STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Anna Kyriakides	:	
	:	
v.	:	**A.A. No. 2018 – 141**
	:	
State of Rhode Island	:	
(RITT Appeals Panel)	:	

O R D E R

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record, the Court finds that the Findings and Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto. It is, therefore,

ORDERED, ADJUDGED AND DECREED

that the Findings and Recommendations of the Magistrate are adopted by reference as the decision of the Court and the decision rendered by the Appeals Panel in this case is hereby REVERSED.

Entered as an Order of this Court at Providence on this 29th day of July, 2019.

By Order:

/s/
Stephen C. Waluk

Enter:

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. **DISTRICT COURT**
SIXTH DIVISION

Anna Kyriakides	:	
	:	**A.A. No. 2018 – 141**
v.	:	**(C.A. No. T18-001)**
	:	**(17-001-530963)**
State of Rhode Island	:	
(RITT Appeals Panel)	:	

F I N D I N G S & R E C O M M E N D A T I O N S

Ippolito, M. The death in 2010 of Colin B. Foote, a young Charlestown man who was killed when his motorcycle was hit by a vehicle operated by a motorist with a history of traffic offenses, inspired the General Assembly to enact the Colin B. Foote Act — which provides that enhanced penalties may be imposed upon motorists who are convicted of four moving violations within an eighteen-month period.[1] In this appeal, Ms. Anna Kyriakides urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial judge's decision to impose an enhanced sentence under that law in conjunction with her entry of a guilty plea to a

[1] *See* P.L. 2010, ch. 242, § 1 and P.L. 2010, ch. 253, § 1 for the designation of the name of the Act. It is codified within the Motor Vehicle Code, without reference to Mr. Foote, at G.L. 1956 § 31-27-24.

charge of speeding — "Prima facie limits," in violation of G.L. 1956 § 31-14-2. Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1. After a review of the entire record and the arguments made by both parties, I have concluded that Ms. Kyriakides' assertions of error are well-founded. I therefore recommend that the decision rendered by the appeals panel in this case be REVERSED.

I
Facts and Travel of the Case

The following synopsis of the events leading to and following from the issuance of the instant citation to Ms. Kyriakides will suffice for the purposes of this opinion —

A
The Issuance of the Citation

On November 7, 2017, in the Town of East Greenwich, Trooper Jean Tondre of the Division of State Police issued a speeding citation to Ms. Kyriakides. *Decision of Appeals Panel,* at 1 (*citing* Summons No. 17-001-530963, which may be found in the electronic record attached to this case, at 37). Appellant pled not guilty at her arraignment and the matter was reassigned for trial to January 25, 2018. *Id*. (*citing Plea Transcript,* at 2).

B

The Plea

On January 25th, before the trial commenced, the parties informed the Court that they had reached an agreement, under which Ms. Kyriakides would plead guilty to a charge of driving ten miles per hour faster than the speed limit. *Decision of Appeals Panel,* at 1 (*citing Plea Transcript*, at 2). The Trial Calendar Judge then, *sua sponte,* raised the issue of the motorist's exposure to enhanced penalties under the Colin B. Foote Act. *Id*. (*citing Transcript,* at 2-3). The Court indicated that, according to the record before her, Ms. Kyriakides had three convictions since May 18, 2016. *Decision of Appeals Panel,* at 1 (*citing Transcript,* at 3). The Judge explained that she arrived at this determination by calculating the eighteen-month (Colin Foote) period from the date the first offense was committed (*not* adjudicated) to the date the fourth offense was committed (*not* adjudicated). *Id*. at 1-2 (*citing Transcript,* at 3).

Through counsel, Ms. Kyriakides protested, stating that the Colin Foote period ran from the date he was first *convicted*, not from the date the first offense was *committed*. *Id*. at 2 (*citing Transcript,* at 7). In support of her position, Appellant cited *State of Rhode Island v. Jacob Botella,* a decision rendered by this Court in 2012. *Id*. She added that the Foote period

would end on the date she was convicted of the civil violation then pending before the Court — *i.e.,* that very day, January 25, 2018. *Id*.

