No. 126978

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of Illinois, No. 1-17-1992.
Respondent-Appellee,	)	There on appeal from the Circuit Court of Cook County, Illinois, No. 1212 474 1801.
-vs-	)	
KEVIN SROGA,	)	Honorable Diann K. Marsalek, Judge Presiding.
Petitioner-Appellant.	)	

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

Page

Nature of the Case. **1**

Issues Presented for Review **1**

Statutes Involved **2**

Statement of Facts **3**

Argument **7**

Section 3-703 of the Illinois Vehicle Code, a Class C misdemeanor prohibiting the displaying of an incorrect license plate on a vehicle, should be interpreted as requiring a mental state because (1) the offense is punishable by imprisonment and a high fine; and (2) the statute does not evince the legislature's clear intent to impose absolute liability. Section 4-104(a)(4) is an identical offense but is punished more harshly, and so Kevin Sroga's sentence under section 4-104(a)(4) violates the proportionate-penalties clause. **7**

People v. Sroga, 2020 IL App (1st) 171992-U 7

Boaden v. Department of Law Enforcement, 171 Ill. 2d 230 (1996) . . . 8

Davis v. Toshiba Machine Co., America, 186 Ill. 2d 181 (1999) 8

Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493 (2000) 8

625 ILCS 5/3-703 (2012) 7

720 ILCS 5/4-9 (2012) 7

625 ILCS 5/4-104(a)(4) (2012) 7

625 ILCS 5/3-703 (2012) 7

Ill. Const. art. I, § 11 7

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

A. Sections 3-703 and 4-104(a)(4) of the Vehicle Code, which both prohibit one from displaying on a vehicle a license plate that is not registered to the vehicle, are identical offenses. 8

1. The statutes prohibit identical conduct 8

625 ILCS 5/4-104(a)(4) (2012) 9

625 ILCS 3-412(a), 3-413(a) (2012) 9

625 ILCS 3-412(b) (2012) 9

625 ILCS 5/1-190.1, 5/3-401.5, 5/3-501.1, 5/3-658 (2012) 9

625 ILCS 5/4-104(a)(4) (2012) 9

625 ILCS 5/3-703 (2012) 9

2. Section 4-9 of the Criminal Code of 2012 provides strict limits on when a statute that omits a mental state can be interpreted as creating an absolute-liability offense 10

In re K.C., 186 Ill. 2d 542 (1999) 10, 11

People v. Fernow, 286 Ill. 627 (1919) 11

People v. Gean, 143 Ill. 2d 281 (1991) 11, 12

People v. Valley Steel Products Co., 71 Ill. 2d 408 (1978) 11, 12

People v. Nunn, 77 Ill. 2d 243 (1979) 11, 12

People v. Sevilla, 132 Ill. 2d 113 (1989) 12

People v. Anderson, 148 Ill. 2d 15 (1992) 12

People v. Tolliver, 147 Ill. 2d 397 (1992) 12

People v. Farmer, 165 Ill. 2d 194 (1995) 12

People v. Molnar, 222 Ill. 2d 495 (2006) 13

720 ILCS 5/4-9 (2012) 10, 11

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

625 ILCS 5/3-703, 5/4-104(a)(4) (2012) 10

3. Section 4-104(a)(4) should be interpreted as an absolute-liability offense, and the mental state of knowledge should be implied 13

People v. Tolliver, 147 Ill. 2d 397 (1992) 14

720 ILCS 5/4-9 (2012) 13

625 ILCS 5/4-104(a)(4) (2012). 13

625 ILCS 5/4-104(b)(3) (2012) 13

730 ILCS 5/5-4.5-55(a), (e) (2012) 13

730 ILCS 5/5-4.5-45(a) (2012) 13

720 ILCS 5/4-3(b) (2012) 14

720 ILCS 5/4-5 (2012) 14

4. Section 3-703's license-plate offense that is identical to section 4-104(a)(4) should not be interpreted as absolute liability as it is a Class C misdemeanor and as there is no clear indication that the legislature intended innocent conduct to be punished. The mental state of knowledge should be inferred 15

a. The punishment for section 3-703's license-plate offense is too great under section 4-9 to impose absolute liability 15

People v. Anderson, 148 Ill. 2d 15 (1992) 15

People v. O'Brien, 197 Ill. 2d 88 (2001) 15, 16

625 ILCS 5/3-703 (2012) 15

720 ILCS 5/4-9 (2012) 15, 16

730 ILCS 5/5-4.5-65(a), (e) (2012) 15

625 ILCS 5/3-707 (1998) 15

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

730 ILCS 5/5-4.5-65 (2012) 16

b. The use of the word "shall" in section 3-703 does not indicate absolute liability 16

People v. O'Brien, 197 Ill. 2d 88 (2001) 16, 17

720 ILCS 5/4-9 (2012) 16

730 ILCS 5/5-4.5-65 (2012) 16

c. Section 3-703 does not evince clear legislative intent that the license-plate offense is absolute liability 17

People v. Avery, 277 Ill. App. 3d 824 (1st Dist. 1995) 17

People v. Valley Steel Products Co., 71 Ill. 2d 408 (1978) 21

People v. O'Brien, 197 Ill. 2d 88 (2001) 17, 22

625 ILCS 5/3-703 (2012) 17, 18, 19

625 ILCS 5/3-701, 5/3-702, 5/3-710 (2012) 21

625 ILCS 5/3-701 (2012) 21

625 ILCS 5/3-702 (2012). 21

625 ILCS 5/3-710 (2012) 21

720 ILCS 5/4-9 (2012) 21

625 ILCS 5/3-701(1), 5/3-702(a)(1), 5/3-702(b), 5/3-703, 5/3-710 (1998) 22

d. The mental state of knowledge should be implied. 22

People v. Tolliver, 147 Ill. 2d 397 (1992) 23

720 ILCS 5/4-5 (2012) 22

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

B. As the elements of section 4-104(a)(4) are identical to those contained in section 3-703 but is punished more harshly, section 4-104(a)(4) violates the proportionate-penalties provision of the Illinois Constitution. 23

People v. Davis, 2015 IL App (1st) 121867 23

People v. Guevara, 216 Ill. 2d 533 (2005). 24

People v. Thompson, 2015 IL 118151 24

People v. Ligon, 2016 IL 118023 24

625 ILCS 5/3-703 (2012) 24

Ill. Const. art. I, § 11. 24

625 ILCS 5/4-104(b) (2012) 24

730 ILCS 5/5-4.5-55(a) (2012) 24

C. As there is no prior version of section 4-104(a)(4) that was a Class C misdemeanor, the remedy is to reverse Sroga's conviction 24

People v. Hauschild, 226 Ill. 2d 63 (2007). 25

People v. Lewis, 175 Ill. 2d 412 (1996) 26

People v. Beard, 287 Ill. App. 3d 935 (1st Dist. 1997) 26

People v. Knaff, 196 Ill. 2d 460 (2001). 26

People v. Clemons, 2012 IL 107821 . . . . 26, 27

People v. Tellez-Valencia, 188 Ill. 2d 523 (1999). 27

Ill. Rev. Stat. 1971, ch. 95½, par. 4-104(b) 25

Ill. Rev. Stat. 1971, ch. 95½, par. 4-108 (a). 25

Ill. Rev. Stat. 1979, ch. 95½, par. 4-104(b)(3) 25

Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-3(a)(2) 26

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

725 ILCS 5/111-5 (1998) 27

Conclusion 29

Appendix to the Brief. A-1

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

NATURE OF THE CASE

Kevin Sroga, petitioner-appellant, appeals from a judgment dismissing his petition for relief from judgment under section 2-1401 petition and his post-conviction petition.

No issue is raised concerning the charging instrument. However, an issue is raised concerning the sufficiency of the section 2-1401 and post-conviction pleadings.

ISSUES PRESENTED FOR REVIEW

a. Whether section 3-703 of the Illinois Vehicle Code, a Class C misdemeanor prohibiting the displaying of an incorrect license plate on a vehicle, should be interpreted as requiring a mental state because (1) the offense is punishable by imprisonment and a high fine; and (2) the statute does not evince the legislature's clear intent to impose absolute liability.

b. Whether section 4-104(a)(4) of the Illinois Vehicle Code is an identical offense to section 3-703 but is punished more harshly.

c. Whether Kevin Sroga's sentence under section 4-104(a)(4) violates the proportionate-penalties clause.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

STATUTES INVOLVED

Section 4-104(a)(4) of the Illinois Vehicle Code (Sroga's conviction)

> "(a) It is a violation of this Chapter for *** 4. A person to display or affix to a vehicle any certificate of title, manufacturers statement of origin, salvage certificate, junking certificate, display certificate, temporary registration permit, registration card, license plate or registration sticker not authorized by law for use on such vehicle." 625 ILCS 5/4-104(a)(4) (2012)

Section 3-703 of the Illinois Vehicle Code

> "No person shall lend to another any certificate of title, registration card, registration plate, registration sticker, special plate or permit or other evidences of proper registration issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, *nor shall any person display upon a vehicle any registration card, registration sticker, registration plate or other evidences of proper registration not issued for such vehicle or not otherwise lawfully used thereon under this Code.* No person shall duplicate, alter or attempt to reproduce in any manner a registration plate or registration sticker issued under this Code. No person shall make fraudulent use of evidences of registration or certificates of title issued erroneously by the Secretary of State. No person shall manufacture, advertise, distribute or sell any certificate of title, registration card, registration plate, registration sticker, special plate or permit or other evidences of proper registration which purports to have been issued under this Code. The Secretary of State may request the Attorney General to seek a restraining order in the circuit court against any person who violates this Section by advertising such fraudulent items. Any violation of this Section is a Class C misdemeanor." (Emphasis added.) 625 ILCS 5/3-703 (2012).

Section 4-9 of the Criminal Code of 2012

> "A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4-4 through 4-7 if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $1,000, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." 720 ILCS 5/4-9 (2012).

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

STATEMENT OF FACTS

A table explaining the record citations used in this brief appears at the end of the statement of facts.

