

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: February 5, 2021]

STATE OF RHODE ISLAND

v.

JOSEPH FORTES

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P2-2020-0114AG

**DECISION**

**K. RODGERS, J.** The matter before this Court is Defendant Joseph Fortes’ Motion to Dismiss the criminal information in accordance with Rule 9.1 of the Superior Court Rules of Criminal Procedure. Defendant contends that the immunity from prosecution provided in the Good Samaritan Overdose Prevention Act of 2016 (the Good Samaritan Act), codified at G.L. 1956 §§ 21-28.9-1 *et seq.*, extends to the illegal possession of a firearm located in the premises where Defendant and a person experiencing an overdose were situated. The State objected to Defendant’s expansive interpretation of the Good Samaritan Act, and argued that there was probable cause to arrest Defendant.

After briefing and argument of counsel and for the reasons that follow, Defendant’s motion is denied.

**I**

**Defendant’s Arrest**

The following facts are gleaned from the various witness statements and police reports contained in the criminal information package.

On May 23, 2019, at roughly 1:13 pm, a 911 call was placed requesting medical assistance for a hotel guest in Room 257 of the Twin River Casino Hotel, in Lincoln, Rhode Island. Twin River Casino Security Director Michael Pfeiler became aware of the 911 transmission and responded to the designated room, along with Twin River Security Manager William Shephard and Twin River Officer Cooney. Emergency personnel from the Limerock Fire Department and members of the Rhode Island State Police Gaming Enforcement Unit also responded to Room 257. Among the State Police personnel who responded were Det. Sgt. Matthew Salisbury, Det. Cpl. Douglas Watters, and Det. Robert Laurelli.

Security Director Pfeiler was one of the first to arrive at Room 257. Defendant was at the entrance door of Room 257 holding a backpack and identified himself as the registered guest of the room. A female was unconscious and unresponsive on a bed in Room 257. Defendant explained that he awoke to find his female friend unconscious on the floor between the entryway and the bathroom door; he picked her up and placed her on the bed. When asked, Defendant initially denied knowing whether his female friend had consumed any drugs. Defendant was asked to leave the hotel room while his female companion was being treated. Defendant then stepped into the hallway carrying a black backpack which he stated was his. He remained in the hallway with Security Director Pfeiler and Officer Cooney, intermittently picking up his backpack and placing it on the floor. Pfeiler observed Defendant to be acting nervous and on one occasion, when Defendant saw Pfeiler notice that it was unzipped, Defendant moved the backpack to obscure its opening.

Defendant ultimately revealed that he and his female friend had consumed cocaine and opioids the evening before and earlier that day. The female was administered several doses of

Narcan and regained consciousness. She was transported to Rhode Island Hospital for further treatment.

At one point, while waiting for the ambulance from Lincoln Rescue to arrive, Defendant asked to use the bathroom as he felt he would vomit. Before going into the bathroom of Room 257, Defendant placed the backpack on the floor of the hotel room.

Defendant remained on scene while detectives processed the room. Det. Sgt. Salisbury looked inside the partially opened backpack that had been placed on the bed by Defendant where the female had been lying; Det. Sgt. Salisbury observed a black case inside the partially opened backpack. Defendant was asked what was in the case; he responded that it was his friend's handgun. Det. Sgt. Salisbury removed the black case from the backpack and inside was an unloaded black Keltec 9mm semi-automatic pistol. Defendant admitted that he did not have a license to carry a firearm and that he was only holding it for a friend.

After the firearm was located, a Terry pat was conducted on Defendant for any other weapons. Officers seized a clear plastic bag of white powdery substance tucked in Defendant's groin area after patting down Defendant, which he stated was fentanyl. Also located in Room 257 were a glass pipe, a digital scale, several empty plastic bags with white powdery residue, and straws. Later that day, hotel cleaning staff located two clear plastic bags of a white powdery substance inside an ice bucket, both of which were seized by members of the State Police. Toxicology tests revealed that the material in the plastic bag seized from Defendant's groin area contained a mixture of carfentanil and furanyl fentanyl and weighed 45.72 grams. Testing further revealed that one of the two bags seized from the ice bucket also contained a mixture of carfentanil and furanyl fentanyl and the other bag seized from the ice bucket contained a cutting agent.