But the Court rejected these arguments, declaring that if Appellant's position was accepted, "… those who pled guilty at arraignment and those who go to trial would be treated differently …." *Decision of Appeals Panel,* at 2 (*citing Transcript,* at 7). Reiterating that the Colin Foote period runs from the date the first violation was issued the date the violation before the Court was committed. *Id*. (*citing Transcript,* at 9). Applying this principle, the Court found that, since the instant citation was issued on November 7, 2018, which was within eighteen months from the date of the first ticket was issued, Ms. Kyriakides was subject to the enhanced penalties prescribed under the Colin B. Foote Act. *Decision of Appeals Panel,* at 2 (*citing Transcript,* at 9). Thereafter, it was agreed that Ms. Kyriakides would appeal solely on the issue of the applicability of the Colin B. Foote Act to her situation, which she did in a timely manner. *Id*.

C

Proceedings Before the Appeals Panel and its Decision

On March 14, 2018, Ms. Kyriakides' appeal was heard by a Traffic Tribunal Appeals Panel composed of Chief Magistrate DiSandro (Chair), Judge Parker, and Magistrate Abbate. *Decision of Appeals Panel,* at 1. In its written decision, issued on August 3, 2018, the Panel addressed Appellant's

assertion that the Trial Judge erred by calculating the Colin B. Foote Act period by using the dates of offense instead of the dates of conviction. *Decision of Appeals Panel,* at 4-5.

The Panel began its analysis by quoting at length from the Act, which provides in pertinent part:

> *Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period* may be fined up to one thousand dollars ($1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years. …

Section 31-27-24(a) (Emphasis added). Next, the Panel made reference to this Court's opinion in *State of Rhode Island v. Jacob Botella,* A.A. No. 2012-046 (Dist.Ct. 06/19/2012), in which we held that "the opening date — for purposes of calculating the [ ] Colin Foote Law window — [is] in fact the date of [the] first conviction and not the date of the first citation, *i.e.,* the date of offense." *Decision of Appeals Panel,* at 4-5 (*quoting Botella, ante*, slip op. at 7). The Panel noted that although we did not reach the correlative issue of whether the *closure* date of the enhancement period would be calculated by using the new (*i.e.,* fourth) charge's date of offense or its date of conviction, though we did observe that, in a criminal setting, the close of the

enhancement period is customarily fixed on the new charge's date of offense. *Id*. at 5 (*citing Botella, ante*, slip op. at 7, n.7).[2]

At this juncture, the Appeals Panel set out the dates of Ms. Kyriakides' first (pertinent) offense. *Decision of Appeals Panel,* at 5. The Panel then held, following *Botella*, that the eighteen-month period begins on the date of the first conviction. *Id*. This done, the Panel then tackled the second issue presented— *i.e.,* when does the Colin Foote period end?

The Appeals Panel began its analysis of this second question by observing that, *under the plain language of § 31-27-24*, "a motorist must receive four convictions within an eighteen-month period." *Id*. But, following our comment in *Botella,* the Panel found that, in order for Foote penalties to be imposed, the fourth offense must be *committed* within eighteen months from the date of the first conviction. *Id*. The Panel expressed particular agreement with the trial judge's comment that if the date of conviction is used, motorists would be given the opportunity to avoid enhanced penalties by delaying the adjudication of their cases until after the expiration of the eighteen-month period. *Id*. And so, the Panel held that, since the date of the commission of her fourth offense was within an eighteen-month period *after*

---

[2] Although this statement is as true today as it was when *Botella* was decided, its inclusion in our opinion is to be regretted if it in any way dissuaded the Panel from undertaking the plain-language analysis I now believe to be appropriate to the resolution of this question.

the date of her first conviction, Ms. Kyriakides was indeed subject to the imposition of enhanced penalties. *Id*. Accordingly, the Panel affirmed the sentence which had been imposed. *Id*. at 6.