Overview

Kevin Sroga was convicted after a jury trial of an Illinois Vehicle Code violation of displaying on a car a license plate registered to another car. (C. 9; R. 60) He raised an unsuccessful collateral challenge to the constitutionality of his sentence. (Sup C. 99 *et seq*.; R. 127) The appellate court affirmed, rejecting his claim that the offense of which he was convicted was identical to another offense in the Illinois Vehicle Code that was punished less severely. *People v. Sroga*, 2020 IL App (1st) 171992-U ("Rule 23 order").

Charges

Sroga was charged with violating section 4-104(a)(4) of the Illinois Vehicle Code, which makes it a Class A misdemeanor to display or affix to a vehicle a license plate "not authorized by law for use on such vehicle." 625 ILCS 5/4-104(a)(4) (2012). (C. 9)

Jury Trial

Officer Vince Cecchin testified to the following at the jury trial. (Sup 3 R. 302 *et seq*.) On October 21, 2012, he was working at 1220 N. Homan and saw a Ford Crown Victoria car parked on the sidewalk. (Sup3 R. 303-04) He

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

learned that the license plates belonged to a 1999 Saturn car. (Sup3 R. 305-06) When he spoke to Sroga, who owned the Ford, Sroga admitted ownership and said, "You got me on the plates." (Sup3 R. 309-10, 312, 329) The officer ascertained that Sroga also owned the Saturn car. (Sup3 R. 311)

Sroga testified, denying that he had put the license plates on the car. (Sup3 R. 336, 338) He admitted that the license plates were still registered to his Saturn car. (Sup3 R. 339-41)

Motion for New Trial

At the hearing on Sroga's motion for new trial, he argued in part that he had not violated section 4-104(a)(4) because that offense required that one lacked a possessory right to the license plate. (C. 58 *et seq.*; C. 60 *et seq.*; Sup3 R. 435) He also asserted that his case might fall instead under section 3-703 of the Illinois Vehicle Code. (Sup3 R. 435) The trial court denied the motion, ruling that the issue was not whether Sroga had the right to possess the license plate. (Sup3 R. 448)

Sentencing

On October 6, 2014, the trial court sentenced Sroga to one year's probation. (Sup3 R. 466) Sroga did not appeal.

Section 2-1401/Post-Conviction Proceedings

In 2016, Sroga filed a section 2-1401 petition, which included the claim that the more appropriate charge to bring was a violation of section 3-703 of

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the Illinois Vehicle Code. (Sup C. 99 *et seq.*) The State moved to dismiss the section 2-1401 petition. (Sup C. 4 *et seq.*)

Sroga filed a motion for leave to amend the petition pursuant to the Post-Conviction Hearing Act. (Sup C. 73 *et seq.*) The motion alleged in part that the "crime" was disproportionate to the nature of the alleged offense and violated the Illinois Constitution. (Sup C. 76) The court allowed the motion. (ER R. 123) And Sroga supplemented the section 2-1401 petition. (C. 87 *et seq.*)

The trial court granted the State's motion to dismiss. (R. 127) The trial court ruled that *res judicata* applied as Sroga's arguments had been raised in his motion for new trial. (R. 127)

Post-Conviction Appeal

On appeal, Sroga argued that section 4-104(a)(4) of the Illinois Vehicle Code violates the proportionate-penalties provision of the Illinois Constitution because the offense's elements are identical to those contained in section 3-703 but that the offense under section 4-104(a)(4) is punished more harshly. Rule 23 order, ¶ 8. The appellate court ruled that the two offenses are not identical because one contains an implicit knowledge requirement while the other should be interpreted as imposing absolute liability. Rule 23 order, ¶¶ 26-41.

In a petition for rehearing, Sroga argued that the appellate court erred in finding clear legislative intent to impose absolute liability for violating section 3-703 by using the incorrect license plate, noting a court's obligation

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

to infer the existence of a culpable mental state if at all possible. The appellate court denied the petition.

This Court granted leave to appeal on May 26, 2021.

Record Citations Used in This Brief

For ease of reference, the following table shows the citations to the electronic record used in the brief ("ER" stands for "electronic record"), the corresponding ResearchIL file name:

ResearchIL File Name	Citation Used
CLR Vol 1 of 1 180522 0934.pdf	C.
ROP Vol 1 of 1 180522 0940.pdf	R.
SupplementalRecord2 Vol 1 of 1 180730 1241.pdf	Sup C.
SupplementalRecord4 Vol 1 of 190716 1032.pdf	Sup3 R.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

ARGUMENT

Section 3-703 of the Illinois Vehicle Code, a Class C misdemeanor prohibiting the displaying of an incorrect license plate on a vehicle, should be interpreted as requiring a mental state because (1) the offense is punishable by imprisonment and a high fine; and (2) the statute does not evince the legislature's clear intent to impose absolute liability. Section 4-104(a)(4) is an identical offense but is punished more harshly, and so Kevin Sroga's sentence under section 4-104(a)(4) violates the proportionate-penalties clause.

Kevin Sroga was convicted of violating section 4-104(a)(4) of the Illinois Vehicle Code ("the Vehicle Code") for displaying a license plate on a vehicle to which the plate was not registered. 625 ILCS 5/4-104(a)(4) (2012). (C. 9; R. 60) On appeal, Sroga argued that section 4-104(a)(4), which is a Class A misdemeanor, violated the proportionate-penalties provision of the Illinois Constitution because the offense is identical to one contained in section 3-703 of the Vehicle Code, which is punishable only as a Class C misdemeanor. 625 ILCS 5/3-703 (2012); Ill. Const. art. I, § 11.

The appellate court affirmed Sroga's conviction, finding that the offenses were not identical, reasoning that section 4-104(a)(4) required a knowledge mental state while section 3-703 required no mental state and so was an absolute-liability offense. *People v. Sroga*, 2020 IL App (1st) 171992-U, ¶¶ 26-41 ("Rule 23 order"). But a person may be guilty of an offense without having, as to each element, a mental state only if the offense is a misdemeanor that is not punishable by incarceration or by a fine exceeding $1,000 or if the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described. 720 ILCS 5/4-9 (2012). The appellate court erred in finding the relevant offense in section 3-

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

703 to be absolute liability because it is a Class C misdemeanor punishable by imprisonment and because there is no clear legislative intent to impose absolute liability.

This Court should reverse the appellate court and vacate Sroga's conviction under section 4-104(a)(4).

Law on Statutory Interpretation

When construing a statute, the court's primary objective is to ascertain and give effect to the legislature's intent. *Boaden v. Department of Law Enforcement*, 171 Ill. 2d 230, 237. (1996). A court begins with the language of the statute, which must be given its plain and ordinary meaning. *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184 (1999). Where the language is clear and unambiguous, a court will apply the statute without resort to further aids of statutory construction. *Davis*, 186 Ill. 2d at 185. One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000). The standard of review on questions of statutory interpretation is *de novo*. *Michigan Avenue National Bank*, 191 Ill. 2d at 503.

A. Sections 3-703 and 4-104(a)(4) of the Vehicle Code, which both prohibit one from displaying on a vehicle a license plate that is not registered to the vehicle, are identical offenses.

1. The statutes prohibit identical conduct.

The Secretary of State, upon registering motor vehicles subject to

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annual registration for the first time, shall issue the appropriate type and number of registration plate to be attached to the vehicle. 625 ILCS 3-412(a), 3-413(a) (2012). Every registration plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued. 625 ILCS 3-412(b) (2012). Therefore, the Vehicle Code permits only the registration plate issued for a particular vehicle to be displayed.

Sections 3-703 and 4-104(a)(4) of the Vehicle Code both make it an offense for a person to display on a vehicle a registration plate that is not authorized for use on the vehicle. 625 ILCS 5/4-104(a)(4) (2012); 625 ILCS 5/3-703 (2012). While section 3-703 uses the phrase "registration plate" and section 4-104(a)(4) uses the phrase "license plate," these phrases are used interchangeably in the Vehicle Code and so are synonymous. *See* 625 ILCS 5/1-190.1, 5/3-401.5, 5/3-501.1, 5/3-658, and 5/3-627 (2012).

Section 4-104(a)(4), contained in the article on anti-theft laws, provides that it is unlawful for "[a] person to display or affix to a vehicle any *** license plate *** not authorized by law for use on such vehicle." 625 ILCS 5/4-104(a)(4) (2012). Section 3-703, contained in the article on offenses against registration and certificate of title laws or revocation of registration or certificate of title, provides in relevant part that "[n]o person shall *** display upon a vehicle any *** registration plate *** not issued for such vehicle or not otherwise lawfully used thereon under this Code." 625 ILCS 5/3-703 (2012) ("the license-plate offense"). Therefore, the two statutes prohibit the same conduct.

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2. Section 4-9 of the Criminal Code of 2012 provides strict limits on when a statute that omits a mental state can be interpreted as creating an absolute-liability offense.

Neither section 3-703 nor section 4-104(a)(4) specify a mental state. 625 ILCS 5/3-703, 5/4-104(a)(4) (2012). Section 4-9 of the Criminal Code of 2012 limits when a statute that does not explicitly provide a mental state and that provides a criminal penalty, including one outside the Criminal Code, can be construed as creating an absolute-liability offense. 720 ILCS 5/4-9 (2012); *In re K.C.*, 186 Ill. 2d 542, 546 (1999).

Section 4-9 states:

> "A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4-4 through 4-7 *if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $1,000*, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." (Emphasis added.) 720 ILCS 5/4-9 (2012).

If, after applying section 4-9, a court determines that a statute should not be construed as creating an absolute-liability offense, then the court must determine which mental state is implied. *K.C.*, 186 Ill. 2d at 546, citing the committee comments.

Section 4-9 became effective in 1962. Laws 1961, p. 1983. Originally, the statute permitted absolute liability for misdemeanors that did not exceed $500, but the statute was amended, effective in 2011, to increase the amount to $1,000. P.A. 96-1198.

