Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

BY Genovese, J.:

2022-K-00206 *STATE OF LOUISIANA VS. QWANDARIOUS ROWE* (Parish of Washington)

REVERSED. SEE OPINION.

Crain, J., dissents and assigns reasons.
McCallum, J., dissents for the reasons assigned by Crain, J.

SUPREME COURT OF LOUISIANA

No. 2022-K-00206

STATE OF LOUISIANA

VS.

QWANDARIOUS ROWE

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Washington

Genovese, J.

We granted this writ application to clarify the application of La.R.S. 14:403.10(B),[1] which shields a person from prosecution of possession of a controlled dangerous substance if it is discovered while that person is receiving needed medical assistance as a result of a "drug-related overdose." Specifically, for the reasons outlined below, we find that for the purpose of applying La.R.S. 14:403.10, "overdose" means an acute medical condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, hysteria, or death that is the result of consumption or use of a controlled dangerous substance, or a condition a lay person would reasonably believe was a drug-related overdose.

FACTS AND PROCEDURAL HISTORY

Defendant, Qwandarious Rowe, was charged by bill of information with possession of methamphetamine (less than two grams), a violation of La.R.S. 40:967(C)(1). The incident giving rise to defendant's arrest occurred at a Washington Parish fair. Specifically, a fair attendee alerted a sheriff's deputy, Sergeant Michael Thomas, that a man in a public bathroom was sitting on the floor

[1] In pertinent part, La.R.S. 14:403.10(B) reads as follows:

> B. A person who experiences a drug-related overdose and is in need of medical assistance shall not be charged, prosecuted, or penalized for possession of a controlled dangerous substance under the Uniform Controlled Dangerous Substances Law if the evidence for possession of a controlled dangerous substance was obtained as a result of the overdose and the need for medical assistance.

with his pants around his ankles. When he entered the bathroom, Sergeant Thomas recognized defendant from previous encounters.

According to Sergeant Thomas, defendant had difficulty staying awake and speaking coherently. As the deputy pulled up defendant's pants and assisted him out of the bathroom, he felt a syringe in defendant's pocket, which he seized. Sergeant Thomas felt defendant required medical evaluation, and the fair's emergency medical service (EMS) team was summoned. Defendant was placed on the back of a golf cart driven by Northshore Hospital EMS personnel for observation. Before the golf cart transported defendant to a different location, Sergeant Thomas noticed something sticking out of defendant's sock. After unrolling the sock, Sergeant Thomas discovered what he believed to be methamphetamine wrapped in a five dollar bill. Ultimately, EMS transported defendant by ambulance to a hospital where he was admitted with an altered mental status (confused, drowsy, and had an irregular heartbeat) and was diagnosed with psychoactive substance abuse and an unspecified psychoactive substance abuse disorder. He was discharged about two-and-one-half hours later.

Defendant filed a motion to quash the bill of information, arguing he qualified for immunity under La.R.S. 14:403.10(B) pursuant to the three-pronged test set out by the Fifth Circuit Court of Appeal in *State v. Jago*, 16-346, p. 5 (La. App. 5 Cir. 12/28/16), 209 So.3d 1078, 1082 (*Jago I*):

> As written, La. R.S. 14:403.10B establishes a three-prong test for determining whether the immunity it establishes applies. The person in possession of the controlled dangerous substance must be experiencing an "overdose"; the person must be in need of medical assistance; and[,] the evidence of the controlled dangerous substance must have been obtained as a result of the overdose and the need for medical assistance. This statute does not define "overdose," and there is no jurisprudence interpreting this statute.

The state agreed defendant satisfied one prong of the test from *Jago I* (the discovery of contraband as a result of the medical assistance), but denied that

defendant had established the second and third prongs of the test: that he was experiencing an overdose, and that he was in need of the medical assistance he received. At the hearing on the motion, Sergeant Thomas testified that while he did not believe defendant had overdosed, he described the state in which he found defendant as follows:

> [H]e was just sitting there. Not making any sense. And I've dealt with Qwandarious before. And I just wanted to [have him checked out], see what was wrong with him, what's going on. Because it's not normal to be sitting in the bathroom stall with your pants around your ankles.

When asked if he was conscious, Sergeant Thomas responded, "He said nothing. And then he'd moan and grunt." He also said defendant "kept trying to fall back asleep." When asked why Sergeant Thomas called EMS, he responded that he thought defendant should be "treated and evaluated."

