

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: February 7, 2020)

STATE OF RHODE ISLAND

:

v.

:

C.A. No. W2-2018-0273A

:

DANIEL DISALVO

:

:

DECISION

**THUNBERG, J.** Before this Court for decision is Daniel DiSalvo’s (Defendant) motion to dismiss the criminal information against him. In the motion, Defendant argues that he is immune from prosecution for possession of controlled substances with the intent to distribute because law enforcement would not have happened upon the contraband but for Defendant’s potential overdose and need for medical assistance. The State of Rhode Island (the State) objects to Defendant’s motion. Jurisdiction is pursuant to G.L. 1956 § 8-2-15.

I

**Facts and Travel**

On December 21, 2017, Donna Maclean (Ms. Maclean) called 911 to request emergency assistance for Defendant, who was unresponsive in the basement of her residence in South Kingstown, Rhode Island. (Narrative, patrolman Christopher Sarasin, Dec. 21, 2017.) Upon arrival, South Kingstown police and emergency responders were led by Ms. Maclean to her basement where Defendant was found lying on the ground, unresponsive, but conscious. *Id.* Another individual, Jason Carlson (Mr. Carlson), was present. *Id.* Ms. Maclean and Mr. Carlson informed police and emergency responders that Defendant’s lips and face were blue, and he was unconscious before help arrived. *Id.*

Officer Sarasin of the South Kingstown Police Department questioned Defendant as to whether he had ingested any drugs. *Id.* He also advised Defendant that he would not be charged for having taken any drugs or for any drugs that were found on his person. *Id.* Defendant did not respond to Officer Sarasin's inquiry. *Id.* Defendant was transported by ambulance to South County Hospital. *Id.*

According to Officer Sarasin, upon entering the basement of Ms. Maclean's residence, he smelled a "very strong odor" of marijuana. *Id.* Moreover, he reported that he observed the following items in plain view: marijuana smoking pipes; hardened hash oil pieces; a butane torch; a small pipe with white residue; a jar filled with marijuana; a bag filled with marijuana; and a four-level stacking of marijuana leaves. *Id.*

Emergency responders suspected that carbon monoxide poisoning may have caused Defendant's condition. *Id.*; Narrative, Detective Robert F. Costantino II, Dec. 21, 2017. Therefore, the local fire department was summoned to Ms. Maclean's residence to check carbon monoxide levels. (Narrative, patrolman Sarasin.) Officer Sarasin reported that while he was escorting members of the fire department throughout the basement to check carbon monoxide levels, he observed six marijuana plants; a marijuana patient card that was issued to Defendant; and an unidentified number of infant marijuana plants. *Id.*

The South Kingstown Police Department seized eight items from the basement. (Narrative, Detective Costantino at 1.) Those items consisted of hardened hash oil pieces (a/k/a dabs or shatter) and usable marijuana. *Id.* Thereafter, the Rhode Island Department of Health tested the seized items and reported that the items were controlled substances—cannabis and tetrahydrocannabinol. *Id.*

On February 14, 2018, Officers Sarasin, Johnson, and Nappa proceeded to 17 Victory Street in South Kingstown with an arrest warrant for Defendant. (Narrative, patrolman Sarasin, Feb. 14, 2018.) Defendant was taken into custody without incident and was charged with two counts of possession: possession with intent to deliver marijuana and possession with intent to deliver tetrahydrocannabinol. *Id.*

An information was subsequently filed with this Court on July 24, 2018. On July 25, 2019, Defendant filed the instant motion, and the State filed its opposition thereto on August 23, 2019.

## II

### Standard of Review

The issue before this Court presents a matter of statutory interpretation. “When construing a statute [this Court’s] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *State v. Burke*, 811 A.2d 1158, 1167 (R.I. 2002) (internal quotations omitted). The threshold issue in matters of statutory interpretation is whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). A statute is ambiguous if it is reasonably “susceptible of more than one meaning. . .” *Town of Burrillville v. Pascoag Apartment Associates, LLC*, 950 A.2d 435, 445 (R.I. 2008) (quoting *Unistrut Corp. v. State Department of Labor and Training*, 922 A.2d 93, 98–99 (R.I. 2007)). “[W]hen the language of a statute is clear and unambiguous, [the court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996) (alteration omitted). Moreover, it is well-settled that the Rhode Island Supreme Court adheres to the canon of statutory construction, “which gives effect to all of a statute’s provisions, with no sentence, clause or word construed as unmeaning or

surplusage.” *Rhode Island Department of Mental Health, Retardation and Hospitals v. R.B.*, 549 A.2d 1028, 1030 (R.I. 1988) (citations omitted).