Section 4-9 addressed a widespread problem that previously existed: more than two hundred provisions in the Illinois Criminal Code of 1874, as well as numerous statutes outside that code, defined offenses without

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including a mental state. 720 ILCS 5/4-9 (2012), Committee Comments. The reasoning behind section 4-9 is that it is proper to assume that a mental state is omitted for the specified misdemeanors "[i]n view of the difficulty of enforcing such provisions if mental state must be proved in each instance." 720 ILCS 5/4-9 (2012), Committee Comments. In certain cases, imposing absolute liability is valid: "In the exercise of the police power for the protection of the public the performance of a specific act may constitute the crime regardless of either knowledge or intent, both of which are immaterial on the question of guilt." *Id.*, citing *People v. Fernow*, 286 Ill. 627, 630 (1919). For the effective protection of the public, the burden is placed upon the individual of ascertaining at his peril whether his act is prohibited by criminal statute. *Fernow*, 286 Ill. at 630.

Section 4-9 is intended to establish, as an expression of general legislative intent, "rather strict limitations" on interpreting a statute as a strict-liability offense. *People v. Gean*, 143 Ill. 2d 281, 285-86 (1991), citing the committee comments. If at all possible, the court will infer the existence of a culpable mental state, even where the statute itself appears to impose absolute liability. *K.C.*, 186 Ill. 2d at 546. The "mere absence of express language describing a mental state does not *per se* lead to the conclusion that none is required." *People v. Valley Steel Products Co.*, 71 Ill. 2d 408, 425 (1978).

Section 4-9 expresses the legislative intent that a person should not be subject to severe criminal penalties unless the proscribed act has been committed knowingly. *People v. Nunn*, 77 Ill. 2d 243, 249 (1979). It would be

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

unreasonable to conclude that the legislature intended to subject a person to a severe penalty for an offense that he might unknowingly commit. *Nunn*, 77 Ill. 2d at 249 (no absolute liability for Class A misdemeanor offense of leaving scene of accident). With the exception of those offenses in which public policy favors absolute liability, it would be unjust to subject a person to a severe penalty for an offense that might be committed without fault. *People v. Sevilla*, 132 Ill. 2d 113, 122 (1989).

In several cases, this Court has applied section 4-9 and rejected an interpretation of absolute liability for both misdemeanor and felony offenses. *Valley Steel Products Co.*, 71 Ill. 2d at 425 (it could not reasonably be said that the legislature intended absolute liability for violations of motor-fuel tax law providing for penalties as high as 20 years' imprisonment and fines as great as $10,000 as the offense might be committed unknowingly); *Sevilla*, 132 Ill. 2d at 122-23 (offense of failing to file retailers' occupation tax return, punishable as Class 4 felony, was not absolute-liability offense); *People v. Anderson*, 148 Ill. 2d 15, 24 (1992) (hazing, a Class B misdemeanor punishable by six months' prison, was not absolute-liability offense); *Gean*, 143 Ill. 2d at 287-88 ("chop shop" statute was not absolute-liability offense as it was punishable as Class 4 felony); *People v. Tolliver*, 147 Ill. 2d 397, 400-03 (1992) (Vehicle Code offense of possessing certificate of title without complete assignment, punishable as Class 4 felony, was not absolute-liability offense where innocent conduct could be punished); *People v. Farmer*, 165 Ill. 2d 194, 206 (1995) (offense of possession of contraband in a penal institution, punishable as various felonies depending on the contraband involved, was

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

not an absolute-liability offense); *cf. People v. Molnar*, 222 Ill. 2d 495, 520-21 (2006) (finding legislative intent that felony offense of sex offender, who received notice of obligation to register, of not registering annually is absolute-liability offense, this Court noting the inclusion of a mental state for the offense of a sex offender giving false material information).

3. Section 4-104(a)(4) should be interpreted as an absolute-liability offense, and the mental state of knowledge should be implied.

The portion of section 4-104(a) at issue states that "(a) It is a violation of this Chapter for *** 4. A person to display or affix to a vehicle any certificate of title, manufacturers statement of origin, salvage certificate, junking certificate, display certificate, temporary registration permit, registration card, *license plate* or registration sticker not authorized by law for use on such vehicle." (Emphasis added.) 625 ILCS 5/4-104(a)(4) (2012). Section 4-104(a)(4) does not explicitly provide for a mental state.

A section 4-104(a)(4) violation is a Class A misdemeanor, punishable by imprisonment for less than one year and a fine of up to $2,500. 625 ILCS 5/4-104(b)(3) (2012); 730 ILCS 5/5-4.5-55(a), (e) (2012). A subsequent offense is punishable as a Class 4 felony punishable by one to three years in prison. 625 ILCS 5/4-104(b)(3) (2012); 730 ILCS 5/5-4.5-45(a) (2012). Thus, the harsh punishments do not allow absolute liability to be implied absent clear intent. 720 ILCS 5/4-9 (2012). But nothing in the statutory language evinces a clear legislative purpose to impose absolute liability for this violation. The appellate court correctly held that section 4-104(a)(4) does not impose

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

absolute liability. Rule 23 order, ¶¶ 26-31.

When a statute does not provide for a mental state, any one of the mental states of intent, knowledge, or recklessness may apply. 720 ILCS 5/4-3(b) (2012). Knowledge is the appropriate implied mental state for section 4-104(a)(4) because if a person knows that the license plate was not registered to the vehicle, the person is not engaged in innocent conduct. 720 ILCS 5/4-5 (2012) ("A person knows, or acts knowingly or with knowledge of: (a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists. (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that result is practically certain to be caused by his conduct."); *see Tolliver*, 147 Ill. 2d at 401 (as there were numerous scenarios in which possessing a certificate knowing it was without complete assignment was innocent conduct, this Court held that the State must prove knowledge and the intent to defraud or commit a crime).

The appellate court correctly found no reason to imply a mental state other than knowledge for section 4-104(a)(4). Rule 23 order, ¶¶ 32-33.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

4. Section 3-703's license-plate offense that is identical to section 4-104(a)(4) should not be interpreted as absolute liability as it is a Class C misdemeanor and as there is no clear indication that the legislature intended innocent conduct to be punished. The mental state of knowledge should be inferred.

a. The punishment for section 3-703's license-plate offense is too great under section 4-9 to impose absolute liability.

A violation of any of the various offenses provided in section 3-703 of the Vehicle Code is a Class C misdemeanor, which is punishable by imprisonment of up to 30 days and a fine of up to $1,500. 625 ILCS 5/3-703 (2012); 730 ILCS 5/5-4.5-65(a), (e) (2012). Therefore, under section 4-9, the punishment for a violation of the license-plate offense at issue in section 3-703 is too harsh to allow implication of absolute liability absent clear legislative intent. 720 ILCS 5/4-9 (2012). *See Anderson*, 148 Ill. 2d at 24 (in analyzing a misdemeanor offense, the Court believed it unlikely that the legislature intended that conduct with consequences that were no fault of defendants be punished by up to six months' imprisonment).

The appellate court held that there was a clear legislative intent that section 3-703 is an absolute-liability offense. Rule 23 order, ¶¶ 38-40. The appellate court relied in part on *People v. O'Brien*, 197 Ill. 2d 88, 92-95 (2001), which interpreted section 3-707 of the Vehicle Code requiring vehicle liability insurance as providing for an absolute-liability offense. 625 ILCS 5/3-707 (1998) ("No person shall operate a motor vehicle unless the motor vehicle is covered by a liability insurance policy ***.") Rule 23 order, ¶¶ 36-40. The appellate court noted *O'Brien*'s emphasis that the penalty for section 3-707 was a business offense that was not punishable by incarceration. 197 Ill. 2d at 93-94. Rule 23 order, ¶ 37. The appellate court noted that section 3-

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

703 was a Class C misdemeanor, which it characterized as "not so severe." Rule 23 order, ¶ 38. But unlike the business offense in *O'Brien*, a Class C misdemeanor still subjects the offender to incarceration. 730 ILCS 5/5-4.5-65 (2012). The mere fact that a section 3-703 violation is the least serious misdemeanor cannot be an indication of intent of absolute liability as section 4-9 does not allow absolute liability to be imposed for a misdemeanor punishable by any length of incarceration absent clear legislative intent. 720 ILCS 5/4-9 (2012).

b. The use of the word "shall" in section 3-703 does not indicate absolute liability.

The appellate court found that because section 3-703's license-plate offense included the word "shall," the legislative intent clearly was to impose absolute liability. Rule 23 order, ¶ 38. The appellate court relied on *O'Brien*'s holding that because section 3-707 of the Vehicle Code at issue there used the word "shall," the "unquestionable" legislative intent was to impose a mandatory obligation to obtain insurance and therefore to provide absolute liability. 197 Ill. 2d at 92-93; Rule 23 order, ¶ 37. However, *O'Brien* did not cite apt authority in support of that holding. Rather, this Court cited only authority that the word "shall" is an expression of a mandatory obligation. 197 Ill. 2d at 93.

Indeed, the concurring opinion found that the use of the word "shall" was "not particularly relevant." *O'Brien*, 197 Ill. 2d at 97. And the concurring opinion stated that "[f]ocusing on the word 'shall' in the provision fails to resolve the issue." *Id.* The concurrence on this point is well reasoned a

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

mandatory obligation can be imposed without absolute liability. Thus, the use of "shall" is not by itself of a clear an indication of legislative intent to impose absolute liability.

Furthermore, *O'Brien* is distinguishable because the word "shall" in section 3-703 does not impose a mandatory obligation. Rather, the word is used in the different sense of a *prohibition*: "[n]o person shall *** display upon a vehicle any *** registration plate *** not issued for such vehicle or not otherwise lawfully used thereon under this Code." 625 ILCS 5/3-703 (2012). The appellate court cited no authority that "shall" used in a prohibition indicates an intent to impose absolute liability.

c. Section 3-703 does not evince clear legislative intent that the license-plate offense is absolute liability.

The type of conduct prohibited by the offense at issue in section 3-703 would cover innocent conduct if interpreted as an absolute-liability offense. Someone who owns two cars could mistakenly put the wrong license plate on each car. The nature of the prohibited conduct does not support an intent to impose absolute liability. The offense poses no immediate danger to the public that makes a mental state irrelevant. *Cf. People v. Avery*, 277 Ill. App. 3d 824, 828-30 (1st Dist. 1995) (felony offense of aggravate driving under the influence was an absolute-liability offense as the conduct was not innocent). No important public policy supports absolute liability for the mistaken use of a license plate. *See Avery*, 277 Ill. App. 3d at 830 (contrasting title and salvage-certificate offenses that "do not kill and maim people" with the driving-under-the-influence statute that "attempts to regulate the way people

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

drive").