The trial court ultimately denied defendant's motion to quash, finding that defendant had only satisfied two out of the three prongs of the *Jago I* test (the need for medical assistance and the discovery of the contraband as a result of the medical assistance), but had not established that he was experiencing an overdose. The trial court noted that "overdose" is not defined in La.R.S. 14:403.10 and acknowledged the difficulty of determining whether defendant "overdosed" (within the meaning of the statute) without medical testimony. In reaching its decision, the trial court referred to the dictionary definition of overdose—"an excessive dose, especially of a narcotic"—and patient educational materials admitted into evidence, which listed chest pain, confusion, sleepiness and difficulty staying awake, slowed breathing, nausea or vomiting, and seizures as signs of an overdose. Defendant's medical records, which were also introduced, indicated that he experienced confusion, sleepiness or difficulty staying awake at the hospital. Thus, the trial court concluded that while defendant exhibited some symptoms of an overdose, he was ultimately only experiencing a drug-related high and, therefore, did not qualify for immunity

under the statute.[2] The trial court also determined that defendant failed to meet his evidentiary burden in proving that he was "overdosing" pursuant to the statute.[3] Following the denial of his motion to quash the bill of information, defendant entered a guilty plea, reserving his right to appeal the denial of the motion to quash pursuant to *State v. Crosby*, 338 So.2d 584, 588 (La. 1976). Defendant was sentenced to two years at hard labor, suspended, and was placed on three years of probation.

A split panel in the First Circuit Court of Appeal affirmed the trial court's ruling. *State v. Rowe*, 21-0626 (La. App. 1 Cir. 12/30/21), 340 So.3d 1052 (Guidry, J., dissenting) (Holdridge, J., concurring).[4] The court of appeal first acknowledged

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[2] Specifically, the trial court explained as follows:

> So[,] there's two out of the six symptoms. I'm not a doctor. I don't know if that's an overdose. But I do tend to agree with argument from counsel from the State saying that any narcotic drug, the symptoms are going to be some degree of confusion and sleepiness. And just because there's a use does not mean that it's an overuse, or that he was in risk of or potentially having an overdose.

Rowe, 21-0626, p. 7, 340 So.3d at 1056.

[3] The trial court found defendant failed to meet his evidentiary burden due to a lack of testimony from medical personnel confirming that he was indeed experiencing an overdose:

> [T]his comes right down to an evidentiary burden. This motion was filed by [the] defense, who was tasked with proving to me that the defendant was, indeed, experiencing a drug related overdose.
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> There has been no testimony from any medical personnel or anything indicating to me that he was having an overdose. It seems to me, in a nonmedical way, that he was experiencing a drug related high. I mean, he was being affected by the drugs. But I've seen nothing to indicate to me that he was having an overdose.
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> So it's a failure to meet the burden of proof to prove to me that Mr. Rowe was experiencing an overdose.

Id., 21-0626, p. 7, 340 So.3d at 1056.

[4] Judge Holdridge's concurrence reads as follows:

> I respectfully concur in this case. The Louisiana Supreme Court stated in the per curiam opinion [in] *State v. Jago*, 2017-0183 (La. 11/17/17), 228 So.3d 1218, 1219, that "requiring a lay person[,] before seeking help[,] to determine whether a drug user has experienced a life-threatening overdose—would frustrate the purpose of the statute, which is to encourage persons to seek help for those they reasonably believe have overdosed." However, the language of the Supreme Court in *Jago* gives the impression that we should encourage law enforcement to only assist and seek medical assistance for individuals who have overdosed. As stated by the trial judge in this case, sometimes it is the "best practice ... to get them checked out[.]" Therefore, I find that La. R.S. 14:403.10(B) should be read to encourage law enforcement in all cases to seek medical assistance for individuals who they are

that this Court, while ultimately denying writs in *Jago I*, issued a per curiam finding that defendant does not have to prove he or she ingested a lethal amount of a controlled dangerous substance to avail themselves of statutory immunity, stating as follows:

> The court of appeal erred in finding that defendant must have injected a lethal quantity of heroin before he can be shielded from prosecution by operation of La. R.S. 14:403.10(B). Requiring a drug user to have experienced a life-threatening overdose—and requiring a lay person before seeking help to determine whether a drug user has experienced a life-threatening overdose—would frustrate the purpose of the statute, which is to encourage persons to seek help for those they reasonably believe have overdosed.