### III

#### Analysis

At issue here is whether the State may prosecute Defendant for possession of controlled substances with the intent to deliver despite the fact that law enforcement would not have discovered the contraband but for Defendant’s need for medical attention. The parties dispute the application of G.L. 1956 § 21-28.9-4, the Good Samaritan Overdose Prevention Act of 2016 (the Act). Their arguments turn on whether the individual who experiences an overdose may seek immunity under the Act; whether the drug or alcohol user needs to actually overdose in order for the protections of the Act to apply; and whether the Act immunizes only possession related crimes—not the crime of possession with the intent to deliver.

Defendant suggests that he is immune from prosecution for any crime related to the possession of a controlled substance because the evidence for the charges against him were gained as a result of his need for medical assistance. (Def.’s Mem. Supp. Mot. to Dismiss at 1.) Defendant argues that the plain and unambiguous language of the Act demonstrates that the person seeking immunity under the Act does not need to actually experience an overdose; and the inclusive language of the Act prevents prosecution of any crime related to the possession of controlled substances or drug paraphernalia or the operation of drug involved premises. *Id.* at 3.

The State, however, argues that the Act does not prohibit it from prosecuting Defendant for possession with intent to deliver. The State reasons that the Act only shields the “Good Samaritan” who calls for help for another person experiencing an overdose from prosecution for possession-related crimes. (State’s Mem. Opp. Mot. to Dismiss at 2.) The State further argues

that it is not foreclosed from prosecuting Defendant for possession with intent to distribute because Defendant did not actually experience an overdose. *Id.* Moreover, the State distinguishes crimes of possession from crimes of possession with intent to deliver. *Id.* at 3. In that regard, the State argues that it may prosecute Defendant because Defendant was not charged with mere unlawful possession of a controlled substance or operating a drug-involved premises—the crimes specified in the Act. *Id.* Rather, Defendant was charged with possession with intent to deliver. *Id.*

## A

### **To Whom Does the Act Provide Immunity from Prosecution?**

This Court must determine whether the Legislature intended to protect a potential overdose victim from prosecution for the crimes contemplated by § 21-28.9-4 before it can address the other issues raised by Defendant’s motion. Section 21-28.9-4, entitled “Emergency overdose care—Immunity from legal repercussions” provides that:

“(a) Any person who, in good faith, without malice and in the absence of evidence of an intent to defraud, seeks medical assistance for someone experiencing a drug or alcohol overdose or other drug- or alcohol-related medical emergency shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the seeking of medical assistance.

“(b) A person who experiences a drug or alcohol overdose or other drug- or alcohol-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for any crime related to the possession of a controlled substance or drug paraphernalia, possession or transportation of alcohol by an underage person, or the operation of a drug-involved premises, if the evidence for the charge was gained as a result of the overdose and the need for medical assistance.

“(c) The act of providing first aid or other medical assistance to someone who is experiencing a drug or alcohol overdose or other drug- or alcohol-related medical emergency may be used as a

mitigating factor in a criminal prosecution pursuant to the controlled substances act.

“(d) The immunity related to the possession of a controlled substance or drug paraphernalia, possession or transportation of alcohol by an underage person, or the operation of a drug-involved premises afforded under this section shall also extend to a violation of probation and/or parole on those grounds.”

Sections 21-28.9-4(a) and 21-28.9-4(b) specify who may not be prosecuted for the types of crimes specified. Section 21-28.9-4(a) pertains to the “Good Samaritan” or person who seeks medical assistance for another who experiences a drug or alcohol overdose or drug- or alcohol-related medical emergency. Specifically, the provision provides that “[a]ny person who . . . seeks medical assistance for someone experiencing a drug or alcohol overdose or other drug- or alcohol-related medical emergency shall not be charged or prosecuted. . . .” Section 21-28.9-4(a). Thus, so long as the person seeking medical attention for another does so, “in good faith, without malice and in the absence . . . of an intent to defraud,” he or she is shielded from being charged or prosecuted for the crimes specified in the latter part of the provision. *Id.*