The appellate court reasoned that another portion of section 3-703 supported the interpretation that the offense of displaying an incorrect license plate was absolute liability. Rule 23 order, ¶¶ 39-40. The appellate court pointed to the offense of "knowingly permit[ting]" the unauthorized use of certain documents by another person. Rule 23 order, ¶ 39. But this reasoning was incorrect.

Section 3-703 contains several offenses. The bolded portion of section 3-703 quoted below is the other offense on which the appellate court relied, and the italicized portion is the offense at issue in Sroga's case:

> "No person shall lend to another any certificate of title, registration card, registration plate, registration sticker, special plate or permit or other evidences of proper registration issued to him if the person desiring to borrow the same would not be entitled to the use thereof, **nor shall any person knowingly permit the use of any of the same by one not entitled thereto**, *nor shall any person display upon a vehicle any registration card, registration sticker, registration plate or other evidences of proper registration not issued for such vehicle or not otherwise lawfully used thereon under this Code.* No person shall duplicate, alter or attempt to reproduce in any manner a registration plate or registration sticker issued under this Code. No person shall make fraudulent use of evidences of registration or certificates of title issued erroneously by the Secretary of State. No person shall manufacture, advertise, distribute or sell any certificate of title, registration card, registration plate, registration sticker, special plate or permit or other evidences of proper registration which purports to have been issued under this Code. The Secretary of State may request the Attorney General to seek a restraining order in the circuit court against any person who violates this Section by advertising such fraudulent items. Any violation of this Section is a Class C misdemeanor." (Emphasis added.) 625 ILCS 5/3-703 (2012).

However, reading the statute as a whole, the intent is not clear that displaying an incorrect license plate is an absolute-liability offense.

Using the appellate court's analysis, the use of "knowingly" in this one

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

offense of permitting the use of documents would mean that all the other offenses in section 3-703 without a mental state are absolute-liability offenses. But an absurd result would obtain: that while one offense requires the mental state of knowledge, a very similar offense requires no mental state.

At the very beginning of the statute, there is a prohibition against lending documentation, but no mental state is provided: "No person shall *lend* to another any certificate of title, registration card, registration plate, registration sticker, special plate or permit or other evidences of proper registration issued to him if the person desiring to borrow the same would not be entitled to the use thereof, ***." (Emphasis added.) 625 ILCS 5/3-703 (2012). Using the appellate court's analysis, this offense would be interpreted as being strict liability.

But the next portion of that sentence relied upon by the appellate court makes it an offense for a person to "knowingly *permit* the use of any of the same by not one entitled thereto, ***." (Emphasis added.) *Id.* But why would the legislature require knowledge that another's use was unlawful when one *permits* the use but not require knowledge that the use was unlawful for the very similar offense of *lending* evidence of title? In other words, why should one be punished for mistakenly *lending* evidence of title without knowing that the other person is not entitled to its use while a person who *permits* another person to use the same document without the requisite knowledge is not punished? There is no rational reason to distinguish between these two behaviors and impose absolute liability on just

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

one.

Similarly, it is not rational to allow a person to be punished for mistakenly displaying the incorrect license plate while punishing a person who permits the use of a license plate by one who is not entitled to its use only if the person knows that the other person is not so entitled. The only reasonable conclusion is that the legislature did not clearly mean to make the offense of displaying the incorrect license plate an absolute-liability offense. *If at all possible*, the court will infer the existence of a culpable mental state. *K.C.*, 186 Ill. 2d at 546. Here it is possible to infer a mental state.

The appellate court cited in support *K.C.*, but there this Court compared the same offense of criminal trespass to a vehicle contained in the Criminal Code to the one contained in the Vehicle Code. 186 Ill. 2d at 549-50. Rule 23 order, ¶ 39. The appellate court's reliance was misplaced. The criminal offense of trespass required knowledge, and so the use of different language in the Vehicle Code showed that the absence of a mental state in the latter indicated different results were intended. *Id.* In contrast, the appellate court in Sroga's case compared a different offense to the offense at issue, and so *K.C.* does not support the appellate court's finding of intent to impose absolute liability for section 3-703's license-plate offense. Moreover, *K.C.'*s finding of an intent to impose absolute liability was supported by a strong indication of legislative intent: the statute at issue had previously contained a mental state but was amended to remove it. *Id.* at 547-48. The offense at issue in section 3-703 never included a mental state.

The appellate court also compared the offense at issue in section 3-703

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

with other sections in chapter three, holding that sections 3-701, 3-702, and 3-710 include the mental state of knowledge. 625 ILCS 5/3-701, 5/3-702, 5/3-710 (2012). Rule 23 order, ¶ 40. However, section 3-701, which provides for offenses for operating a vehicle absent proper evidence of registration, among other things, does not include a mental state except for the offense of an owner knowingly permitting a vehicle without proper evidence of registration to be operated. 625 ILCS 5/3-701 (2012). Similarly, section 3-702, which provides for offenses for operating a vehicle when the registration is cancelled, suspended, or revoked does not include a mental state except for the offense of an owner knowingly permitting such a vehicle to be operated. 625 ILCS 5/3-702 (2012). Section 3-710 prohibits a person from displaying evidence of insurance to a law enforcement officer, court, or officer of the court, knowing there is no valid liability insurance. 625 ILCS 5/3-710 (2012). The appellate court found the inclusion of a mental state in these other sections to be support for absolute liability for the offense at issue. Rule 23 order, ¶ 40.

Even assuming *arguendo* that all these other Vehicle Code offenses in chapter three require a mental state, the offenses are not contained in section 3-703 and are unrelated to section 3-703's license-plate offense. Inclusion of a mental state in other sections of the Vehicle Code does not *clearly* indicate legislative intent to impose absolute liability for the offense at issue contained in a *different* statute. For, under section 4-9, the "mere absence of express language describing a mental state does not *per se* lead to the conclusion that none is required." *Valley Steel*, 71 Ill. 2d 408, 425; 720 ILCS

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

5/4-9 (2012), Committee Comments ("This section is intended to establish *** rather strict limitations upon the interpretation that mental state is not an element of the offense, *although the express language of the provision defining the offense fails to describe such an element.*") (emphasis added). Therefore, the inclusion of mental states in other statutes unrelated to the offense at issue in section 3-703 should have no bearing on whether the omission of a mental state means none should be implied.

Sroga acknowledges that in *O'Brien* this Court took note of other sections of the Vehicle Code, relating to vehicle-registration offenses, as support for finding legislative intent for absolute liability in the statute at issue, which concerned liability insurance. 197 Ill. 2d at 94-95, citing 625 ILCS 5/3-701(1), 5/3-702(a)(1), 5/3-702(b), 5/3-703, 5/3-710 (1998). *O'Brien* held that, in accordance with *K.C.*, 186 Ill. 2d 542, the Court had to presume that by including a mental state in these other sections, the omission of a mental state in the statute at issue indicated that different results were intended. *Id.* at 95. But, as noted above, *K.C.*, 186 Ill. 2d at 549-50, compared the same offense contained in the Criminal Code and in the Vehicle Code. *O'Brien* incorrectly relied on other Vehicle Code statutes to determine whether a mental state was implied for the statute under consideration.

d. The mental state of knowledge should be implied.

For the same reason why knowledge was the appropriate mental state to infer for section 4-104(a)(4), it is the appropriate mental state to infer for section 3-703. 720 ILCS 5/4-5 (2012) (definition of knowledge). For if a person

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

knows that the license plate is not registered to the vehicle, the person cannot be engaged in innocent conduct. *See Tolliver*, 147 Ill. 2d at 401 (as there were numerous scenarios in which possessing a certificate knowing it was without complete assignment was innocent conduct, this Court held that the State must prove knowledge and the intent to defraud or commit a crime).

To summarize, the punishment for section 3-703's license-plate offense is too great under the terms of the statute governing absolute liability. The use of "shall" in describing the offense's prohibition is not relevant to the issue of the existence of a mental state. No public policy supports the inference of absolute liability for an offense that can be committed innocently and does not impose an immediate public danger. The provision of the knowledge mental state for another offense in section 3-703 does not allow the conclusion that no mental state was implied for the different, license-plate offense in section 3-703. The mental state of knowledge should be inferred. The offense in section 4-104(a)(4) and the license-plate offense in section 3-703 are thus identical as they prohibit the same conduct and require proof of the same mental state.

B. As the elements of section 4-104(a)(4) are identical to those contained in section 3-703 but is punished more harshly, section 4-104(a)(4) violates the proportionate-penalties provision of the Illinois Constitution.

Whether a statute violates the proportionate-penalties clause is a question reviewed *de novo*. *People v. Davis*, 2015 IL App (1st) 121867, ¶ 7.

The Illinois Constitution states in part that all penalties shall be

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. Ill. Const. art. I, § 11. A sentence violates the proportionate-penalties clause if it is greater than the sentence for an offense with identical elements. *People v. Guevara*, 216 Ill. 2d 533, 542 (2005). Such a provision is void *ab initio*. *Guevara*, 216 Ill. 2d at 542. A challenge to a facially unconstitutional statute that is void *ab initio* cannot be forfeited and "may be raised at any time." *People v. Thompson*, 2015 IL 118151, ¶ 32. Accordingly, a section 2-1401 petition can properly raise the issue that a sentence violates the proportionate-penalties clause. *People v. Ligon*, 2016 IL 118023, ¶ 9.

While section 3-703 is punishable as a Class C misdemeanor, section 4-104(a)(4) is currently punishable as a more serious, Class A, misdemeanor. 625 ILCS 5/4-104(b) (2012); 625 ILCS 5/3-703 (2012); 730 ILCS 5/5-4.5-55(a) (2012) (a Class A misdemeanor is punishable by imprisonment for less than one year); 730 ILCS 5/5-4.5-65 (2012) (a Class C misdemeanor is punishable by imprisonment of no more than 30 days). As sections 3-703 and 4-104(a)(4) have identical elements but different punishments, section 4-104(a)(4) violates the proportionate-penalties clause. *See Guevara*, 216 Ill. 2d at 542.