State v. Jago, 17-0183, p. 1 (La. 11/17/17) 228 So.3d 1218, 1219 (Johnson, C.J., dissenting) (*Jago II*). In response to *Jago II*, the court of appeal opined, "While the supreme court found that a drug user did not have to experience a life-threatening overdose in order for the definition of 'overdose' to be satisfied under R.S. 14:403.10(B), the court left little guidance as to what constitutes a drug-related overdose." *Rowe*, 21-0626, p. 8, 340 So.3d at 1057. Thereafter, the court held that "an 'overdose' is a medical and factual term that requires a witness with a medical background (or a medical expert) to testify as to the medical factors involved in diagnosing whether there has been an overdose." *Id*. In the absence of expert medical testimony or evidence of what substance caused defendant's intoxication, the court of appeal found that the trial court did not abuse its discretion in denying the motion to quash the bill of information. *Id.*, 21-0626, pp. 8–9, 340 So.3d at 1057–58. Judge Guidry dissented, finding that this case "represents the exact type of case envisioned by the legislature in passing this immunity statute[,] one in which someone

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> concerned may be in medical distress for any reason. However, in order for the immunity provided by La. R.S. 14:403.10(B) to apply, the defendant would have to prove the elements of the three-prong test and establish that medical assistance was provided because he was experiencing an overdose. In this case, the defendant did not meet his burden that he overdosed. Therefore, he is not immune from prosecution for his drug offense.

Rowe, 21-0626, p. 1, 340 So.3d at 1058 (Holdridge, J., concurring).

reasonably believes a person is experiencing a drug-related overdose and the person receives medical assistance as a result of the overdose." *Id*., 21-0626, p. 1, 340 So.3d at 1058 (Guidry, J., dissenting). Judge Guidry also expressed concern that the majority's holding would perpetuate the problem the statute sought to alleviate.[5]

Defendant thereafter filed a writ application with this Court, which this Court granted. In his brief to this Court, defendant argues that the court abused its discretion in finding that defendant did not qualify for immunity under La.R.S. 14:403.10 based on the previously-discussed testimony and evidence admitted. Contained within the hospital records admitted as evidence was a notation from defendant's doctor stating, "risk factors consist of overdose." He argues this Court should adopt the reasoning in Judge Guidry's dissent.

The state reiterates its arguments that defendant should not qualify for immunity under La.R.S. 14:403.10(B) because he failed to prove that he was in need of medical assistance and, in fact, was experiencing an overdose. The state agrees with the court of appeal's conclusion that "to define 'overdose' merely as one which is dangerous or is 'too great a dose' would lead to the absurd result of allowing *any* amount of a [controlled dangerous substance] to satisfy this prong of the test for immunity granted by La. R.S. 14:403.10 B," quoting *State v. Brooks*, 16-0345, pp. 7–8 (La. App. 5 Cir. 12/28/16), 210 So.3d 514, 520. (Emphasis in original).[6] The state argues the term "overdose" must be defined with reference to what is apparent

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[5] Specifically, Judge Guidry found as follows:

> The statute's purpose is to save lives[,] and these critical split-second decisions have to be made based upon what is happening in real time. The majority's opinion would have a chilling effect on a person responding to what reasonably appears to be a drug-related overdose and frustrates the legislative intent to save lives. A witness to a drug-related overdose may hesitate or fail to get medical assistance for the drug user rather than exposing the person to criminal prosecution, which is exactly the scenario that the statute seeks to avoid.

Id., 21-0626, p. 2, 340 So.3d at 1059 (Guidry, J., dissenting).

[6] *Brooks* is the companion case to *Jago I*. Brooks and Jago were co-defendants.

because "[La.]R.S. 14:403.10 is targeted towards situations involving a person responding to what *reasonably appears* to be a drug-related overdose." The state notes "that other states with similar overdose immunity statutes define 'overdose' to mean a condition a *layperson would reasonably believe to be a drug overdose requiring immediate medical assistance*."[7] The state also underscores that in order to distinguish between mere intoxication and a more serious condition, other states include in their statute's definition of "overdose" that it is an "acute condition."