Section 21-28.9-4(b) is pertinent to Defendant’s motion. The section addresses the potential criminal liability of the person who experiences “a drug or alcohol overdose or other drug- or alcohol-related medical emergency and [who] is in need of medical assistance. . . .” Section 21-28.9-4(b). Similar to the “Good Samaritan,” persons who experience an overdose or other drug- or alcohol-related medical emergency “shall not be charged or prosecuted for any crime” specified. *Id.*

This Court holds that the Act is unambiguous as to whom immunity applies. The parties concede that the language of the Act is clear and unambiguous. (Def.’s Mem. Supp. Mot. Dismiss at 2; State’s Mem. Opp. Mot. Dismiss at 2.) The State, however, argues that Defendant is not immune from prosecution for the crimes charged because he was not the Good Samaritan. (State’s

Mem. Opp. Mot. Dismiss at 2.) This argument ignores the express language of § 21-28.9-4(b). Section 21-28.9-4(b) explicitly states that “[a] person who experiences a drug or alcohol overdose or other drug- or alcohol-related medical emergency and is in need of medical assistance shall not be charged or prosecuted for any” of the specified crimes. Thus, this Court rejects the State’s argument that only the Good Samaritan is immunized from criminal liability for the crimes specified by the Act. The Legislature clearly intended for those experiencing drug- or alcohol-related medical problems to be shielded from criminal liability for certain drug- and alcohol-related crimes when such persons meet the qualifications of § 21-28.9-4(b).

## **B**

### **Does the Victim Need to Actually Experience an Overdose?**

The State further argues that Defendant does not fall under the protection of the Act because Defendant did not experience an overdose. (State’s Opp. Mot. Dismiss at 2, 3.) Section 21-28.9-4(b) requires that the individual who induced the drugs or alcohol to “experience[ ] a drug or alcohol overdose or other drug- or alcohol-related medical emergency” that requires medical assistance. The Act does not define the term “overdose.” Other courts, however, have defined the term “drug overdose” in the context of similar statutes. For example, the Court of Appeals of Georgia acknowledged that the Georgia 9-1-1 Medical Amnesty Law, § 16-13-5, defines “drug overdose” as “extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death.” *State v. Mercier*, 826 S.E.2d 422, 426 (Ga. 2019). The Fifth District of the District Court of Appeal of Florida similarly held that “overdose” means “extreme physical illness or impending death.” *See State v. Silliman*, 168 So.3d 245, 247 (Fla. App. 5th Dist. 2015).

Here, it is evident that § 21-28.9-4(b) does not require Defendant to experience an overdose to seek the immunity afforded by the Act. Section 21-28.9-4(b) explicitly states that a person who

“experiences a drug or alcohol overdose” or “other drug- or alcohol-related medical emergency” and requires medical assistance “shall not be charged or prosecuted” for any of the specified crimes. Thus, the prerequisite to immunity under the Act is that Defendant experiences an overdose or other drug- or alcohol-related medical emergency that requires medical intervention. It is clear from the record that Defendant either experienced an overdose or drug-related medical emergency.

Ms. Maclean sought assistance for Defendant because she found him in her basement blue in the face, unresponsive, and unconscious. *See Mercier*, 826 S.E.2d at 426 (holding that Georgia 9-1-1 Medical Amnesty Law immunized defendant who was found collapsed next to his car, blue/purple in the face, and with a weak pulse from prosecution for possession of controlled substances); *see also People v. Markham*, 126 N.E.3d 759, 761 (Ill. App. 3rd Dist. 2019) (holding that immunity provided by Illinois Controlled Substances Act applied to defendant charged with unlawful possession of controlled substance, who was found by his female companion “sitting in bed turning purple” and suspected of suffering from a drug overdose). Moreover, according to Officer Sarasin, he “detected a very strong odor of . . . marijuana[ ] [and] [o]n the table under the television, in plain view, [he] saw marijuana smoking pipes, hardened hash oil pieces, aka “dabs” or “shatter”, [sic] a butane torch, and a small pipe with white residue.” (Narrative, patrolman Sarasin, Dec. 21, 2017.) Officer Sarasin also reported that “[i]n searching the immediate area around [Defendant] for any possible drug he may have taken that caused his unconsciousness, the aforementioned marijuana and paraphernalia was observed.” *Id.* Further, Officer Sarasin indicated that he and the emergency responders asked Defendant if he ingested any drugs and that Defendant would not respond to those inquiries. *Id.* These circumstances demonstrate that Defendant experienced a drug-related medical emergency that required medical assistance.