C. As there is no prior version of section 4-104(a)(4) that was a Class C misdemeanor, the remedy is to reverse Sroga's conviction.

When an amended sentencing statute has been found to violate the proportionate-penalties clause, the proper remedy is to remand for resentencing in accordance with the statute as it existed prior to the

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

amendment. *People v. Hauschild*, 226 Ill. 2d 63, 88 (2007). However, there is no prior version of the statute under which Sroga was convicted that made the offense punishable as a Class C misdemeanor or other misdemeanor that provided for only up to 30 days' imprisonment.

The punishment for this offense has varied. When originally enacted in 1970, the offense, which was then codified in section 4-104(b), was punishable as a "misdemeanor" with imprisonment not to exceed one year and so similar to the current Class A misdemeanor. Ill. Rev. Stat. 1971, ch. 95½, par. 4-104(b); Ill. Rev. Stat. 1971, ch. 95½, par. 4-108 (a) ("Any person who violates *** Sections 4-102 or 4-104 *** is guilty of a misdemeanor [at that time there were no classifications of misdemeanors] and, shall be *** imprisoned in a penal institution other than a penitentiary not exceeding one year ***.") Effective January 1, 1973, the offense became punishable as a Class A misdemeanor. Ill. Rev. Stat. 1973, ch. 95½, par. 4-108(a). Effective September 22, 1979, the offense, which was now codified in section 4-104(a)(4), became punishable as a Class B misdemeanor, with a subsequent conviction punishable as a Class A misdemeanor. Ill. Rev. Stat. 1979, ch. 95½, par. 4-104(b)(3). Effective January 1, 1985, the punishment for a first offense was changed to a Class A misdemeanor with a subsequent conviction being a Class 4 felony. Ill. Rev. Stat. 1985, ch. 95½, par. 4-104(b)(3). The punishment has remained a Class A misdemeanor since 1985.

Thus, the lowest misdemeanor classification for section 4-104(a)(4) that has ever been provided was Class B, which is still more severe than the Class C misdemeanor classification for section 3-703. Ill. Rev. Stat. 1979, ch.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

95½, par. 4-104(b)(3) ("A person convicted of a violation of *** subsection 4 *** of subsection (a) is guilty of a Class B misdemeanor **"); Ill. Rev. Stat. 1979, ch. 38, par. 1005-8-3(a)(2) (a Class B misdemeanor is punishable by imprisonment of no more than six months). So there is no constitutional punishment available for the offense.

The State therefore had no authority to charge Sroga with section 4-104(a)(4). *See People v. Lewis*, 175 Ill. 2d 412, 423 (1996) (because the mandatory minimum penalty for armed violence predicated on robbery committed with a category I weapon violated the constitutional guarantee of proportionate sentencing, the State's Attorney had no authority to charge the offense).

The only remedy can be reversal of Sroga's conviction. *See Lewis*, 175 Ill. 2d at 423 (affirming the trial court's dismissal of the count for armed violence because the sentence was unconstitutional); *People v. Beard*, 287 Ill. App. 3d 935, 938 (1st Dist. 1997) (reversing convictions for armed violence as the sentences, compared to the sentences for the identical offenses of armed robbery and aggravated vehicular hijacking, violated the proportionate-penalties clause).

Sroga cannot be resentenced to the Class C misdemeanor sentence that is the punishment for violating section 3-703 as he was not charged with that offense. For a person cannot be convicted of an uncharged offense except for a lesser included offense, which is implicitly charged. *People v. Knaff*, 196 Ill. 2d 460, 472 (2001).

In *People v. Clemons*, 2012 IL 107821, this Court held that armed

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

robbery with a firearm violated the proportionate-penalties clause because its penalty was more severe than the penalty for the identical offense of armed violence predicated on robbery with a category I or II weapon. 2012 IL 107821, ¶¶ 12-19. *Clemons* rejected the State's argument that defendant should be resentenced under the punishment applicable to the armed-violence statute. *Id.* at ¶¶ 57-58. This Court reasoned that defendant had not been charged with armed violence and that a charging instrument cannot be modified on appeal. *Id.* at ¶ 58. Similarly, the charging instrument against Sroga cannot now be modified, and he cannot be resentenced under the punishment for section 3-703.

And, in *People v. Tellez-Valencia,* 188 Ill. 2d 523, 526 (1999), defendants' convictions for predatory criminal sexual assault of a child in *Tellez-Valencia* were void due to a single-subject-rule violation. The State argued that the charging instruments could be amended on appeal to change the name of the charged offense to aggravated criminal sexual assault. *Tellez-Valencia,* 188 Ill. 2d at 526. The State contended that the amendment was merely a formality because the elements of the two crimes, as well as the statutory language and penalties, were identical. *Id.* The Court rejected the State's argument as such a substantive amendment could not be made on appeal. *Id.* at 526, citing 725 ILCS 5/111-5 (1998) (providing that only formal defects can be amended at any time).

Conclusion

The license-plate offense in section 3-703 cannot be interpreted as

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

absolute liability given its applicable punishment and the lack of clear legislative intent that innocent conduct will be punished. As the identical conduct is prohibited by section 4-104(a)(4) but is punished more severely, Sroga's sentence under the latter section violates the proportionate-penalties clause.

This Court should reverse the judgment of the appellate court and vacate the conviction.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

CONCLUSION

For the foregoing reasons, Kevin Sroga, petitioner-appellant, respectfully requests that this Court reverse the appellate court and vacate Sroga's conviction.

Respectfully submitted,

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SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 29 pages.

/s/Adrienne N. River
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SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

APPENDIX TO THE BRIEF

Kevin Sroga No. 126978

Index to the Record A-1

Appellate Court Decision A-3

Notice of Appeal A-21

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6/29/2021 12:42 PM
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SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

INDEX TO THE RECORD

Common Law Record ("C") **Page**

Misdemeanor Complaint 9

To Petition to Advance (October 29, 2012) 11

Written Demand for a Speedy Trial (October 29, 2012). 12

State's Answer to Discovery 13

Motion to Quash Arrest and Suppress Evidence (February 2, 2013) 15

Written Demand for a Speedy Trial (November 8, 2013 and January 24, 2014) 23, 28

Petition to Vacate (January 24, 2014). 26, 39

Notification of Docket Entry (August 29, 2014) 40

Circuit Court Order for Defendant Sroga to receive free transcripts 51

Order Assessing Fines, Fees and Costs. 54

Motion for Leave to Amend and Correct Defendant's Previously Filed Motion (November 5, 2014) 58

Motion for Reconsideration for a New Trial (November 5, 2014) 60

Motion to Alter and Amend Sentence (November 5, 2014) 68

Motion to Supplement Petitioner's Previous filed Petition for Relief from Judgment (May 24, 2017) 87

Notice of Appeal (July 28, 2017) 97

Clerk of the Circuit Court appointment of the Office of the State Appellate Defender 101

Supplemental Common Law Record

People's Motion to Dismiss Defendant's Sec. 2-1401 Petition with Prejudice Per Res Judicata (December 22, 2016) Sup2 C4

Defendant's Response in Contra to Increasing Bond Sup2 C7

Defendant's Response to the Sate's Motion to Dismiss Sup2 C13

Memorandum Opinion and Order Sup2 C37

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

Common Law Record ("C") **Page**

Leave to Amend Petition Pursuant to Post-Conviction Hearing Act (May 1, 2017) Sup2 C73

Leave to Supplement Defendant's Response to the State's Motion to Dismiss (May 1, 2017) Sup2 C87

To Petition for Relief from Judgment Sup2 C99

Report of Proceedings ("R")

	Direct	Cross	Redir.	Recr.	
February 8, 2016					
Pro Se Motion for Post-Trial Conviction Relief - Denied					R11
October 11, 2016					
Petition for Relief of Judgment					
Argument					
Ms. Tracz (State)					R48
Continuance					R56
May 25, 2017					
Continuance					R103
July 27, 2017					
State's Motion to Dismiss Amended Petition for Relief of Judgment					
Argument					
Mr. Sroga (Pro Se)					R124
Ms. Lemke (State)					R124
Mr. Sroga (Pro Se)					R125
Court's Ruling					R126

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

2020 IL App (1st) 171992-U

No. 1-17-1992

Order filed December 30, 2020

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Respondent-Appellee,	)	Cook County
	)	
v.	)	No. 12 1247418
	)	
KEVIN SROGA,	)	Honorable
	)	Diann K. Marsalek,
Petitioner-Appellant.	)	Judge presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Howse and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Where section 4-104(a)(4) of the Illinois Vehicle Code (625 ILCS 5/4-104(a)(4) (West 2012)) does not contain the same elements as section 3-703 of the Illinois Vehicle Code (625 ILCS 5/3-703 (West 2012)), section 4-104(a)(4) does not violate the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11).

¶ 2 Years after petitioner Kevin Sroga was convicted and sentenced to 12 months' probation for violating section 4-104(a)(4) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/4-

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

104(a)(4) (West 2012)) by affixing to his vehicle a license plate not registered for use on the vehicle, he filed a section 2-1401 petition challenging his conviction and sentence. Upon the State's motion, the circuit court dismissed his petition. Sroga now appeals that dismissal and contends that section 4-104(a)(4) violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), where the offense contains the same elements as an offense described in section 3-703 of the Vehicle Code (625 ILCS 5/3-703 (West 2012)), but is punished more severely. For the reasons that follow, we affirm the circuit court's dismissal.

¶ 3 I. BACKGROUND

¶ 4 The State charged Sroga with a Class A misdemeanor for possession of unauthorized registration on a vehicle for affixing to his vehicle a license plate not registered for use on the vehicle in violation of section 4-104(a)(4) of the Vehicle Code (625 ILCS 5/4-104(a)(4) (West 2012)). Sroga's case proceeded to a jury trial, where the State's evidence showed that, in October 2012, a Chicago police officer observed an unoccupied Ford Crown Victoria parked on the sidewalk. While writing a citation for the parking infraction, the officer ran the vehicle's license plate through a police database and learned that the license plate affixed to the vehicle was registered to another vehicle, which Sroga owned. A short time later, Sroga appeared and attempted to move the Ford, which he also owned. The officer informed Sroga that his license plate was not registered to the Ford to which Sroga responded "you got me on the plates." The jury found Sroga guilty of the offense. Thereafter, he filed an unsuccessful motion for new trial, and on October 6, 2014, the trial court sentenced him to 12 months' probation. Sroga did not appeal his conviction or sentence.