In this case, the state contends, the court of appeal came to the correct conclusion, albeit for the wrong reason. The state asserts that defendant did not establish that he was experiencing an overdose, *not* because he failed to present medical expert testimony, but rather because the evidence presented at the motion hearing did not give rise to a reasonable belief that the defendant was experiencing an overdose. First, the state avers that the individual who alerted the sheriff's deputy about defendant in the bathroom did not indicate the situation was a medical emergency. Next, the state points to Sergeant Thomas's testimony that he did not believe the defendant was experiencing an overdose. Finally, the state argues the hospital records indicate that defendant was not distressed, but instead was experiencing the desired effects of the drugs he consumed.[8] In short, the state contends the evidence shows defendant was *not*, in fact, experiencing an overdose.

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[7] The state cites to Colo. Rev. Stat. § 18-1-711; Delaware Code, Title 16, § 4769; Hawaii R.S. § 329-43.6; N.C. Stat. § 90-96.2; N.D. Code, § 19-03.1-23.4; Pa. Stat., Title 35, § 780-113.7; S.C. Stat. § 44-53-1910.

[8] The triage note indicates that the chief complaint was "arrived via EMS from fair." The records show "no actual or suspected pain" reported. The "assessment" reflects that defendant knew who and where he was but was "disoriented to situation" and "disoriented to time." The medical records further reflect that less than ten minutes after admission, a nurse conducting rounds reported: "pt standing and dancing in room, states he have [sic] called for a ride." In addition, the state points out that the medical records indicate the "clinical service" as "non-specified" with an ICD-10 code of "F19.10"— meaning "other psychoactive substance abuse, uncomplicated." The state asserts that had the final diagnosis been that the defendant was experiencing an overdose of methamphetamine–a psychostimulant drug–the ICD-10 code would have been under "T43.6"–pertaining to "Poisoning by, adverse effect of and overdosing of psychostimulants."

Furthermore, the state argued that portions of the medical records highlighted in defendant's brief[9] do not indicate that the defendant actually experienced an overdose, but rather that he was merely experiencing "symptoms of an overdose." The state argues the symptoms alone do not indicate an overdose *per se*, because these symptoms are also consistent with simply experiencing a high; thus, the situation lacked the severity required to avail himself of the statutory immunity in La.R.S. 14:403.10. The state also asserts that defendant failed to show he was "in need of medical assistance" as required to qualify for immunity under the statute.[10]

DISCUSSION

We must determine whether the appellate court erred in affirming the trial court's denial of defendant's motion to quash due to his failure to present medical expert testimony as to whether he, in fact, suffered an overdose pursuant to the statute. The central question presented by this case is one of statutory interpretation—how "overdose" should be defined in the context of La.R.S. 14:403.10. In answering this question, we are guided by current laws and previous jurisprudence from this Court. In *State v. Oliphant*, 12-1176, p. 5 (La. 3/19/13), 113 So.3d 165, 168, this Court explained:

> The interpretation of any statutory provision starts with the language of the statute itself. *Oubre v. Louisiana Citizens Fair Plan*, 11-0097, p. 11 (La. 12/16/11), 79 So.3d 987, 997. When the provision is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect, and its provisions must be construed so as to give effect to the purpose indicated by a fair interpretation of the language used. La. Civ.Code art. 9; La.Rev.Stat. § 1:4; *In re Clegg*, 10-0323, p. 20 (La. 7/6/10), 41 So.3d 1141, 1154. Unequivocal provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning. La. Civ.Code art. 11; La.Rev.Stat. § 1:3; *see also Snowton v. Sewerage and Water Bd.*,

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[9] The state is referring to the notations in the medical records that indicated defendant had an irregular heart rhythm, he was confused/disoriented and drowsy, and the doctor's observation, "Risk factors consist of overdose."

[10] Both the trial court and appellate court agreed that defendant was in need of medical assistance, and defendant did not challenge that conclusion in his writ application to this Court. Accordingly, because that issue is not formally before this Court, we do not address it in depth.

> 08-399, pp. 5–6 (La. 3/17/09), 6 So.3d 164, 168. Words and phrases must be read with their context and construed according to the common and approved usage of the language. La.Rev.Stat. § 1:3.
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> Moreover, it is well-established criminal statutes are subject to strict construction under the rule of lenity. *State v. Carr*, 99-2209, p. 4 (La. 5/26/00), 761 So.2d 1271, 1274. Criminal statutes, therefore, are given a narrow interpretation, and any ambiguity in the substantive provisions of a statute as written is resolved in favor of the accused and against the State. *State v. Becnel*, 93-2536, p. 2 (La. 5/31/96), 674 So.2d 959, 960.

