THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2021-0014

DIANNA RUDDER

v.

DIRECTOR, NEW HAMPSHIRE DIVISION OF MOTOR VEHICLES

MEMORANDUM OF LAW FOR THE NEW HAMPSHIRE DIVISION OF MOTOR VEHICLES

The Director of the New Hampshire Division of Motor Vehicles ("DMV"), by and through counsel, the Office of the Attorney General, files this Memorandum of Law pursuant to Supreme Court Rule 16(4)(b).

Appellant, Dianna Rudder, appeals an order of the Grafton County Superior Court (*Bornstein*, J.), affirming her administrative license suspension pursuant to RSA 265-A:30. Appellant challenges the court's finding that the DMV hearing examiner had sufficient evidence to determine that the area in which Appellant's vehicle was located at the time of her arrest was a "way" within the meaning of RSA 265-A:31, II(a).

STATEMENT OF THE CASE AND FACTS

For purposes of this memorandum of law, DMV accepts and adopts the Appellant's recitation of facts and procedural history. Specifically, DMV highlights that Appellant concedes that the private church parking lot in

which she was arrested would fit the definition of "way" provided in RSA 259:125, II. AB 4.[1]

ARGUMENT

Appellant accurately characterizes this as an extremely simple case, with the sole issue being which definition of "way," as provided in RSA 259:125, applies to an administrative license suspension ("ALS"). AB 5. DMV contends that an ALS is so intertwined with a charge of driving under the influence of drugs or liquor ("DUI")[2] that the definition of "way" provided in RSA 259:125, II, which applies to a DUI, must also be applied to an ALS.

The issue raised here is limited to the interpretation of a statute, which is a question of law that this Court reviews *de novo*. *Mortgage Specialists, Inc. v. Davey*, 153 N.H. 764, 774 (2006). This Court interprets a statute in the context of the overall statutory scheme and not in isolation. *State v. Bobola*, 168 N.H. 771, 772 (2016). The goal is to apply statutes in light of the legislature's intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme. *Id*. This Court does not presume that the legislature would pass an act leading to an absurd result, and will consider other indicia of legislative intent where the literal reading of a statutory term would compel an absurd result. *State v. Gallagher*, 157 N.H. 421, 423 (2008).

---

[1] "AB" refers to the Appellant's Brief and appended documents. "SA" refers to the State's Appendix, filed herewith.

[2] The term "DUI" is synonymous and interchangeable with the term "DWI," as used in the cases and legislative history cited herein.

Appellant argues that the definition of "way" in RSA 259:125, II—which applies to DUIs—does not apply to ALS proceedings because it does not expressly reference the ALS statute. Instead, Appellant urges this Court to apply the narrower definition of "way" in paragraph I of the statute and contends that, because the church parking lot in which she was arrested for DUI does not satisfy that definition, she was not operating a motor vehicle upon the ways of this state. According to Appellant's construction of the statute, she cannot be subject to an ALS despite the fact that she concedes she was driving upon a "way" for purposes of her DUI arrest. AB 5-7. This argument fails because it defies the purpose of the statutory scheme, is contrary to the intent of the legislature, and produces an absurd result.

A. The statutory scheme, interpreted as a whole, so closely relates ALS and DUI that the same definition of "way" must be applied to both.

The definition of "way" in RSA 259:125, II that applies to DUI must also apply to ALS, as it is the civil counterpart that is inseparably related to, and necessarily triggered by, the DUI. A review of the statutory scheme demonstrates that the legislature intended for ALS and DUI to operate in concert. A person commits a DUI when they drive or attempt to drive a vehicle upon any way while they have an alcohol concentration of 0.08 or more.[3] RSA 265-A:2, I(b). A person who is suspected of driving under the influence of alcohol impliedly consents to submit to testing to determine

[3] For purposes of this memorandum of law, the discussion is limited to DUI stemming from operating a motor vehicle after alcohol consumption, and does not address the testing and process related to impairment from other illegal drugs or operating other vehicles.