¶ 5 On October 6, 2016, Sroga filed a *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)) and requested

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

that his conviction and sentence be vacated. He argued that he had a possessory right to the license plate on the Ford and suggested that his conduct would have been more appropriately charged as a violation of section 3-703 of the Vehicle Code (625 ILCS 5/3-703 (West 2012)) for improper use of evidence of registration. In response, the State filed a motion to dismiss, contending that his petition failed to show he was entitled to relief and was also barred by *res judicata*. Ultimately, the circuit court granted the State's motion to dismiss, finding that *res judicata* barred the relief Sroga sought because he had raised the same arguments in his posttrial motion for new trial.

¶ 6 This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Sroga contends that section 4-104(a)(4) of the Vehicle Code (625 ILCS 5/4-104(a)(4) (West 2012)), which is punishable as a Class A misdemeanor, violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) because the identical conduct also constitutes a violation of section 3-703 of the Vehicle Code (625 ILCS 5/3-703 (West 2012)), which is punishable only as a Class C misdemeanor.

¶ 9 A. Procedural Default and Mootness

¶ 10 At the outset, we must address two issues that could potentially preclude us from reaching the merits of Sroga's challenge under the proportionate penalties clause. First, Sroga raised his specific claim of a violation of the proportionate penalties clause for the first time on appeal from the dismissal of his section 2-1401 petition. Generally, the normal rules that require preservation of error would prevent us from reviewing his claim. See *People v. Thompson*, 2015 IL 118151, ¶ 39. But if section 4-104(a)(4) violates the proportionate penalties clause, then it is void *ab initio* (*People v. Guevara*, 216 Ill. 2d 533, 542 (2005)), meaning "that the statute was constitutionally infirm from the moment of its enactment and, therefore, unenforceable." *Thompson*, 2015 IL

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

118151, ¶ 32. As such, Sroga may attack the allegedly unconstitutional statute at any time in any court, either collaterally or directly. *People v. Davis*, 2014 IL 115595, ¶ 26; see *People v. Ligon*, 2016 IL 118023, ¶ 9 ("Voidness challenges stemming from the unconstitutionality of a criminal statute under the proportionate penalties clause may be raised at any time."). Thus, the fact that Sroga raised his proportionate penalties challenge for the first time on appeal does not preclude us from reviewing his challenge.

¶ 11 Relatedly, because Sroga brought his challenge in a section 2-1401 petition, under the normal rules governing such petitions, he was required to file his petition within two years after the entry of the order of judgment, to present a meritorious defense and to show diligence in presenting the court with that defense. *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). Given the circumstances of this case, it is arguable that Sroga did not act diligently in presenting his petition. However, the normal requirement of diligence in presenting a section 2-1401 petition does not preclude us from reviewing his challenge because his claim is that section 4-104(a)(4) violates the proportionate penalties clause and thus is void *ab initio*. See *Thompson*, 2015 IL 118151, ¶ 32; *Guevara*, 216 Ill. 2d at 542.

¶ 12 The second issue we must consider before addressing the merits of Sroga's proportionate penalties challenge is whether his challenge is moot, as the State argues. "A case is moot if the issues involved in the trial court have ceased to exist because intervening events have made it impossible for the reviewing court to grant effectual relief to the complaining party." *People v. Roberson*, 212 Ill. 2d 430, 435 (2004). Where an appeal involves the propriety of a sentence, the appeal is generally moot where the individual has served his sentence. *In re Shelby R.*, 2013 IL 114994, ¶ 15.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

¶ 13 The State argues that, if section 4-104(a)(4) were to violate the proportionate penalties clause, the proper remedy would be to reduce Sroga's conviction from a Class A misdemeanor to a Class C misdemeanor consistent with section 3-703. And in doing so, under normal circumstances, the State asserts that the case would be remanded to the trial court for resentencing. Yet, according to the State, because Sroga has already served the greater Class A misdemeanor sentence of 12 months' probation, which was imposed more than six years ago, his substantive claim is moot and we cannot provide any real relief to him.

¶ 14 Sroga, however, argues that, if section 4-104(a)(4) were to violate the proportionate penalties clause, the proper remedy would be to reverse his conviction. Sroga posits that, when an amended sentencing statute has been found to violate the proportionate penalties clause, the proper remedy is a remand for resentencing consistent with the pre-amended version of the statute. Sroga, though, asserts that no prior version of section 4-104(a)(4) has ever had a constitutionally proportionate sentence and thus no constitutional sentence ever existed for the offense. Sroga therefore claims that the State never had the authority to charge him with an offense for violating section 4-104(a)(4) and thus reversal is the only appropriate remedy.

¶ 15 Although the parties disagree about the ultimate remedy if we were to find that section 4-104(a)(4) violates the proportionate penalties clause, both nevertheless agree that Sroga would have been convicted of a Class A misdemeanor—the most severe misdemeanor—improperly. See 730 ILCS 5/5-4.5-55 to 5-4.5-65 (West 2012). In other words, a successful proportionate penalties challenge by Sroga would at the very least result in his conviction being reduced from a Class A misdemeanor to a Class C misdemeanor, consistent with the comparator statute of section 3-703. That is potentially real relief to him and therefore, we find this appeal is not moot. See *People v. Yaworski*, 2014 IL App (2d) 130327, ¶ 4 (rejecting the State's mootness argument and addressing

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

the merits of a defendant's appeal where, although the defendant had already "fully served his sentence[,] *** [f]urther postconviction proceedings could conceivably result in reduction of the degree of the offense").

¶ 16 B. The Proportionate Penalties Clause

¶ 17 The proportionate penalties clause of the Illinois Constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. In analyzing a constitutional challenge under the clause, we must determine whether our legislature has set a sentence consistent with the gravity of the offense. *Ligon*, 2016 IL 118023, ¶ 10. One way a sentence can violate the clause is where a sentence "is greater than the sentence for an offense with identical elements." *Id.* "If the legislature determines that the exact same elements merit two different penalties, then one of these penalties has not been set in accordance with the seriousness of the offense." *People v. Sharpe*, 216 Ill. 2d 481, 522 (2005). The expectation that identical conduct will result in identical penalties comports with logic and common sense, and where it does not, "the penalties [are] unconstitutionally disproportionate and the greater penalty [cannot] stand." *Ligon*, 2016 IL 118023, ¶ 11. The constitutionality of a statute presents a question of law, which we review *de novo*. *Id.*

¶ 18 This case causes us to interpret two statutes, specifically section 3-703 and section 4-104(a)(4) of the Vehicle Code (625 ILCS 5/3-703, 4-104(a)(4) (West 2012)), and determine whether they contain identical elements. When we interpret a statute, our primary objective to determine and give effect to the intent of our legislature. *People v. Clark*, 2019 IL 122891, ¶ 18. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.* ¶ 20. Where the statutory language is clear and unambiguous, we must

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

apply the statute as written and cannot resort to extrinsic aids of statutory construction. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). However, where the statutory language is unclear and ambiguous, we may resort to extrinsic aids of statutory construction. *People v. Boyce*, 2015 IL 117108, ¶ 22. One fundamental principle of statutory construction is that "[w]ords and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *People v. Santiago*, 236 Ill. 2d 417, 428 (2010). "It is well established that, by employing certain language in one instance, and entirely different language in another, the legislature indicated that different results were intended." *People v. Ousley*, 235 Ill. 2d 299, 313-14 (2009).

¶ 19 For instance, in *In re K.C.*, 186 Ill. 2d 542, 545 (1999), our supreme court was tasked with determining whether two provisions of the Vehicle Code prohibiting trespass to a vehicle were absolute liability offenses. Neither section contained an explicit culpable mental state and in determining whether one should be implied, the court compared the provisions to a similar provision in the Criminal Code of 1961 that also prohibited trespass to a vehicle. *Id.* at 549. In doing so, the court observed that the trespass statute found in the Criminal Code of 1961 contained the culpable mental state of knowledge whereas the trespass provisions found in the Vehicle Code did not. *Id.* at 549-50. The court found the inclusion of a culpable mental state in the Criminal Code of 1961 and exclusion of one in the Vehicle Code indicative of a legislative intent that no culpable mental state should be implied in the trespass provisions of the Vehicle Code. *Id.* at 550. To find otherwise, according to our supreme court, would render the mental state of knowledge in the trespass provision of the Criminal Code of 1961 " 'meaningless surplusage.' " *Id.*

¶ 20 C. The Statutes At Issue

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

¶ 21 With these principles of statutory construction in mind, we turn to the two statutes at issue in this appeal, which are both found in different chapters of the Vehicle Code. The first statute at issue is section 4-104(a)(4) (625 ILCS 5/4-104(a)(4) (West 2012)), under which defendant was charged and convicted. The provision makes it unlawful for:

> "[a] person to display or affix to a vehicle any certificate of title, manufacturers statement of origin, salvage certificate, junking certificate, display certificate, temporary registration permit, registration card, license plate or registration sticker not authorized by law for use on such vehicle."

Id. A first violation is considered a Class A misdemeanor (625 ILCS 5/4-104(b)(3) (West 2012)), which is punishable by a sentence of imprisonment of up to 364 days and a fine not to exceed $2500. 730 ILCS 5/5-4.5-55(a), (e) (West 2012). Meanwhile, section 3-703 (625 ILCS 5/3-703 (West 2012)) contains various prohibitions related to evidence of vehicle registration and certificates of title. Pertinent to this appeal, section 3-703 provides in part that:

> "nor shall any person display upon a vehicle any registration card, registration sticker or digital registration sticker, registration plate or digital registration plate or other evidences of proper registration not issued for such vehicle or not otherwise lawfully used thereon under this Code."

