

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T21-0023
	:	21001518383
NICHOLAS LOPES	:	

DECISION

PER CURIAM: Before this Panel on April 27, 2022—Magistrate DiChiro (Chair), Chief Magistrate DiSandro, and Magistrate Goulart, sitting—is the appeal of Nicholas Lopes (Appellant) from a decision of Judge Almeida, sustaining the charged violation of G.L. 1956 § 31-18-17, “Pedestrians on Freeways[.]” Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. Appellant was represented by counsel before this Panel. For the reasons set forth in this Decision, Appellant’s appeal is denied.

I

Facts and Travel

On May 19, 2021, Trooper Dimitrius Palmer (Trooper Palmer) of the Rhode Island State Police charged Appellant with G.L. 1956 § 31-21-1, “Stopping on Traveled Portion of Open Highways[.]” and G.L. 1956 § 31-18-17, “Pedestrians on Freeways[.]” *See* Summons No. 21001518383. Appellant contested the charges, and the matter proceeded to trial on October 18, 2021.

At trial, Trooper Palmer testified that on May 19, 2021, the Lincoln Woods Barracks received several telephone calls reporting that a pedestrian had been struck by a motor vehicle on Route 95 North near Lonsdale Avenue in Pawtucket. (Tr. at 1.) Trooper Palmer and several other

officers reported to the scene of the incident. *Id.* at 3. The officers interviewed several witnesses at the scene of the incident. *Id.* at 3. Trooper Palmer said that the witnesses reported that prior to being struck by a vehicle, Appellant had been running across traffic. *Id.* While at the scene of the incident, Trooper Palmer also encountered Appellant, who was on the ground waiting for the ambulance to bring over a stretcher. *Id.* at 1, 4. Appellant was conscious, alert, and had sustained non-incapacitating injuries to his leg. *Id.* at 1, 3.

While he was waiting for the ambulance, Appellant explained to Trooper Palmer the circumstances that led to the incident. *Id.* at 4. At trial, Trooper Palmer explained that Appellant was operating a blue Yamaha GSXR motorcycle in the far left-hand lane of Route 95 North when his motorcycle seat became dislodged and traveled across the middle lane, into the right-hand lane of Route 95 North. *Id.* at 1, 4-5. Despite not having a seat on his motorcycle, Appellant managed to safely exit the highway at the exit near Lonsdale Avenue. *Id.* at 5. However, Appellant felt that retrieving his motorcycle seat was a priority. *Id.* at 4, 12. In order to retrieve the motorcycle seat, Appellant drove his seatless motorcycle onto Route 95 South, the opposite side of the highway from where the seat was, and parked his motorcycle on the left shoulder, next to the far left-hand lane. *Id.* at 5-6. Trooper Palmer testified that Appellant maneuvered himself over the concrete median that separates Route 95 South from Route 95 North, and then Appellant ran across the three lanes of travel on Route 95 North. *Id.* at 2, 5. Appellant picked up his motorcycle seat and attempted to travel back to his motorcycle that was parked on Route 95 South. *Id.* at 2. On Appellant's walk back to his motorcycle, Appellant was struck by a gray Toyota Corolla. *Id.* at 3. Trooper Palmer also testified that he had the opportunity to speak with the operator of the Toyota Corolla at the scene, and that the operator was not driving in a reckless manner. *Id.* at 4.

Next at trial, Appellant's counsel moved to dismiss the charged violation of § 31-21-1, "Stopping on Traveled Portion of Open Highways[,]" because Appellant stopped his motorcycle on the left shoulder of Route 95 South, and not in an open lane of travel. *Id.* at 5-8. Appellant's counsel stated that Appellant "leaving [his motorcycle] on the shoulder [was] practical in the situation[,]" and the Trial Judge responded, "none of this is practical." *Id.* at 8. The Trial Judge further noted that Appellant risked his life on both sides of the highway, and that the entire situation was "[n]ot what somebody driving would expect. Seeing anyone cross the highway for any reason." *Id.*

Appellant's counsel also argued that § 31-18-17 contains an exception providing that a pedestrian would not be charged with violating § 31-18-17 when crossing the freeway in an emergency. *Id.* Appellant's counsel argued that Appellant's situation met the definition of emergency in the statute. *Id.* The Trial Judge said that the phrase "or an emergency" in the statute was up for definition. *Id.* at 8. In addition, the Trial Judge stated that the term "covers like a variety of things I guess that [the legislature] would imagine [could cause] someone [to] cross the highway. So that's just very subjective isn't it. An emergency." *Id.* at 9. With regard to the definition of "emergency," the Trial Judge also stated that the term "emergency" likely meant "a very good reason. An accident, or to render aid to someone." *Id.* at 8.