their alcohol concentration. RSA 265-A:4. Before such testing, the law enforcement officer must inform the arrested person of the right to additional tests, afford an opportunity to request an additional test, and inform as to the consequences of refusing to test. RSA 265-A:8. To satisfy that requirement, an officer needs to reasonably convey the ALS warnings to the arrested individual. *State v. Mfataneza*, 172 N.H. 166, 172 (2019). If a person refuses the test, or if they submit to a test which discloses an alcohol concentration of 0.08 or more, the law enforcement officer shall submit a sworn report to the Department of Safety, detailing that the test was requested and either refused or disclosed an impermissible blood alcohol concentration. RSA 265-A:30, I; NH Admin R. Saf-C 2803.03. Upon receipt of the sworn report of a law enforcement officer, the Department of Safety shall subject the person to an ALS, resulting in the suspension of their driver's license or privilege to drive. RSA 265-A:30, II. If the arrested individual seeks an administrative review or hearing of the ALS, such review or hearing shall be limited in scope to reviewing the circumstances of the underlying DUI. RSA 265-A:31, II; NH Admin. R. Saf-C 2804.

It is clear that ALS and DUI are complementary consequences for the same conduct, which run on a parallel path, as part of a cohesive statutory scheme. As part of the due process of a DUI, an arrested individual must be informed of their ALS rights. In order to trigger an ALS, a person must first be arrested for DUI. In reviewing the basis for an ALS, the hearing examiner reviews the circumstances of the DUI. A DUI is the criminal ramification for drunk driving, while the ALS is the resulting civil track to remove the drunk driver from the road.

Because there is ambiguity in RSA 259:125 – certain statutes, administrative rules, and cases directly connect ALS to DUI, but RSA 259:125 is silent as to ALS – it is necessary to look at other indicia of the legislative intent. *Gallagher*, 157 N.H. 423. In reviewing the legislative history, it is clearly established that ALS was intended to be an inherent part of DUI. During the 2006 statutory recodification, the legislature purposely compiled all existing ALS and DUI statutes into one chapter and collectively referred to them as the "DWI statutes." SA 75-76. The Department of Safety was specifically consulted during the recodification process. SA 76. Department of Safety Assistant Commissioner Earl Sweeney raised concerns from its Bureau of Hearings related to clarifying how to calculate the number of days applicable to administrative matters. SA 77. The fact that ALS was specifically recodified into the "DWI statutes," that the Department of Safety, as the agency responsible for administering license suspensions, was specifically consulted, and that it was appropriate for the Bureau of Hearings to put forth concerns about the administrative process in regard to the "DWI statutes," are clear indicators that the legislature understood ALS to be a discrete component within the larger context of DUI.

It is a general rule that different statutes relative to the same subject are to be construed together. *Sloan v. Bryant*, 28 N.H. 67, 71 (1853). Where DUI and ALS each have their own statute, but are both relative to the same subject, drunk driving, they must be construed together. Understanding that DUI and ALS are inextricably connected as part of a statutory scheme, and in the absence of any directive to the contrary that would require a different

definition of "way" to ALS, the RSA 259:125, II definition of "way" that is applied to DUI must be imported to apply to ALS.

B. Appellant's narrow reading of "way" should be rejected because the legislature's intent in enacting this statute was to close loopholes and provide the most expansive meaning of "way."

Appellant is attempting to create and exploit a loophole by arguing that there are certain locations where an individual could be convicted of DUI but shielded from the resulting ALS. This argument fails because it directly defies the legislature's intent. In 1981, the legislature made comprehensive changes to the DUI laws in an effort to close various loopholes and "get tough" on DUI. *State v. Lathrop*, 164 N.H. 468, 470 (2012). The legislature found that public safety required the DUI statutes to apply in any location to which the public has access, which resulted in an expansion to the definition of "way." *Id*. When making these changes, the legislature was concerned not only with imposing harsher criminal punishment on drunk drivers, but on the administrative mechanisms that would keep drunk drivers off the road.

At the Judiciary Committee Hearing, Rep. Leigh Bosse, sponsor of the bills, testified that the goal of the legislative changes was to "frankly, get the drunks off our highways." SA 5. Rep. Bosse further explained that the "first priority must be to protect those who are being maimed, crippled and killed in alcohol-related accidents" and to only worry about the drunk driver "after we get them off the highway." SA 8. To achieve that goal, a package of legislation was introduced that, amongst other things, would expand the locations in which a person could be convicted of DUI, and would impose license suspension for anyone that was found to have a

certain blood alcohol concentration or refused to have their blood alcohol concentration tested. SA 5-7.