D

Proceedings Before the District Court

On August 8, 2018, Ms. Kyriakides filed a further appeal to the Sixth Division District Court, pursuant to G.L. 1956 § 31-41.1-9. A briefing schedule was set on September 18, 2018; since then, memoranda have been received from Appellant and the Attorney General.

1

Initial Memorandum Submitted by Appellant Kyriakides

Ms. Kyriakides presented an initial memorandum on September 17, 2018, the day *before* the conference in this case was conducted. In that first memorandum, Ms. Kyriakides argued that the language of § 31-27-24(a), is perfectly clear and unambiguous; accordingly, this Court is bound to interpret the statute literally and give the words of the statute their plain and ordinary meaning. *Appellant's Memorandum* (September 17, 2018), at 2 (*citing State v. Bryant,* 670 A.2d 776, 779 (R.I. 1996)). Appellant urged that the Appeals Panel failed to do this when it held that the eighteen-month Colin Foote enhancement period ends on the date the fourth violation is committed. *Id*.

Appellant also argued, in the alternative, that if the Court finds that the Act is *not* unambiguous, it should be construed by invocation of the rule of lenity, which provides that, if a criminal statute is ambiguous, the Court must adopt the least harsh of the possible meanings. *Appellant's Memorandum* (September 17, 2018), at 2 (*citing State v. Anthony,* 422 A.2d 821, 925 (R.I.1980)). Appellant also invoked the maxim that "penal statutes must be construed in favor of the party upon whom a penalty is to be imposed." *Id*. (*citing Bryant,* 670 A.2d at 779 (*quoting State v. Calise,* 478 A.2d 198, 200 (R.I. 1984); *Eaton v. Sealol, Inc.,* 447 A.2d 1147, 1148 (R.I. 1982))). By application of these doctrines, Appellant demanded reversal of the Panel's decision. *Id*. at 3.

2

Second Memorandum Submitted by Appellant Kyriakides

After a briefing schedule was set on September 18, 2018, Appellant was offered the opportunity to file a second memorandum, and she did so on October 18, 2018. To my reading, her second memorandum was a more expansive version of the first, making the same points in a more leisurely manner.

3

The Memorandum of the Appellee/State of Rhode Island

The Appellee/State of Rhode Island began its Memorandum by

noting that our Supreme Court has declared two fundamental principles of statutory construction: first, where the language of a statute is unambiguous, all discussion about its proper construction must stop, and the Court is required to give the words of the statute their plain and ordinary meaning. *Appellee's Memorandum,* at 1-2 (*citing Chambers v. Ormiston,* 935 A.2d 956 (R.I. 2007)). On the other hand, "… if a statute is ambiguous, we must engage in a more elaborate statutory construction process, in which process we very frequently employ the canons of statutory construction." *Id.* at 2 (*quoting Chambers,* 935 A.2d at 960).

Then, after quoting § 31-27-24(a) in its entirety, the State asserted that the statute was indeed ambiguous, since it is "susceptible of more than one reasonable meaning." *Id.* (*quoting State v. Maxie,* 187 A.3d 330, 339 (R.I. 2018) (*quoting Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of Rhode Island,* 31 A.3d 1263, 1269 (R.I. 2011))). Specifically, the State urged that ambiguity arises because:

> If one reads RIGL 31-27-24, one may reasonably think that the time period applied to the commission of four moving violations on separate and distinct occasions within an eighteen-month period, not that the convictions must come within an eighteen-month period. However, Appellant is arguing that the statute reads that the convictions must come on four separate and distinct occasions within an eighteen-month period pursuant to the statute. This would make the statute ambiguous and requiring further evaluation.

Id. at 2-3. Then, having asserted that the Act is ambiguous, the State urges a particular construction of the Act.

