrowing "other offenses" to offenses like those explicitly listed. The question would become whether structuring is of a kind with the other offenses in section 322.3(12). Appellants contend that it is not. *See* p. 17–18, *supra*. But as the Court of Appeals did not receive briefing or argument on the question, the Court could reverse the interpretation of section 322.3(12) and remand for the trial court to apply its replacement to structuring in the first instance.

CONCLUSION

Appellants request that this Court grant further review, reverse the Court of Appeals and the district court, and remand with instructions to enter judgment in their favor.

REQUEST FOR ORAL ARGUMENT

Appellants respectfully request oral argument.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 24, 2021, I electronically filed the foregoing Final Reply Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 3,764 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 365 in Times New Roman 14 pt.

Dated: August 24, 2021

/s/ Todd M. Lantz