Appellant was next to speak at trial. *Id.* Appellant provided an account of what had transpired on the date of the incident that was similar to the account Trooper Palmer testified that Appellant had provided at the scene. *Id.* at 10. However, Appellant said that his bike seat was in the middle lane of Route 95 North rather than the far right-hand lane. *Id.* at 10-11. Appellant testified that he picked up the bike seat in the middle lane and guessed that he was struck in the

left lane but stated that he was not certain he was struck in that lane.¹ *Id.* at 11. When the Trial Judge asked Appellant to confirm that he had been struck in the left-hand lane of Route 95 North, Appellant responded, “I’m assuming. . . it must’ve been that lane[.]” *Id.* Appellant later confirmed that he was struck when traveling between the middle lane and the concrete median, in the left-hand lane of travel on Route 95 North.

Ultimately, the Trial Judge dismissed the charged violation of § 31-21-1, “Stopping on Traveled Portion of Open Highways[.]” and sustained the charged violation of § 31-18-17, “Pedestrians on Freeways[.]” *Id.* at 14-15. The Trial Judge decided that the State did not prove a violation of § 31-21-1 by clear and convincing evidence because Trooper Palmer had testified that Appellant stopped his motorcycle on the shoulder of Route 95 South, rather than in an open lane of travel. *Id.* at 14. However, the Trial Judge sustained the charged violation of § 31-18-17. The Trial Judge found that Appellant’s desire to retrieve his seat did not meet the definition of “emergency” because a motorcycle seat is replaceable. *Id.* at 16. Further, the Trial Judge repeatedly expressed concern that Appellant had put himself in an incredibly dangerous situation by crossing multiple lanes of the highway. *Id.* at 14-16. Appellant agreed with the Trial Judge that he made a poor judgment call by running into the highway and stated, “[i]t was a bad decision.” *Id.* at 15-16. The Trial Magistrate imposed a \$100 fine plus court costs. *Id.* at 16-17. Appellant timely filed the instant appeal.

¹ Appellant testified, “I grabbed the seat and then um when I looked up I went like this because um [I’]m guessing that it had to be from the speed lane or I mean I don’t know I cant I cant you know c[a]us[e] I got caught blind.” *Id.*

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error

of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, the Appeals Panel must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant argues that that the Trial Magistrate erred by sustaining the charged violation of § 31-18-17, “Pedestrians on Freeways[.]” *See* Notice of Appeal. Specifically, Appellant argues that § 31-18-17 contains an exception for emergency situations, and Appellant contends that his situation was an emergency. *See id.* Appellant also argues that the Trial Judge stated that the term “emergency” under this statute refers to subjective emergencies, and so as long as Appellant believed his situation was an emergency, he did not violate the statute. *See id.*

Section 31-18-17 provides:

“Any pedestrian who shall cross any freeway as defined by § 24-10-1, except in an emergency or to render assistance in case of an accident or unforeseen cause, shall be deemed to be guilty of a civil violation.” Sec. 31-18-17.

Although the legislature did not define the term “emergency” in this statute, the Rhode Island Supreme Court has stated that “when . . . a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary.” *Planned Environments Management Corp. v. Robert*, 966 A.2d 117, 123 (R.I. 2009); *see also* 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction*, § 47.28 (7th ed. 2007) (“Absent a statutory definition . . . dictionaries can provide a useful starting point to determine a term’s meaning[.]”). Merriam-Webster defines “emergency” as “an unforeseen combination of circumstances or the resulting state that calls for immediate action[.]” *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/emergency> (last visited June 14, 2022).