The fact that emergency responders suspected that poor ventilation, coupled with high carbon monoxide levels, may have caused Defendant's state does not overcome the fact that Defendant may have been experiencing a drug-related medical emergency. There is nothing in the record that demonstrates that carbon monoxide was present in the basement, nor is there evidence showing that carbon monoxide poisoning is what caused Defendant to asphyxiate and become unconscious.

Therefore, this Court holds that § 21-28.9-4(b) requires either an overdose or drug- or alcohol-related medical emergency requiring medical intervention in order for a potential overdose victim to obtain immunity under the Act. The Act does not require that the Defendant overdose on drugs or alcohol to be shielded from criminal liability for the specified crimes.

## C

### **Is Possession of a Controlled Substance with Intent to Deliver a Crime of Possession?**

Lastly, the parties dispute whether unlawful possession of a controlled substance with the intent to distribute is a crime that falls under the scope of the Act. Defendant argues that the Act does not make a distinction between crimes of possession and possession with the intent to deliver. Thus, according to Defendant, this Court should apply the "inclusive language [of the Act which] prevents the prosecution of 'any crime related to the possession of a controlled substance or drug paraphernalia . . . or the operation of a drug involved premises.'" (Def.'s Mem. Supp. Mot. to Dismiss at 3.) The State, on the other hand, argues that may prosecute Defendant for unlawful possession with the intent to deliver because Defendant was not charged with "mere unlawful possession of a controlled substance nor has Defendant been charged related to the operation of a drug-involved premises such as maintaining or visiting a common nuisance." (State's Mem. Opp. Mot. Dismiss at 3.)

Again, the language contained in § 21-28.9-4(b) is dispositive. This section provides that qualifying individuals

“shall not be charged or prosecuted for *any crime related to the possession of a controlled substance or drug paraphernalia*, possession or transportation of alcohol by an underage person, or the operation of a drug-involved premises, if the evidence . . . was gained as a result of the overdose and the need for medical assistance.”

Section 21-28.9-4(b) (emphasis added). The outcome of this dispute turns on whether the crime of unlawful possession of a controlled substance with the intent to distribute is a crime “related to the possession of a controlled substance.” *Id.* Clearly, it is. An individual must possess the controlled substances with which he or she intends to distribute in order to be guilty of possession with the intent to deliver. Moreover, the unambiguous language of § 21-28.9-4(b) establishes that the Legislature intended that the individual who overdoses or experiences a drug- or alcohol-related medical emergency receive immunity for “*any crime related to the possession of a controlled substance or drug paraphernalia. . . .*” Section 21-28.9-4(b) (emphasis added). The Legislature chose to use the words “any crime related to the possession of a controlled substance” to delineate the crimes that would fall under the umbrella of protection afforded by the Act. The Legislature could have carved out crimes related to the delivery or distribution of controlled substances; however, as demonstrated by the existing statute, it did not. *Contra Commonwealth v. Bredbenner*, No. 757 MDA 2017, 2018 WL 1386781, at \*3 (Super. Ct. Pa. 2018) (discussing Pennsylvania’s Drug Overdose Response Immunity statute and holding that defendant did not qualify for immunity thereunder for possession with the intent to deliver because “the Act expressly . . . prohibits the interfering with or preventing the investigation, arrest, charging or prosecution of a person for PWID”). Thus, the Act does prohibit the State from charging or

prosecuting Defendant for possession of marijuana with the intent to deliver and possession of tetrahydrocannabinol with the intent to deliver.

#### **IV**

#### **Conclusion**

Defendant's motion to dismiss the information is granted. Counsel shall submit the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

---

**TITLE OF CASE:** State of Rhode Island v. Daniel DiSalvo

**CASE NO:** W2-2018-0273A

**COURT:** Washington County Superior Court

**DATE DECISION FILED:** February 7, 2020

**JUSTICE/MAGISTRATE:** Thunberg, J.

**ATTORNEYS:**

**For Plaintiff:** Andrew M. Pettit, Esq.

**For Defendant:** Matthew T. Marin, Esq.