Defendant was charged by the Rhode Island State Police with possession with intent to deliver carfentanil, in violation of § 21-28-4.01(a)(4)(i); possession with intent to deliver furanyl fentanyl, in violation of § 21-28-4.01(a)(4)(i); possession of one ounce to one kilogram of fentanyl, in violation of § 21-28-4.01.1(a)(7); carrying a firearm without a license, to wit, a 9mm Kel-Tec pistol, in violation of G.L. 1956 § 11-47-8(a); and possession of a firearm by a person convicted of a crime of violence, in violation of § 11-47-5. On December 23, 2020, prior to the commencement of argument on the within Motion to Dismiss, the State dismissed the three controlled substance charges in accordance with Rule 48(a) of the Superior Court Rules of Criminal Procedure.

## II

### Standard of Review

Rule 9.1 of the Superior Court Rules of Criminal Procedure as well as G.L. 1956 § 12-12-1.7 provide the mechanism for challenging probable cause on the face of a criminal information package. A defendant charged by way of a criminal information may,

“within thirty (30) days after the defendant has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time.” Super. R. Crim. P. 9.1; *see also* § 12-12-1.7.

In considering a Rule 9.1 motion, the trial judge’s review of whether probable cause exists is limited to “the four corners of the information package.” *State v. Young*, 941 A.2d 124, 128 (R.I. 2008). Moreover, “the probable-cause standard applied to a Rule 9.1 motion to dismiss is identical to the traditional probable-cause standard to support an arrest.” *State v. Peters*, 172 A.3d 156, 159 (R.I. 2017) (citing *State v. Reed*, 764 A.2d 144, 146 (R.I. 2001)). “[P]robable cause to

arrest exists when the facts and circumstances within the police officer's knowledge at the time of arrest and of which he or she has reasonably trustworthy information are sufficient to lead a reasonable person to conclude that a crime has been committed and that the person to be arrested committed it." *Reed*, 764 A.2d at 146. "When ruling on a motion to dismiss, the trial justice must afford the state 'the benefit of every reasonable inference in favor of finding probable cause.'" *Peters*, 172 A.2d at 159 (quoting *Young*, 941 A.2d at 128); see also *State v. Jenison*, 442 A.2d 866, 875-76 (R.I. 1982).

### III

#### Analysis

Whether there existed probable cause to arrest Defendant on May 23, 2019, is dependent upon whether the crimes of possessing a firearm without a license, in violation of § 11-47-8(a), and possession of a firearm by a person convicted of a crime of violence, in violation of § 11-47-5, are within the universe of crimes that are afforded immunity from prosecution under the Good Samaritan Act. Thus, the instant motion requires this Court to delve into the language of the Good Samaritan Act to determine the scope of its immunity.

#### A

#### Statutory Construction

The principles of statutory construction are well-settled in Rhode Island jurisprudence. The threshold inquiry is whether, *vel non*, the subject statute is ambiguous. 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 (R.I. 2007)). "[W]hen the language of a statute is clear and unambiguous, this 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). In examining an unambiguous statute, “there is no room for statutory construction and [the Court] must apply the statute as written.” *State v. DiCicco*, 707 A.2d 251, 253 (R.I. 1998).

If a statute is ambiguous, courts will “apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” *Tarzia v. State*, 44 A.3d 1245, 1252 (R.I. 2012) (internal quotation marks omitted); *see also Downey v. Carcieri*, 996 A.2d 1144, 1150 (R.I. 2010). If there exists a statutory ambiguity, the Court must “establish[] and effectuat[] the legislative intent behind the enactment.” *State v. Fritz*, 801 A.2d 679, 682 (R.I. 2002). “Of course, it is equally well established that, when confronted with statutory provisions that are unclear or ambiguous, [courts] . . . will examine statutes in their entirety, and will ‘glean the intent and purpose of the Legislature ‘from a consideration of the entire statute, keeping in mind [the] nature, object, language and arrangement’ of the provisions to be construed.’” *DiCicco*, 707 A.2d at 253 n.1 (quoting *In re Advisory to the Governor (Judicial Nominating Commission)*, 668 A.2d 1246, 1248 (R.I. 1996) and *Algiere v. Fox*, 122 R.I. 55, 58, 404 A.2d 72, 74 (1979)). Finally, in construing a statute, Rhode Island courts must “[give] 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).

## **B**

### **The Good Samaritan Act Is Ambiguous But, When Read in Its Entirety, It Does Not Confer Immunity for Firearm Offenses**

To ascertain whether the statute is ambiguous, this Court turns now to the Act itself. Section 21-28.9-4, entitled “Emergency overdose care – Immunity from legal repercussions,” provides in pertinent part:

“(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.” Section 21-29.9-4(a) (emphasis added).