Id. A violation is considered a Class C misdemeanor (*id.*), which is punishable by up to 30 days' imprisonment and a fine of up to $1500. 730 ILCS 5/5-4.5-65(a), (e) (West 2012). Both statutes are virtually the same today as they were when Sroga committed his offense. See 625 ILCS 5/3-703, 4-104(a)(4) (West 2020); 625 ILCS 5/3-703, 4-104(a)(4) (West 2012). And the punishments for Class A and Class C misdemeanors remain the same today as when Sroga committed the

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

offense. See 730 ILCS 5/5-4.5-55, 5-4.5-65 (West 2020); 730 ILCS 5/5-4.5-55, 5-4.5-65 (West 2012).

¶ 22 Initially, we note that section 4-104(a)(4) utilizes the term "license plate" whereas section 3-703 utilizes the term "registration plate." See 625 ILCS 5/3-703; 4-104(a)(4) (West 2012). But previous decisions from Illinois courts have used the term "license plate" and "registration plate" interchangeably. See generally *People v. Gaytan*, 2015 IL 116223; *People v. Varnauskas*, 2018 IL App (3d) 150654; *People v. Rucker*, 294 Ill. App. 3d 218 (1998); *People v. Miller*, 255 Ill. App. 3d 577 (1994). Additionally, the Vehicle Code uses the terms interchangeably. For instance, section 1-190.1 of the Vehicle Code (625 ILCS 5/1-190.1 (West 2020)), which is titled "Special license plate," provides that "[r]egistration plates issued by the Secretary of State that by statute require, in addition to the applicable registration fee, an additional fee that is to be deposited into the Secretary of State Special License Plate Fund." Similarly, section 3-627 of the Vehicle Code (625 ILCS 5/3-627 (West 2020)), which is titled "Environmental License Plate," provides that the Illinois Secretary of State "may issue special registration plates designated to be environmental license plates." This interchangeability is exhibited in other sections of the Vehicle Code, as well. See 625 ILCS 5/3-401.5, 3-501.1, 3-658 (West 2020). Consequently, "license plate" and "registration plate" are synonymous.

¶ 23 With that initial issue out of the way, we can break down the relevant language of both provisions of the Vehicle Code more succinctly for purposes of this appeal. To this end, section 4-104(a)(4) makes it unlawful for "[a] person to display or affix to a vehicle any *** license plate *** not authorized by law for use on such vehicle." 625 ILCS 5/4-104(a)(4) (West 2012). Conversely, section 3-703 makes it unlawful for a person to "display upon a vehicle any *** registration plate *** not issued for such vehicle or not otherwise lawfully used thereon." 625

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

ILCS 5/3-703 (West 2012). Despite the similar language and prohibition, the State argues that the provisions do not share the same culpable mental state. Although the State acknowledges no culpable mental state is explicitly required by either provision, it asserts that, because section 4-104(a)(4) is punishable as a Class A misdemeanor compared to section 3-703 being punishable as a Class C misdemeanor, a knowing mental state should be implied into section 4-104(a)(4) whereas section 3-703 should be construed as an absolute liability offense.

¶ 24 An absolute liability offense is an offense in which culpability is not an element. *People v. Kite*, 153 Ill. 2d 40, 44 (1992). The Criminal Code of 2012 allows for an absolute liability offense only where "the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $1,000, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." 720 ILCS 5/4-9 (West 2012). Section 4-9 of the Criminal Code of 2012 applies to all criminal offenses even those outside the Criminal Code of 2012. See *People v. Molnar*, 222 Ill. 2d 495, 519 (2006) (stating that "[s]ection 4-9 [of the Criminal Code of 1961]," which dictated the circumstances in which an absolute liability offense may exist under the Criminal Code of 1961—the predecessor to the Criminal Code of 2012—"applies to all criminal penalty provisions, including those outside the Criminal Code of 1961"). In light of section 4-9 of the Criminal Code of 2012, even where no culpable mental state appears in the language of a statute, courts will infer one whenever possible (*People v. Witherspoon*, 2019 IL 123092, ¶ 30) in order to comport with the general rule that a criminal offense involves an act accompanied by a culpable mental state. *In re K.C.*, 186 Ill. 2d at 546.

¶ 25 D. Section 4-104(a)(4) of the Vehicle Code

¶ 26 With these principles of absolute liability in mind, we first turn to section 4-104(a)(4) to determine whether it is an absolute liability offense. A first violation of section 4-104(a)(4) is a

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

Class A misdemeanor (625 ILCS 5/4-104(b)(3) (West 2012)), which is punishable by a sentence of imprisonment of up to 364 days and a fine not to exceed $2500. 730 ILCS 5/5-4.5-55(a), (e) (West 2012). A subsequent violation of section 4-104(a)(4) is a Class 4 felony (625 ILCS 5/4-104(b)(3) (West 2012)), which is punishable by one to three years' imprisonment. 730 ILCS 5/5-4.5-45(a) (West 2012). Given that a first violation, as was the case with petitioner, is punishable as a Class A misdemeanor with potential imprisonment and a $2500 fine, possession of unauthorized registration on a vehicle could only be an absolute liability offense if there was a clear legislative intent to impose absolute liability. See 720 ILCS 5/4-9 (West 2012); *People v. Sito*, 2013 IL App (1st) 110707, ¶ 30 (where the statute providing for the offense of unauthorized possession or storage of weapons did not contain a culpable mental state and was a Class A misdemeanor punishable by incarceration, absolute liability for the offense could be imposed only if there was a "clear indication of a legislative purpose to impose absolute liability").

¶ 27 Our supreme court in *People v. Gean*, 143 Ill. 2d 281 (1991), laid out a rubric for determining when a statute clearly indicates a legislative purpose to impose absolute liability for the conduct described. In the case, the court had to determine whether sections 4-104(a)(1) and (a)(2) of the Vehicle Code were absolute liability offenses. *Id.* at 287-88. At the time, those sections made it unlawful for:

> "1. A person to possess without authority any manufacturers statement of origin, certificate of title, salvage certificate, junking certificate, display certificate of title, registration card, license plate, registration sticker or temporary registration permit, whether blank or otherwise;

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

2. A person to possess any manufacturers certificate of origin, salvage certificate, junking certificate, certificate of title, display certificate without complete assignment."

Ill. Rev. Stat. 1987, ch. 95 ½, ¶ 4-104(a)(1), (2). And a violation of either subsection was punishable as a Class 4 felony. Ill. Rev. Stat. 1987, ch. 95 ½, ¶ 4-104(b)(1).

¶ 28 Our supreme court first observed that neither section 4-104(a)(1) or 4-104(a)(2) contained a culpable mental state, and, as a result, it had to determine whether there was a strong legislative intent to make the offenses absolute liability offenses. *Gean*, 143 Ill. 2d at 287. In arguing that they were absolute liability offenses, the State highlighted section 4-104(a)(3), which made it unlawful to "possess any manufacturer's statement of origin, certificate of title, or salvage certificate, etc., '*knowing* it to have been stolen, converted, altered, forged, or counterfeited.' " (Emphasis added.) *Id.* (quoting Ill. Rev. Stat. 1987, ch. 95 ½, ¶ 4-104(a)(3)). Despite the culpable mental state of knowledge being present in section 4-104(a)(3), the court disagreed that the absence of one in sections 4-104(a)(1) and 4-104(a)(2) demonstrated a clear legislative intent to make those sections absolute liability offenses. *Id.* The court found that, "[a]fter reviewing the legislative history of section 4-104, [it was] unable to find any legislative intent that sections 4-104(a)(1) and (a)(2) [were] absolute liability offenses." *Id.*

¶ 29 Buttressing this conclusion, our supreme court further observed that violations of sections 4-104(a)(1) and 4-104(a)(2) were punishable as Class 4 felonies that carried a "substantial penalty" of up to three years' imprisonment. *Id.* at 288. The court remarked that " '[i]t would be unthinkable to subject a person to a long term of imprisonment for an offense he might commit unknowingly.' " *Id.* at 287 (quoting *People v. Valley Steel Products Co.*, 71 Ill. 2d 408, 425 (1978)). In light of the legislative history of section 4-104 failing to show any legislative intent to make sections 4-

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

104(a)(1) or 4-104(a)(2) absolute liability offenses and the substantial penalty for violations, our supreme court held that sections 4-104(a)(1) and 4-104(a)(2) were not absolute liability offenses. *Id.* at 288.

¶ 30 Turning to the instant case, we acknowledge, as our supreme court did in *Gean*, that section 4-104(a)(3) contains the culpable mental state of knowledge yet section 4-104(a)(4) contains no culpable mental state. And generally, "by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended." *In re K.C.*, 186 Ill. 2d at 549-50. However, despite this principle of statutory construction, as with *Gean*, our search of the legislative history of section 4-104 fails to show any clear legislative purpose to impose absolute liability for the conduct described in section 4-104(a)(4). But just as important are the potential punishments for violating section 4-104(a)(4). A first violation of section 4-104(a)(4) is a Class A misdemeanor with a potential imprisonment of nearly one year (730 ILCS 5/5-4.5-55(a), (e) (West 2012)), which is a "substantial" penalty. *People v Nunn*, 77 Ill. 2d 243, 249 (1979). A subsequent violation of section 4-104(a)(4) is a Class 4 felony (625 ILCS 5/4-104(b)(3) (West 2012)), which, as noted in *Gean*, 143 Ill. 2d at 288, is a substantial penalty. In other words, despite section 4-104(a)(3) containing a culpable mental state and section 4-104(a)(4) not containing one, the potential consequences for violating section 4-104(a)(4) are severe enough that they defeat the general rule of statutory construction that "by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended." *In re K.C.*, 186 Ill. 2d at 549-50. The lack of legislative history indicating that a culpable mental state should be implied into section 4-104(a)(4) coupled with the substantial penalties for violations demonstrate that there is no clear legislative purpose to impose absolute liability for the conduct described in section 4-104(a)(4).

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

¶ 31 Given that the offense of possession of unauthorized registration on a vehicle is a misdemeanor punishable by up to 364 days of imprisonment as well as a fine up to $2500, and the fact that section 4-104(a)(4) does not clearly indicate a legislative purpose to impose absolute liability, possession of unauthorized registration on a vehicle is not an absolute liability offense. See 720 ILCS 5/4-9 (West 2012).