When the language of the law is susceptible to different meanings, it must be interpreted as having the meaning that best conforms to the law's purpose. La.C.C. art. 10. When the words of a law are ambiguous, their meaning must be sought by examining the context in which they are used and the law's text as a whole. La.C.C. art. 12. The legislative history of an act and contemporaneous circumstances are also helpful guides in ascertaining legislative intent. *Exxon Pipeline Co. v. Louisiana Public Service Com'n*, 98-1737, p. 8 (La. 3/2/99), 728 So.2d 855, 860.

Here, both lower courts in this matter expressed the difficulty of applying La.R.S. 14:403.10(B) without a more specific definition of "overdose," indicating that "overdose," in the context of R.S. 14:403.10, is susceptible to different meanings. As noted by the trial and appellate courts, the dictionary definition of the word "overdose" is "an excessive dose." On the other hand, "overdose" is also a medical term used for diagnosis and treatment that is defined, at least in part, by its symptoms. Additionally, there remains the issue of what burden of proof defendants must meet to avail themselves of this statutory immunity.

The legislature passed La.R.S. 14:403.10(B) as part of an array of "Good Samaritan" laws in 2014. *See* 2014 La. Acts 392. The purpose of La.R.S. 14:403.10 was to curb drug-related deaths of Louisiana citizens. The sponsoring legislators testified at committee hearings that in recognition of the fact that the fear of police involvement often discourages bystanders from seeking medical assistance for a person potentially overdosing, the statute grants immunity to the drug user and the

person who calls for help. During the most recent legislative session, the statute was amended. The bill broadened the statute's immunity protections, but did not clarify the definition of "overdose." *See* 2022 La. Sess. Law Serv. Act 225 (H.B. 601). A representative from the Louisiana District Attorney's Association testified at a committee hearing that the purpose of the bill was to expand good faith immunity and further incentivize people who might otherwise be afraid of prosecution to engage in life support, call 911, and seek medical assistance.

Although the appellate majority's technical interpretation of "overdose" does not conflict with the plain language of the statute, this narrow and highly-technical reading subverts the purpose of the law, which is to remove the fear of prosecution and to encourage bystanders to seek help. If a third party fears that an apparent overdose may not be severe enough to later receive confirmation by a medical expert, the witness might equivocate about calling 911. The chilling effect of the application of the law endorsed by the appellate majority in this case could counteract the very problem sought to be addressed by the provision. Indeed, interpreting "overdose" to have a highly technical meaning that requires expert medical testimony to evaluate runs counter to this Court's previous statements in *Jago II* where we noted that "requiring a lay person before seeking help to determine whether a drug user has experienced a life-threatening overdose—would frustrate the purpose of the statute[.]" *Id.,* 17-0183, p. 1, 228 So.3d at 1219. In short, the court of appeal's definition is *not* "the meaning that best conforms to the law's purpose." La.C.C. art. 10.

As of 2022, 40 states and the District of Columbia have enacted some form of a Good Samaritan or 911 drug immunity law that provides some protection from arrest or prosecution for individuals who report an overdose in good faith.[11] Most

[11] Drug Overdose Immunity and Good Samaritan Laws, NCSL, https://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx.

states' statutes include a reasonableness component in the definition of overdose.[12] Notably, Louisiana's companion immunity statute addressing alcohol consumption also includes a reasonableness component. Specifically, La.R.S. 14:403.9 (emphasis