Based on the dictionary definition of “emergency[.]” this Panel agrees with the Trial Judge that the retrieval of Appellant’s motorcycle seat was not an “emergency” within the meaning of the statute. Although Appellant’s motorcycle seat becoming dislodged and traveling to the far right lane of the highway may have been “an unforeseen combination of circumstances[.]” the situation did not “call for [the] immediate action” of running across three lanes of Route 95 to recover the seat. *See id.* Any “emergency” in this matter ended when Appellant exited the highway, because at that point, Appellant had reached a point of safety.

This Panel can also look to other related areas of law to determine the definition of “emergency” in this statute. Our Supreme Court follows the rule of statutory construction that interprets statutes relating to the same or similar subject matter such that they will harmonize with each other and be consistent in their general objective. *See Blanchette v. Stone*, 591 A.2d 785, 786 (R.I. 1991). “[Courts] end the process of statutory construction upon concluding that a statute has a plain meaning because ‘our ultimate goal is to give effect to the General Assembly’s intent,’ and [the Rhode Island Supreme Court has] repeatedly observed that the plain language of a statute is the ‘best indicator of [legislative] intent.’” *State v. Diamante*, 83 A.3d 546, 550 (R.I. 2014) (quoting *Olamuyiwa v. Zebra Atlantek, Inc.*, 45 A.3d 527, 534 (R.I.2012)).

In the negligence context, the “sudden emergency doctrine” is a rule of reason “which recognizes that individuals confronted with sudden and unexpected events demanding immediate action cannot be held to the same standard of care required of one in no such predicament.” *Roth v. Hoxsie’s Arco Serv., Inc.*, 121 R.I. 428, 432, 399 A.2d 1226, 1228 (1979). The Rhode Island Supreme Court has held that the sudden emergency doctrine is inapplicable when the alleged emergency situation lacked spontaneity. *Markham v. Cross Transp., Inc.*, 119 R.I. 213, 226, 376 A.2d 1359, 1366 (1977). Additionally, the Supreme Court has found that the sudden emergency

doctrine “is unavailable when the emergency is created by the actor’s own negligence” *Mercurio v. Fascitelli*, 116 R. I. 237, 241, 354 A.2d 736, 739 (1976).

Not only did Appellant’s missing motorcycle seat lack the urgency or spontaneity that is typically present in “emergency” situations, but Appellant also created an emergency situation by crossing the freeway on foot. The record is devoid of any indication that there was an immediate need for Appellant to retrieve his motorcycle seat out of the road. Once Appellant was able to navigate his seatless motorcycle off the highway, Appellant should have called the police to assist him in retrieving the motorcycle seat. Instead, Appellant navigated his seatless motorcycle off Route 95 North and onto Route 95 South, wherein Appellant parked his motorcycle on the left shoulder, hopped over the highway meridian, traveled across two or three lanes of the highway, bent down to grab his motorcycle seat, and then attempted to travel back across two or three lanes of Route 95. This Panel is satisfied that Appellant’s desire to retrieve his motorcycle seat did not constitute an emergency within the meaning of the statute. In fact, the only emergency Appellant faced was the emergency he created himself by running across a highway. The sudden emergency doctrine would not be available to Appellant in the negligence context, and so the emergency exception contained in § 31-18-17 should not be available to excuse Appellant for the violation. *See Markham*, 119 R.I. at 226, 376 A.2d at 1366; *Mercurio*, 116 R. I. at 241, 354 A.2d at 739.

Lastly, Appellant’s contention that the term “emergency” is subjective is misguided. At trial, the Trial Judge stated that the phrase “or an emergency” in the statute was up for definition. (Tr. at 8.) She stated that the term “covers like a variety of things I guess that [the legislature] would imagine [could cause] someone [to] cross the highway. So that’s just very subjective isn’t it. An emergency.” *Id.* at 9. From the Trial Judge’s statement, it appears that she was simply

pointing out that the term “emergency” was not officially defined in § 31-18-17. As this Panel stated above, the need for Appellant to retrieve his motorcycle seat was not an emergency.

IV

Conclusion

This Panel has reviewed the entire record of this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate’s decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Michael DiChiro (Chair)

Chief Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____