The State expressed its agreement with the Panel's construction of the Act, insofar as it ruled that the *starting point* for the eighteen-month period is the date of the first *conviction*. *Appellee's Memorandum,* at 3. Next, the State addressed the precise issue in contention: when is the eighteen-month Colin Foote look-back period triggered — on the day the fourth offense is committed or on the date when the fourth offense is adjudicated to conviction? The State urges that the clear legislative intent of the Act is to protect the public from those who would put them at risk on the highways and, in order to accomplish this goal, the end point of the eighteen-month period must be deemed to be the date of offense. *Id*. at 4. Otherwise, the State warns, the eighteen-month period would be effectively shortened sixteen or seventeen months, because of the delay inherent in noticing the motorist to appear for his or her arraignment in the Traffic Tribunal or the authorized Municipal Court. *Id*. The State also argues that an end-date based on the date of conviction would, in addition, encourage motorists facing enhanced penalties under the Act to delay the adjudication of their citations for as long as possible. *Id* at 4-5. This, the State argues, would create a disparity in the treatment of similarly-placed individuals, which, it

implies, would be an offensive state of affairs. *Id.* at 4-5.

II

Standard of Review

The standard of review which this Court must employ is enumerated in G.L. 1956 § 31-41.1.-9(d), which provides as follows:

> (d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or 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 appeals panel's findings, inferences, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the appeals panel;
> (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.

This standard is akin to the standard of review found in G.L.1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, the District Court "* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" *Guarino v. Dep't of Social Welfare,* 122 R.I. 583, 584, 410 A.2d 425 (1980) (citing Gen. Laws

1956 § 42-35-15(g)(5)). Thus, the Court will not substitute its judgment for that of the appeals panel as to the weight of the evidence on questions of fact. *See Link v. State,* 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Ins. Co. v. Janes,* 586 A.2d 536, 537 (R.I. 1991) (decision rendered during existence of Administrative Adjudication Division[AAD]). And so, except in the case where the panel's decision is affected by error of law, the decision of the panel must be affirmed as long as it is supported by legally competent evidence. *Link,* 633 A.2d at 1348 (citing *Environ. Scientific Corp. v. Durfee,* 621 A.2d 200, 208 (R.I. 1993)).

III
APPLICABLE LAW
A
The Colin B. Foote Act

Given that Appellant Kyriakides does not challenge her adjudication on the charge of speeding under § 31-14-2 of the Motor Vehicle Code, the only statute at issue is the Colin B. Foote Act, the heart of which is found in subsection 31-27-24(a), which states in its entirety:

> **31-27-24. Multiple moving offenses.** — (a) Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars ($1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or

> revoked by the court for a period of up to two (2) years. Prior to the suspension or revocation of a person's license to operate within the state, the court shall make specific findings of fact and determine if the person's continued operation of a motor vehicle would pose a substantial traffic safety hazard.

B

Statutory Construction — The Plain Language of the Statute

As stated and reiterated *ante,* the parties have joined issue on the interpretation to be given to the Colin B. Foote Act. And so, in order to resolve the instant case, we must not only be conversant with the Act itself, but also with pertinent principles and canons of statutory construction. Luckily, the parties to the instant case agree that the resolution of the instant case hinges on the applicability of the so-called "plain-meaning rule" of statutory construction. *See generally,* 2A N. SINGER AND S. SINGER, SUTHERLAND STATUTORY CONSTRUCTION, § 46:1, *The Plain Meaning Rule* (7th ed., Nov. 2017 Update).

For a fairly recent (and splendidly concise) statement of our Supreme Court's teaching regarding the plain meaning rule, we may turn to its 2012 decision in *Arnold v. Department of Labor and Training Board of Review,* 822 A.2d at 168-69, in which the Court declared:

> The resolution of this appeal depends upon questions of statutory interpretation. "When construing a statute 'our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.' " *Oliveira v. Lombardi,* 794