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[12] *See* Alaska Stat. §11.71.311 (". . . who the person reasonably believed was experiencing a drug overdose . . ."); CA Health & Safety Code § 11376.5(e) (". . . if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose . . ."); Colo. Rev. Stat. §18-1-711(5)(" . . . a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance."); Conn. Gen. Stat. §21a-267(e)(" . . . who such person reasonably believes is experiencing an overdose . . ."); D.C. Code § 7-403(a)(1)(A)-(C) ("[r]easonably believes that he or she is experiencing . . . himself," "[r]easonably believes that another person is experiencing . . .," "is reasonably believed to be experiencing . . ."); Del. Code Ann. Tit. 16, § 4769 (". . . if a layperson could reasonably believe that the condition is in fact an overdose and requires medical assistance."); Ga. Code Ann. § 16-13-5(a)(1) (". . . reasonable person would believe . . ."); Haw. Rev. Stat. § 329-43.6 (2015) (2)(" A condition that a layperson would reasonably believe to be a drug or alcohol overdose . . ."); Iowa Code § 124.418 (". . . a prudent layperson would reasonably believe such condition to be the result of, the consumption or use of a controlled substance."); Ky. Rev. Stat. § 218A.133 (". . . a layperson would reasonably believe requires medical assistance;"); Md. Code, Crim. Proc. §1-210 (". . . a person reasonably believed to be experiencing a medical emergency after ingesting or using alcohol or drugs . . ."); Mich. Comp. Laws §§333.7403(7)(a) (". . . a layperson would reasonably believe to be a drug overdose that requires medical assistance."); Minn. Stat. Ann. § 604A.05, Subd. 5 (". . . that a layperson would reasonably believe to be a drug overdose . . . ."); Mo. Rev. Stat. § 195.205 (1) (". . . a person would reasonably believe to be a drug or alcohol overdose that requires medical assistance"); Miss. Code. Ann. § 41-29-149.1 (". . . a layperson would reasonably believe to be resulting from the consumption or use of a controlled substance or dangerous drug for which medical assistance is required."); Mont. Code. Ann. 50-32-609 (a) (". . . person who is experiencing an actual or reasonably perceived drug-related overdose . . ."); N.C. Gen. Stat. Ann. § 90-96.2(a) (". . . that a layperson would reasonably believe to be a drug overdose . . ."); N.D. Cent.Code §19-03.1-23.4 (". . . the overdosed individual must have been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance."); Neb. Rev. Stat. §28-472 (". . . condition a layperson would reasonably believe requires emergency medical assistance."); N.H. Rev. Stat. Ann. §318-B:28-b (". . . condition . . . which a layperson would reasonably believe requires medical assistance."); Nev. Rev. Stat. §453C.150 (". . . an ordinary layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance."); N.Y. Penal Law § 220.78 (". . . a patient's condition shall be deemed to be a drug or alcohol overdose if a prudent layperson, possessing an average knowledge of medicine and health, could reasonably believe that the condition is in fact a drug or alcohol overdose . . ."); Okl. Stat. tit. 63 § 2-413.1 (". . . reasonably appeared to be in need of medical assistance due to the use of a controlled dangerous substance"); Or. Rev. Stat. Ann. §475.898 (". . . a condition . . . that a person would reasonably believe to be a condition that requires medical attention."); 35 Pa. Cons. Stat. § 780-113.7 ("A patient's condition shall be deemed to be a drug overdose if a prudent layperson, possessing an average knowledge of medicine and health, would reasonably believe that the condition is in fact a drug overdose and requires immediate medical attention."); S.C. Code Ann. § 44-53-1910 (2) (". . . condition . . . that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance."); S.D. Codified Laws §§ 34-20A-109 (". . . condition. . . that a person would reasonably believe to be a drug overdose that requires medical assistance."); Tenn. Code Ann. § 63-1-156 (". . . condition . . . that a reasonable person would believe to be resulting from the consumption or use of a controlled substance or other substance…"); Utah Code §58-37-8 (16) (". . . bystander . . . reasonably believes that the person or another person is experiencing an overdose event."); Vt. Stat. Ann. tit. 18, § 4254(a)(1) (". . . an acute condition resulting from or believed to be resulting from the use of a regulated drug which a layperson would reasonably believe requires medical assistance."); Wis. Stat. §961.443 (1) (". . . a reasonable person would believe him or her to be, suffering from an overdose . . ."); W.Va. §16-47-4 (1) (". . . a person who reasonably appears to be experiencing an overdose . . .").

added), provides, in pertinent part:

> A. A peace officer shall not take a person into custody based solely on the commission of an offense involving alcohol described in Subsection B of this Section if the peace officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that all of the following apply:
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> (1) The law enforcement officer has contact with the person because the person acting in good faith requested emergency medical assistance for *an individual who reasonably appeared to be in need of medical assistance due to alcohol consumption* and the person did not illegally provide alcohol to the individual.