¶ 32 In light of this conclusion, we must determine which mental state should be implied into the statute. When a statute does not provide a culpable mental state applicable to an element of the offense, any of the mental states of intent, knowledge or recklessness may apply. 720 ILCS 5/4-3(b) (West 2012). In *Gean*, 143 Ill. 2d at 288-89, when this very situation occurred with respect to sections 4-104(a)(1) and 4-104(a)(2) of the Vehicle Code, our supreme court concluded that knowledge was the appropriate mental state for the offenses because the purpose of these provisions was to prevent " 'chop shop' " activities. The holding in *Gean* with respect to section 4-104(a)(2) was modified subsequently in *People v. Tolliver*, 147 Ill. 2d 397, 400-02 (1992), where our supreme court observed that a mere knowledge mental state could still punish innocent behavior and provided multiple such examples. Because a violation of section 4-104(a)(2) was a felony, the court modified the holding in *Gean* and required the State to prove "criminal knowledge or knowledge with an intent to defraud or commit a crime," or, in other words, "knowledge plus criminal purpose." *Id.* at 400-01, 03.

¶ 33 Given that a violation of section 4-104(a)(4) is punishable as a misdemeanor, we see no reason for a mental state more culpable than knowledge to be applicable, and therefore, we find the mental state of knowledge appropriate. Therefore, as relevant to this case, section 4-104(a)(4) makes it unlawful for a person to display or affix a license plate to a vehicle *knowing* that it is not authorized by law for use on such vehicle.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

¶ 34 E. Section 3-703 of the Vehicle Code

¶ 35 Having concluded that section 4-104(a)(4) of the Vehicle Code requires an implied mental state of knowledge, we next turn to section 3-703 to determine whether it is an absolute liability offense. As noted, in relevant part, this section provided that: "nor shall any person display upon a vehicle any *** registration plate *** not issued for such vehicle or not otherwise lawfully used thereon." 625 ILCS 5/3-703 (West 2012). A violation of this section is a Class C misdemeanor (*id.*), which is punishable by up to 30 days' imprisonment and a fine of up to $1500. 730 ILCS 5/5-4.5-65(a), (e) (West 2012). Given these potential consequences, improper use of evidence of registration could only be an absolute liability offense if there was a clear legislative intent to impose absolute liability. See 720 ILCS 5/4-9 (West 2012); *Sito*, 2013 IL App (1st) 110707, ¶ 30.

¶ 36 Instructive in determining whether section 3-703 clearly indicates a legislative purpose to impose absolute liability for the conduct described is *People v. O'Brien*, 197 Ill. 2d 88, 89 (2001), where a defendant was charged with operating an uninsured motor vehicle pursuant to section 3-707 of the Vehicle Code. The sole issue on appeal was whether the offense was an absolute liability offense. Section 3-707 at the time provided that "[n]o person shall operate a motor vehicle unless the motor vehicle is covered by a liability insurance policy ***." 625 ILCS 5/3-707 (West 1998). Our supreme court initially noted that no culpable mental state appeared in the statute and that a violation of section 3-707 was not punishable by incarceration but was punishable by a fine exceeding $500. *O'Brien*, 197 Ill. 2d at 92-93.[1] Given this, the court remarked that operating an

[1] At the time of the *O'Brien* decision, section 4-9 of the Criminal Code of 1961 provided that an absolute liability offense could only exist if "the offense is a misdemeanor which is not punishable by incarceration or by a fine *exceeding $500*, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." (Emphasis added.) 720 ILCS 5/4-9 (West 1998).

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

uninsured motor vehicle could only be an absolute liability offense if section 3-707 clearly indicated a legislative purpose to impose absolute liability. *Id.* at 92.

¶ 37 In concluding that there was such a clear legislative intent, our supreme court highlighted three sources of intent. *Id.* at 92-95. First, our supreme court highlighted the word "shall" in section 3-707 and found that indicative of a clear "legislative intent to impose a mandatory obligation." *Id.* at 93. Second, the court emphasized the "minor penalty" for violations of section 3-707, observing that the offense was not punishable by imprisonment and only a fine between $501 and $1000, barely above the threshold for absolute liability offenses at the time. *Id.* at 93-94. The court remarked that, where "the penalty is not severe, the likelihood of a legislative intent to impose absolute liability is enhanced." *Id.* at 94. And third, the court "discern[ed] a clear legislative purpose to impose absolute liability" when considering section 3-707 in the context of other related provisions of the Vehicle Code, in particular several other provisions of chapter 3, article VII, that contained the culpable mental state of knowledge. *Id.* at 94-95 (citing 625 ILCS 5/3-701(1) (West 1998); 625 ILCS 5/3-702(a)(1) (West 1998); 625 ILCS 5/3-702(b) (West 1998); 625 ILCS 5/3-703 (West 1998); 625 ILCS 5/3-710 (West 1998)). Given that these related provisions contained the culpable mental state of knowledge and section 3-707 did not, the court found it "must presume that, by specifically including a culpable mental state in the numerous [related] statutes ***, the legislature's omission of a culpable mental state in section 3-707 'indicates that different results were intended.' " *Id.* at 95 (quoting *In re K.C.*, 186 Ill. 2d at 550). To find otherwise, according to the court, would render the language of the related statutes " 'meaningless surplusage.' " *Id.* Consequently, our supreme court held that section 3-707 was an absolute liability offense. *Id.* at 95-96.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

¶ 38 Turning back to section 3-703, just as in *O'Brien*, we find that the statute clearly indicates a legislative purpose to impose absolute liability for improper use of evidence of registration. First, just like *O'Brien*, the relevant prohibition in section 3-703 contains the word "shall," which demonstrates a clear "legislative intent to impose a mandatory obligation." *Id.* at 93. Second, the punishment for violating section 3-703 is not so severe. While a Class C misdemeanor is more serious than a petty offense that does not subject a violator to imprisonment (730 ILCS 5/5-1-17 (West 2012); *People v. Studley*, 259 Ill. App. 3d 556, 559 (1994)), a Class C misdemeanor is the least serious of the misdemeanor offenses. See 730 ILCS 5/5-4.5-55 to 5-4.5-65 (West 2012). "Where *** the penalty is not severe, the likelihood of a legislative intent to impose absolute liability is enhanced." *O'Brien*, 197 Ill. 2d at 94.

¶ 39 The less severe punishment for violating section 3-703 leads to the third reason we find the section clearly indicates a legislative purpose to impose absolute liability for improper use of evidence of registration. Unlike in *Gean* and our conclusion with respect to section 4-104(a)(4), the punishment for violating section 3-703 is not so severe that we may disregard the general rule of statutory construction that "by employing certain language in one instance and wholly different language in another, the legislature indicates that different results were intended." *In re K.C.*, 186 Ill. 2d at 549-50. Thus, we find evidence of legislative intent to impose absolute liability by examining other provisions of chapter 3, article VII of the Vehicle Code. Notably, a different prohibition in section 3-703 itself provides that:

> "No person shall lend to another any certificate of title, registration card, registration plate or digital registration plate, registration sticker or digital registration sticker, special plate or permit or other evidences of proper registration issued to him if the person desiring to borrow the same would not be entitled to the

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

> use thereof, nor shall any person *knowingly* permit the use of any of the same by one not entitled thereto."

(Emphasis added). 625 ILCS 5/3-703 (West 2012). Amongst the various prohibitions in section 3-703, the aforementioned one is the only prohibition where an explicit culpable mental state appears. Because of our legislature's use of the mental state of knowledge in one prohibition in section 3-703 but not anywhere else, in particular the prohibition relevant to this appeal, we must presume that different results were intended. See *O'Brien*, 197 Ill. 2d at 95; *In re K.C.*, 186 Ill. 2d at 550. Otherwise, we would render the word "knowing" in another prohibition of section 3-703 as meaningless surplusage. *O'Brien*, 197 Ill. 2d at 95.

¶ 40 Our conclusion is buttressed by a review of other relevant sections in chapter 3, article VII of the Vehicle Code, where our legislature explicitly included the culpable mental state of knowledge. See 625 ILCS 5/3-701, 3-702, 3-710 (West 2012). Just as in *O'Brien*, we cannot ignore these deliberate indications of legislative intent. Consequently, the relevant prohibition in section 3-703 clearly indicates a legislative purpose to impose absolute liability, and we will not imply a culpable mental state for the specific offense of improper use of evidence of registration.

¶ 41 In sum, section 4-104(a)(4) contains an implied mental state of knowledge whereas the pertinent prohibition in section 3-703 is an absolute liability offense. As such, these offenses do not share the same elements and there is no violation of the proportionate penalties clause of the Illinois Constitution. See *Ligon*, 2016 IL 118023, ¶¶ 10-11, 25. Accordingly, we affirm the circuit court's dismissal of Sroga's section 2-1401 petition.

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

Notice of Appeal (This form replaces CCMC1-256) (9/5/03) CCG 0256

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
Municipal DEPARTMENT, First Traffic DIVISION/DISTRICT

KEVIN SROGA
Plaintiff/ Appellant

People of the State of Illinois
Defendant/ Appellee

Reviewing Court No. ______
Case No. 1212 474 1801
Honorable Watkins / Marsalek
Trial Judge

FILED
JUL 28 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
CLERK

NOTICE OF APPEAL

Appellant Information

Name(s): KEVIN SROGA

Address to which notices shall be sent: ______

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An appeal is taken from the order or judgment described below:

Specify the date judgment/order appealed from: 7-27-17

Specify the judge who entered the judgment/order: Diann K. Marsalek

Relief sought from Reviewing Court: Reversal of the Dismissal order with proper directives and any other Relief this court deems proper and Just.

[signature]

(May be signed by the Appellant, the Attorney for the Appellant or the self-represented party)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

SUBMITTED - 13861576 - Kelly Kuhtic - 6/29/2021 12:42 PM

No. 126978

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- KEVIN SROGA, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-1992. There on appeal from the Circuit Court of Cook County, Illinois , No. 1212 474 1801. Honorable Diann K. Marsalek, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, aagKatherineDoersch@gmail.com;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Kevin Sroga, 7915 W Cressett Drive, Elmwood Park, IL 60707

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 29, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

E-FILED
6/29/2021 12:42 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

/s/Kelly Kuhtic
LEGAL SECRETARY
Office of the State Appellate Defender
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Chicago, IL 60601
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Service via email is accepted at
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