> A.2d 453, 457 (R.I. 2002) (quoting *Webster v. Perrotta,* 774 A.2d 68, 75 (R.I. 2001)). This Court must literally interpret a clear and unambiguous statute and attribute the plain and ordinary meanings to its words. *Solas v. Emergency Hiring Council of Rhode Island,* 774 A.2d 820, 824 (R.I. 2001). When examining an unambiguous statute, "there is no room for statutory construction and we must apply the statute as written." *Id*. (quoting *State v. DiCicco,* 707 A.2d 251, 253 (R.I. 1998)). We ascertain the Legislature's intention behind an ambiguous statute by considering "the entire statute, keeping in mind its nature, object, language and arrangement." *LaPlante v. Honda North America, Inc.,* 697 A.2d 625, 628 (R.I. 1997) (quoting *Algiere v. Fox,* 122 R.I. 55, 58, 404 A.2d 72, 74 (1979)). Although this Court is the ultimate arbiter of law, we give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized. *See In re Lallo,* 768 A.2d 921, 926 (R.I. 2001). Our ultimate interpretation of an ambiguous statute, however, is grounded in policy considerations and we will not apply a statute in a manner that will defeat its underlying purpose. *See Pier House Inn, Inc. v. 421 Corporation,* 812 A.2d 799, 804 (R.I.2002).

While we could highlight every line of this quotation, there are, in my view, three essential elements that we may glean as guidance in obtaining an understanding of the rule — (1) if the language of a statute is clear and unambiguous, (2) it is the best indicator of the legislative intent, and, in such situations, (3) the words of the statute must be given their plain and ordinary meaning.

In addition, there is a corollary to the plain-meaning rule which directs that, when construing statutes, our judges "must give effect to each and every word used in the statute." *Tarzia v. State,* 44 A.3d 1245, 1253-54 (R.I. 2012) (*citing State v. Clark,* 974 A.2d 558, 571 (R.I.2009) (*citing State v. Bryant,* 670 A.2d 776, 779 (R.I. 1996))). *See also* 2A N. SINGER & S. SINGER, § 46.6., *Each Word Given Effect* (7th ed., Nov. 2017 Update).

IV
Analysis

We now turn to the precise issue of law which is presented in the instant appeal: how should the judicial officers of the Traffic Tribunal properly determine the end-date of the eighteen-month look-back period in the Colin B. Foote Act — by the date of the new offense or by the date the Defendant was convicted of that offense?

A

As always, we would welcome an easy solution to this problem. Perhaps we could find one by examining decisions within which our Supreme Court has interpreted Rhode Island's other enhanced penalty statutes, of which there are a fair number.[3] Unfortunately, most of these

[3] Some of these enhanced penalty provisions mandate prison sentences for those who commit certain misdemeanor offenses a second time. *E.g.* G.L. 1956 § 31-27-2(d)(2) (Driving While Under the Influence) *and* G.L. 1956 § 12-29-5(c)(1)(i) (Domestic Violence). Others make second or third convictions a felony.

statutes are inapposite, because they do not have a look-back period — as the Colin B. Foote Act does. And, with regard to the few that do include such elements, such as our drunk-driving law, the Rhode Island Supreme Court has not had the occasion to rule on this issue.

As a result, we must work through this issue without the benefit of much in the way of direction, short cut or helping hand, following the approach to statutory interpretation presented *ante* in the quotation from *Arnold*, *ante,* at 13-14. In doing so, we begin from the premise that our goal is to ascertain the intent of the legislature when it fashioned § 31-27-24(a) in the manner which it did. As a result, we must determine whether the statute is clear and unambiguous; for, if it is, it must be interpreted literally, giving each word its plain and ordinary meaning.

E.g. § 31-27-2(d)(3) (DUI), § 12-29-5(c)(1)(ii) (Domestic Violence), *and* G.L. 1956 11-41-20 (Shoplifting, where the goods taken are valued at more than $100.00). Recidivist provisions in our Controlled Substances Act double the penalties for second and third-time offenders. *See* G.L. 1956 §§ 21-28-4.11 (Second Offenses) *and* 21-28-4.14 (Third Offenses). Concededly, the foregoing is not an exhaustive taxonomy of the enhanced penalty provisions which are applicable in criminal cases, but only a sample of the most frequently used.

Moreover, enhanced penalty provisions are not limited to criminal offenses; the offense of refusal to submit to a chemical test, which is a civil violation in the first instance, becomes a misdemeanor for a second offense. *See* G.L. 1956 § 31-27-2.1(b)(2).