Defendant argues that the unlawful possession of a firearm falls within the gambit of “any crime related to . . . the operation of a drug-involved premises” and thus cannot be prosecuted because the firearm was located as a result of Defendant seeking medical assistance for his female friend. Notably, “a drug-involved premises” is not defined in the Good Samaritan Act or elsewhere in the Rhode Island General Laws. Defendant relies on federal case law to support a definition that drug-involved premises typically involves the presence of a firearm. *See* Def.’s Mot. at 5. The State, on the other hand, equates a “drug-involved premises” as a common nuisance, which is defined in § 21-28-4.06(a) as “[a]ny store, shop, warehouse, building, vehicle, aircraft, vessel, or any place which is used for the unlawful sale, use, or keeping of a controlled substance.” The plain and ordinary meaning of the phrases “the operation of” and “a drug-involved premises” is reasonably susceptible of both interpretations offered. Thus, the phrase is ambiguous, and the Court turns now to the principles of statutory construction.

Mindful of the obligation to view the statute in its entirety in order to determine the intent of the legislature, *see DiCicco*, 707 A.2d at 253 n.1; *In re Advisory to the Governor*, 668 A.2d at 1248; *Algiere*, 122 R.I. at 58, 404 A.2d at 74, this Court need look no further than § 21-28.9-5 to conclude that firearm offenses were not intended to be immune from prosecution under the Good Samaritan Act. Section 21-28.9-5 mandates that,

“In the first week of January, 2017, and each year thereafter, the attorney general shall, in cooperation with local law enforcement

agencies and the state police, submit to the general assembly a report summarizing the impact of this chapter on law enforcement. The report shall include any incidents in which a law enforcement agency was barred, due to the immunity provisions of § 21-28.9-4, from charging or prosecuting a person *under chapters 28 and 28.5 of this title*, and under § 3-8-9 or § 3-8-10, *who would have otherwise been so charged or prosecuted*, and indicating whether the person was charged with, or prosecuted for, *any other criminal offense* resulting from the agency's response to the request for medical assistance.” Section 21-28.9-5 (emphasis added).

As expressly referenced in the mandatory reporting requirements, law enforcement is barred under § 21-28.9-4 “from charging or prosecuting a person under chapters 28 and 28.5” of Title 21. Section 21-28.9-5. Chapter 28 of Title 21 governs uniform controlled substances, and chapter 28.5 of Title 21 governs the sale of drug paraphernalia.<sup>1</sup> Within Title 21, chapter 28, are innumerable offenses involving controlled substances—including, by way of example, possession of a controlled substance (§ 21-28-4.01(c)); delivery, manufacture or possession with intent to deliver a controlled substance (§ 21-28-4.01(a)); manufacture, sale, delivery, possession with intent to deliver, or possession of certain enumerated quantities of a controlled substance (§ 21-28-4.01.2); distributing or manufacturing a controlled substance in or near a school (§ 21-28-4.07.1); fraudulently obtaining a controlled substance by prescription or otherwise (§ 21-28-4.05); conspiring to violate the Uniform Controlled Substances Act (§ 21-28-4.08); and keeping, maintaining or visiting a common nuisance (§ 21-28-4.06). The reporting mandates of the Good Samaritan Act clearly prohibit law enforcement from charging or prosecuting a person for any

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<sup>1</sup> The reference in § 21-28.9-5 to § 3-8-9 and § 3-8-10 is not pertinent to the issues before this Court. Immunity from prosecution for those offenses is conferred in § 21-28.9-4(b), which protects a person from being charged for “any crime related to . . . possession or transportation of alcohol by an underage person.” Sec. 21-28.9-4(b).

such offenses under chapter 28 and 28.5 of Title 21 who would have otherwise been charged or prosecuted for such offense *but for* the immunity conferred in § 21-28.9-4.<sup>2</sup>

By contrast, the offenses with which Defendant was charged and are at issue here are set forth in § 11-47-8(a) and § 11-47-5. Neither of these two firearm offenses is found within chapter 28 or chapter 28.5 of Title 21, nor has Defendant identified any provision in either chapter 28 or 28.5 that cross-references firearm offenses proscribed by chapter 47 of Title 11.<sup>3</sup> Thus, these two firearm offenses fall within the category of offenses for which a “person [may be] charged with, or prosecuted for, *any other criminal offense* resulting from the agency’s response to the request for medical assistance.” Section 21-28.9-5.