Based on this Court's opinion in *Jago II*, and the legislature's choice of words in the companion statute, and borrowing from the language in other states' immunity statutes, we find that for the purpose of applying La.R.S. 14:403.10, "overdose" means an acute medical condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, hysteria, or death that is the result of consumption or use of a controlled substance, or a condition a lay person would reasonably believe was a drug-related overdose.

Having defined "overdose" above, the question then turns to whether the trial court abused its discretion in denying defendant's motion to quash. The trial court read into the record a disjunctive list of six signs of an overdose and noted defendant's medical records indicated he experienced two of the symptoms. There is no indication that the medical records stated that a person must experience all—or even a majority—of the enumerated symptoms in order to be deemed having suffered an overdose. Furthermore, defendant's medical records stated "risk factors consist of overdose." The trial court "interpret[ed] [that] to mean they were worried there could have been an overdose going on." Accordingly, even by its own definition of overdose, the trial court's finding that there was nothing indicating that defendant was experiencing an overdose was not correct. Additionally, despite Sergeant Thomas's belief that defendant was not experiencing an overdose, he nevertheless concluded that defendant's behavior was "not normal" and sought

medical attention. Defendant's condition was one that a lay person would reasonably believe was a drug-related overdose as defined above. Furthermore, there is sufficient evidence in the record that defendant was experiencing an "acute condition" that involved a decreased level of consciousness, disorientation as to time and place, and an inability to stand on his own or pull his pants up by himself.

CONCLUSION

We conclude that the trial court manifestly erred in rejecting defendant's claim of immunity from prosecution under La.R.S. 14:403.10. Defendant presented sufficient evidence that he was, in fact, experiencing a drug-related overdose and, furthermore, his condition was such that a lay person would reasonably believe he was experiencing a drug-related overdose. In addition, defendant was in need of medical assistance and was charged with possession of a controlled dangerous substance as a result of the medical assistance. Accordingly, the lower courts' rulings are reversed, and defendant's motion to quash is granted.

REVERSED.

SUPREME COURT OF LOUISIANA

No. 2022-K-00206

STATE OF LOUISIANA

VS.

QWANDARIOUS ROWE

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Washington

CRAIN, J., dissenting.

To be immune from prosecution, defendant has to prove he experienced "a drug-related overdose" and the incriminating evidence "was obtained as a result of the overdose and the need for medical assistance." La. R.S. 14:403.10B(1). The trial court did not abuse its discretion in finding defendant failed to meet this burden of proof.

"Overdose" is a medical term requiring medical evidence to prove. Technical terms must be given their technical meaning when the law involves a technical matter. La. Civ. Code art. 11; *see also* La. R.S. 1:3 ("Technical words . . . shall be construed and understood according to [their] peculiar and appropriate meaning."). The only medical evidence here is the hospital emergency room record, which does not indicate defendant suffered an overdose. To the contrary, as recognized by the majority, the hospital record confirms defendant was "standing and dancing" in the emergency room. The trial court correctly surmised defendant "was experiencing a drug related high" and "was being affected by the drugs," but the record contains "nothing to indicate [defendant] was having an overdose."

Finding otherwise, the majority relies heavily on the purpose of La. R.S. 14:403.10 to curb drug-related deaths by encouraging bystanders to seek medical assistance for someone potentially overdosing. While that purpose is admirable, it

is not advanced in the slightest by applying the statute in this case. The bystander did not seek medical assistance for anyone. He reported to a sheriff's deputy that the defendant was sitting on the floor of a public restroom with his pants around his ankles. There is no evidence the bystander said anything about a drug overdose. By all indications, the bystander wanted law enforcement to be aware of a problem in a public facility.

More importantly, even if the law's purpose was implicated, I respectfully submit the majority's interpretation of the statute disregards its language in pursuit of its purpose. The majority creates a definition not found in Section 403.10, then adds a "reasonableness component" that expands the word "overdose" to include "a condition a lay person would reasonably believe was a drug-related overdose." This eliminates the express statutory requirement of an actual "overdose." Courts are not free to rewrite laws to effect a purpose that is not otherwise expressed. *Cacamo v. Liberty Mutual Fire Ins. Co.*, 99-3479 (La. 6/30/00), 764 So. 2d 41, 44. If the legislature wants to extend Section 403.10's immunity to someone who only *appears* to have overdosed, it can do so. We should not. As currently drafted, the statute requires proof of an overdose. Defendant failed to present the necessary medical evidence to prove that element. I would affirm the lower courts.