Finally, we should note that the Colin B. Foote Act, which is our repeat-offenders sentence-enhancement provision in the Motor Vehicle Code, has an analog within the Criminal Code. G.L. 1956 § 12-19-21 is our habitual offender statute for repeat felony offenders.

B

The enhanced penalties enumerated in § 31-27-24(a) are imposed upon "[e]very person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period[.]" With regard to the issue before us,[4] and for the reasons I shall now enumerate, I find that there is no ambiguity in § 31-27-24(a).[5]

The subject of the quoted phrase is, in the first instance, extremely broad — as broad as it can be; it is all persons, all humanity. And then this vast group is limited by the verb "convicted." Convicted of what? Moving violations, which are non-criminal breaches of the motor vehicle code. How many times? Four times; to be precise, four *separate* times. Within what

---

[4] The Rhode Island Supreme Court declared the term "occasion" ambiguous during its interpretation of § 12-19-21. It held, based upon the legislative purpose of the statute, that the phrase "sentenced on two or more occasions" required proof that the predicate felony convictions occurred *sequentially*. *See State v. Smith,* 766 A.2d 913, 924 (R.I. 2001).

Accordingly, and contrary to the argument put forward by the State, the issue cannot create an ambiguity in § 31-27-24(a) for two reasons. *See Appellee's Memorandum,* at 2-3. First, the Supreme Court has settled its meaning in *Smith*; and second, the meaning of the phrase "on four (4) separate and distinct occasions" is not at issue in this case. The issue here is strictly one of *timing*.

[5] The Appeals Panel expressed agreement with this finding when it stated – "Moreover, this panel finds that the plain and unambiguous language of § 31-27-24 is clear that a motorist must receive four convictions with an eighteen month period. *See* § 31-27-24." *Decision of Appeals Panel,* at 5.

period? Eighteen months. Therefore, by examining the text, we observe no ambiguity.[6]

And so, we are commanded to give each word of the statute its plain and ordinary meaning. Doing so, I conclude that the motorist's four *convictions* must fall within the eighteen-month period specified in the Colin Foote Act in order to trigger its enhanced penalties.[7]

---

[6] I would note at this juncture a learned decision of the Superior Court, *State v. Jeffrey Leonard,* K2-2017-0745A (Super.Ct. 3/16/2018) (Procaccini, J.), which interpreted G.L. 1956 § 31-27-2(d)(3)(i), which provides, in pertinent part, that "[e]very person convicted of a third or subject violation within a five-year (5) period … shall be guilty of a felony…." In *Leonard,* the Court determined that the statute was ambiguous, as it was not clear whether the five-year limitation referenced the term "convicted" or the word "violation." *Leonard,* slip op. at 5. Then, invoking the rule of lenity, the Court held that the enhanced penalties for a third drunk driving charge may only be imposed if all three *convictions* occurred within the statutory period. *Leonard,* slip op. at 5-6. Expressing no opinion on the Court's decision, I must concede that the argument for ambiguity is stronger with regard to ¶ 31-27-2(d)(3)(i) than it is for § 31-27-24(a).

In the Colin B. Foote Act, the term *violation* is used as part of the compound term "moving violation." It serves the function of defining the category of offense which triggers the invocation of the law. It has a technical meaning. On the other hand, in the DUI statute, the term "violation" serves no defining function, since it is clear that we are talking only about DUI charges. There is no ambiguity to be resolved. The term is used almost generically, in the sense of a further instance or occurrence. And so, since every word in a statute is presumed to carry a meaning, the use of the term violation in ¶ 31-27-2(d)(3)(i) can be said to create ambiguity.