The fact that the identity of which offenses are immune from prosecution under § 21-28.9-4 is found in the reporting requirements specified in § 21-28.9-5 is of no moment. Mindful that this Court must “give 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*

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<sup>2</sup> This Court pauses to note that the three controlled substance charges with which Defendant was originally charged clearly fall within the gambit of the offenses that are barred from being charged or from prosecution. Each of those crimes is a “*crime related to the possession of a controlled substance or drug paraphernalia.*” Section 21-28.9-4(a). Furthermore, there can be no question here that Defendant had in good faith called for medical assistance for his female friend and that evidence for each of these three controlled substance charges was gained as a result of Defendant seeking such medical assistance. *Id.* Additionally, having satisfied § 21-28.9-4(a), § 21-28.9-5 makes clear that law enforcement is barred from prosecuting any of these three offenses as they are each found in chapter 28 of title 21. Defendant’s call for medical assistance on May 23, 2019 did save the life of his female friend. That Defendant was originally charged with three additional offenses that law enforcement is expressly barred from prosecuting under the Good Samaritan Act is of great concern. If the Good Samaritan Act is to encourage individuals experiencing or witnessing an overdose or a drug-related emergency to call for medical assistance with the promise of immunity from prosecution for certain controlled substance offenses, then law enforcement needs to comply with its obligation to forego charging or prosecuting such controlled substance offenses in the first instance.

<sup>3</sup> Defendant’s reference to § 11-47-2 as including the offense of the sale, delivery or possession with intent to deliver a controlled substance as a crime of violence, *see* Def.’s Mot. at 3, is wholly inapposite to the considerations before this Court.

*and Hospitals*, 549 A.2d at 1028, it would violate the tenets of statutory construction if this Court were to ignore the language in § 21-28.9-5 which differentiates between the two categories of offenses to be reported: (1) crimes under chapters 28 and 28.5 of Title 21, and under § 3-8-9 or § 3-8-10, which *would have otherwise been charged and prosecuted* but for the immunity provisions of § 21-28.9-4; and (2) all other criminal offenses *which were charged or prosecuted* resulting from the agency's response to the request for medical assistance. Section 21-28.9-5. Indeed, had the Legislature intended that firearm offenses would be afforded immunity under the Good Samaritan Act, then reference to chapter 47 of Title 11 generally, or to a specific section or sections therein, would have been included in the litany of statutes listed in § 21-28.9-5 as being barred from prosecution.

Therefore, although “the operation of a drug-involved premises” is ambiguous, the scope of the immunity from prosecution that is afforded by the Good Samaritan Act clearly excludes firearm offenses charged under chapter 47 of Title 11. The Good Samaritan Act does not shield this Defendant from being charged with or prosecuted for carrying a firearm without a license or for carrying a firearm after being convicted of a crime of violence.

## C

### **Probable Cause**

Having concluded that the two firearm offenses with which Defendant was charged are not immune from prosecution under the Good Samaritan Act, the remaining question before this Court is whether there is probable cause to sustain such charges in this criminal information. Viewing the four corners of the criminal information package and giving the State the benefit of every reasonable inference in favor of finding probable cause, *see Peters*, 172 A.2d at 159, it is abundantly clear that the State has satisfied its burden. Twin River security personnel and RISP

responded to a medical emergency in Room 257 of the Twin River Casino Hotel. Defendant was observed both inside the room and outside in the hallway clutching a backpack and acting nervously. When asked what was inside the black case observed through the open zipper of the backpack, Defendant admitted that it was a firearm that he was holding for a friend and that he did not have a license to carry a firearm. Although unloaded at the time it was seized, the firearm was test-fired and was deemed operable. Defendant does not challenge that he was previously convicted of a crime of violence and is prohibited from possessing a firearm. Reports and documentation substantiating these facts are included in the information package. Accordingly, there exists probable cause to prosecute Defendant on Counts 4 and 5.

#### **IV**

#### **Conclusion**

The immunity afforded by the Good Samaritan Act does not extend to firearm offenses, including the two specific firearm offenses with which Defendant was charged. There is ample evidence contained within the information package to support a finding of probable cause on each of the remaining two counts against Defendant. Accordingly, Defendant's Motion to Dismiss pursuant to Rule 9.1 of the Superior Court Rules of Criminal Procedure is denied.

Counsel for the State shall prepare an Order consistent with this Decision.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** State of Rhode Island v. Joseph Fortes

**CASE NO:** P2-2020-0114AG

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 5, 2021

**JUSTICE/MAGISTRATE:** K. Rodgers, J.

**ATTORNEYS:**

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