Rep. Dana Christy, another sponsor, detailed the problems that arise from loopholes that allow individuals to drive under the influence of alcohol and not be charged with DUI simply by virtue of their location. SA 19. Rep. Christy gave a specific example of what the bill intended to fix - strikingly similar to the present facts and loophole Appellant is trying to create – which involved individuals driving drunk in a church parking lot in Enfield and managing to avoid DUI charges and maintain their drivers' licenses because they drunk drove in the right location. SA 19. In a memorandum to the Judiciary Committee, the Committee Research Staff noted that the implied consent statute, which triggers an ALS for anyone who refuses to have their blood alcohol concentration tested, must be updated in connection with the expansion of "way." SA 3. The Memorandum explains that this housekeeping update would avoid a situation where an individual could be arrested for DUI on a particular type of way, but would not lose their driver's license because the arrest happened on that particular type of way. SA 3. At the time of expanding the definition of "way" in RSA 259:125, the legislature contemplated and was concerned with applying the same definition of "way" to DUI and the resulting ALS so that a drunk driver would be subjected to both procedures.

Throughout the legislative history, there are countless references to the need to get drunk drivers off the road. ALS is precisely the mechanism that swiftly suspends a drunk driver's license to get them off the road. RSA 265-A:30; NH Admin R. Saf-C 2803.01. Allowing the Appellant to avoid an ALS because of the location in which she committed a DUI defies the

legislature's intent. Such a finding would exploit a loophole the legislature intended to close, would be contrary to the legislature's intent for DUI and ALS to go hand-in-hand, and would defeat the legislature's goal of removing drunk drivers from the road.

C. Applying a different definition of "way" in the ALS context, from that applied to the DUI context, produces an absurd result.

Both *Lathrop* and the legislative history of RSA 259:125 establish that the legislature wanted to eradicate "DWI-free zones" where an individual could avoid the ramifications of drunk driving by being in the right location. *Lathrop*, 164 N.H. 470. The legislature closed the "DWI-free zone" loophole by expanding the definition of way to include the broadest range of locations. By arguing that the broadest range of locations in RSA 259:125, II applies only to DUI, and not ALS, Appellant is attempting to create a loophole where there are "ALS-free zones." It is an absurd result to find that there are special locations where someone could be convicted of DUI, but free from the parallel ALS, by drunk driving in the right location.

Appellant's reading of RSA 259:125 leads to an equally absurd result because it would create a scenario where the hearing examiner, reviewing the reasonableness of an arresting officer, must apply a different analysis than the arresting officer. In the present matter, Appellant stipulated that the only issue in the administrative hearing was whether the officer had reasonable grounds to believe she was operating her vehicle upon a way. RSA 265-A:31, II (a); AB 9. This provision requires the hearing examiner to review the reasonableness of the arresting officer's determination that an individual was driving while intoxicated upon a way. The arresting officer determines whether a DUI has occurred based on the definition of "way"

contained in RSA 259:125, II. It is logical that, to review that officer's reasonableness, the hearing examiner would need to examine the same definition of "way" that the officer would have applied. If Appellant's argument is followed, the hearing examiner would be reviewing an arresting officer's reasonableness based on different criteria than the arresting officer was required to apply. Put simply, it is an absurd result that an officer could determine DUI based on one definition, but the hearing examiner would be determining that officer's reasonableness using an altogether different definition.

CONCLUSION

For the foregoing reasons, this Court should affirm the Superior Court's finding that Appellant operated her vehicle upon a "way" within the meaning of RSA 259:125, II and uphold her administrative license suspension. In filing this memorandum of law, it is DMV's position that oral argument is not necessary. Should this Court request oral argument, Assistant Attorney General Emily Goering will present oral argument on behalf of DMV.

Respectfully submitted,

STATE OF NEW HAMPSHIRE
DIVISION OF MOTOR VEHICLES

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

May 10, 2021

/s/ Emily C. Goering

Emily C. Goering, Bar No. 268497
Assistant Attorney General
Office of the Attorney General
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3675

Certificate of Compliance

This memorandum complies with the word limitation set out in Supreme Court Rule 16(4)(b) by containing 2484 words.

Certificate of Service

I hereby certify that copies of the foregoing were served via the court's e-file system to Cabot Teachout, Esq., counsel for Appellant.

/s/ Emily C. Goering
Emily C. Goering