[7] Of course, a finding that § 31-27-24 was ambiguous would not have required, *ipso facto,* a ruling in the State's favor — *i.e.,* that it is the date of offense (of the most recent citation) which triggers the look-back period. The Court would have been required to decide whether the State's argument (that the State's interest in punishing repeat traffic offenses to the greatest extent possible) should prevail over the Defendant's position (that the rule of lenity

C

Now, this result does not comport with the general practice throughout the nation in criminal cases — *viz.,* that the enhancement period is measured from the date of the first conviction to the date the final offense was committed. *See* 24 C.J.S., *Criminal Procedure and Rights of the Accused,* § 2461 (Sept. 2018 Update) (*citing*, at n.13, *Harrison v. Boyd,* 329 S.E.2d 198 (Ga. App.1985), *City of Chanute v. Wilson,* 704 P.2d 392 (Kan.App.1985), *and Sanders v. Comm., Dept. of Transp. Bureau of Traffic Safety,* 493 A.2d 794 (Pa.Commw.1985)).[8] Of course, if the statute expressly provides otherwise, a contrary rule will be adopted. *See* 24 C.J.S. § 2461 (*citing*, at n. 14, *State v. Morse,* 347 N.W.2d 807 (Minn.1984)).

Now, we must concede that the Rhode Island Supreme Court has not yet ruled on the issue, though the practice in Rhode Island (in criminal cases) does seem to conform to the national view. And so, in adopting a different interpretation here, we are forgoing that level of comfort which surrounds our actions when we employ the practices associated with criminal prosecutions when handling lesser penal, non-criminal, cases. But

---

demanded the opposite result). I will not speculate regarding the more likely outcome.

[8] Cases from other states citing *Harrison* favorably (and adopting the rule that the date of offense triggers the close of the look-back period) include: *Wik v. State,* 786 P.2d 384, 387 (Alaska, 1990); *Rogers v. State,* 738 S.W.2d 412, 414 (Ark.1987); *and State v. Wilhere,* 653 A.2d 282, 286-87 (Del.Super. 1994).

we must make this sacrifice if we are to follow our duty and apply this non-ambiguous law as written; as our Supreme Court has reminded us, it is not our job to legislate.

In addition, I am not convinced that this ruling would have drastically deleterious effects on the overall effectiveness of the Foote Act. Because the offenses which trigger the Act are exclusively civil violations, a defendant's ability to delay a prosecution is very much limited. Cases which are not resolved at arraignment are immediately reassigned for trial.[9] And, if a defendant fails to appear at arraignment or trial, he or she will be the subject of a default judgment.[10] Conversely, in the criminal context, a

---

[9] The Attorney General postulates that the effect of this decision would be to make the Foote Act efficacious, not for the full eighteen-month period, but for a lesser period, of sixteen or seventeen months. This certainly seems reasonable. We note in the instant case that the date of offense was November 7, 2017, the date of arraignment was December 7, 2017, and the date of trial was January 25, 2018. So, the delay here was 2½ months, inclusive of the holiday period. I have every faith that the judicial officers of the Traffic Tribunal will be able to expedite Colin Foote cases so as to minimize the impact of this decision.

[10] Because, on the criminal context, we in Rhode Island have historically adhered to the interpretation that an enhancement (or upgrade) period ends on the date of the new offense, we have not had to consider whether the running of such a period should be tolled if the defendant absconds or otherwise adopts dilatory tactics. I would note that there are cases elsewhere that do toll the running of enhancement statutes in such situations. *See* 24 C.J.S., *Criminal Procedure and Rights of the Accused,* § 2461, *ante,* and the case cited at n. 7, *People v. Garcia,* 241 Ill.2d 416, 948 N.E.2d 32 (2011) (holding that the defendant, who absconded prior to his trial for attempted murder, was subject to an extended sentence based on a 1993 felony conviction, even though the ten-year look-back period had expired before his bench trial was conducted; the

defendant who absconds before trial entirely prevents the administration of justice — because of the defendant's right of confrontation. That cannot happen here.

V
Conclusion

After a careful review of the evidence and the pertinent law, and for the reasons outlined in this opinion, I find that the decision rendered by the Appeals Panel in the instant case was affected by error of law. G.L. 1956 § 31-41.1-9. Accordingly, I recommend that the decision of the Appeals Panel be REVERSED.

/s/
Joseph P. Ippolito
MAGISTRATE

July 29, 2019

Court found the statute tolled, even though no tolling provision was included therein. *Garcia,* 948 N.E.2d at 35-39).