STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. CUM-24-43

STATE OF MAINE,
Plaintiff/Appellee

v.

CHRISTOPHER RAY,
Defendant/Appellant

ON APPEAL FROM THE DISTRICT COURT
BUREAU OF MOTOR VEHICLES DOCKET NO. 4176631

BRIEF FOR APPELLEE STATE OF MAINE

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INTRODUCTION

Under 29-A M.R.S. § 2063(2) (2023), a person operating a bicycle on a roadway at less than the normal speed of traffic moving in the same direction must keep to the right portion of the way as far as practicable, subject to specific exceptions based on safety. In this case, a police officer came upon a bicyclist operating on a roadway at less than the normal speed of traffic and observed that the bicyclist failed to keep as far to the right as practicable, and instead continuously operated in the roadway side-by-side with his cycling companion, despite the presence of the officer's motor vehicle waiting to pass him. The police officer stopped the bicyclist and issued a ticket for a civil traffic violation.

At trial, the District Court found that the bicyclist violated the statute. On appeal, the bicyclist challenges the District Court's application of the statute and the sufficiency of the evidence. He also raises several issues he did not raise before the trial court, now claiming for the first time that various exceptions under the statute applied to him and also challenging for the first time the lawfulness of the traffic stop and the judicial proceedings.

FACTS AND PROCEDURAL HISTORY

On July 7, 2023, at about 7:45 AM in Cumberland, Police Chief Charles Rumsey was driving east on Tuttle Road in an unmarked police cruiser when he came upon two bicyclists who were heading in the same direction. *App.* 8; *Tr.* 4-5.[1] According to Chief Rumsey, the bicyclists "were riding side-by-side on the right-hand side of the road," such that one "was further out into the road than the other cyclist." *Id.* Thus, both bicyclists were in the road, but one was further to the left in the road than the other. Chief Rumsey slowed and followed the bicyclists, waiting for them to change their positions to single file on the right side of the road to allow him to pass safely, but they did not do so. *App.* 8; *Tr.* 5. Instead, they continued riding side-by-side for a substantial distance while Chief Rumsey waited behind them, and he paced their speed at about 17 miles per hour. *Id.*

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[1] Designations to pages of the appendix and the trial transcript are in the form *App.* __ and *Tr.* __. Designations to portions of Defendant's demonstrative aid video, presented at trial and subsequently added to the record by order dated May 7, 2024, are in the form *Video* 00:00.

Believing the bicyclists' failure to keep to the right was unlawful, Chief Rumsey pulled alongside them, rolled down his window, and said to them, "single file, guys, single file." *Id.* In response, the bicyclist to the left turned his head towards Chief Rumsey "and yelled, basically, you can go F yourself." *Id.* At that point Chief Rumsey applied his brakes and activated his emergency blue lights to stop the bicyclists. *Id.* After identifying the bicyclist on the left as Appellant, Chief Rumsey issued him a traffic ticket for violating 29-A M.R.S. § 2063(2) by operating a bicycle at less than the normal speed of traffic moving in the same direction and failing to keep to the right of the roadway as far as practicable to allow other traffic to pass. *Id.*[2]

Appellant requested a trial, which was scheduled for January 3, 2024, in the District Court. *App.* 13-14.[3] Appellant did not move to suppress or exclude any evidence, nor did he otherwise assert

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[2] See 29-A M.R.S. § 2601(3) & (7) (2023) (governing issuance of a violation summons and complaint for a traffic infraction).

[3] The District Court has original and exclusive jurisdiction over traffic infractions. 29-A M.R.S. § 2602(1) (2023).

any violation of his rights or challenge the lawfulness of the investigation or the judicial proceedings.

At trial, Chief Rumsey appeared on behalf of the State of Maine and Appellant appeared on his own behalf.[4] Chief Rumsey testified to the facts described above, and Appellant was given the opportunity to cross-examine him but declined to do so. *App.* 8-9; *Tr.* 3-6. Appellant testified, and consistent with Chief Rumsey's testimony he acknowledged that he and his companion were "riding side-by-side" on bicycles heading east on Tuttle Road, "going at approximately the same speed, between 17 and… 19 miles an hour." *App.* 9, *Tr.* 6-7. He also admitted he made an "inappropriate and regretful comment" to Chief Rumsey. *App.* 9, Tr. 6.[5]

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[4] A law enforcement officer who is not an attorney may appear on behalf of the State of Maine in the prosecution of a traffic infraction proceeding. 4 M.R.S. § 807(3)(M) (2023).

[5] Contrary to Chief Rumsey's testimony that he stopped the bicyclists "immediately" after the verbal exchange (*App.* 8, *Tr.* 5), Appellant testified the verbal interaction occurred at the fire barn or thereabouts and the traffic stop occurred "about a third of a mile" later. *App.* 9, *Tr.* 8. At less than 20 miles per hour, traveling a third of a mile would take more than a minute. However, there was no evidence that the cyclists ignored Chief Rumsey's blue lights for more than a minute before they stopped.

Regarding his position in the roadway, Appellant initially testified, "I do not agree that I was in the travel lane," but then he conceded he was traveling "along" the white fog line, and finally he contradicted his initial testimony and admitted "my tire… was probably on the left side of the fog line." *App.* 9; *Tr.* 6. Contrary to Chief Rumsey's testimony, Appellant claimed he gave "enough room to allow passenger cars and trucks to pass me," and that he "did not impede or obstruct any vehicle." *Id.* Appellant also testified the distance between the yellow center line and the white fog line was 11 feet, and that "typically a car is 6.5 feet wide," but he did not identify the source of those numerical values. *App.* 9, *Tr.* 7.

Appellant presented to the judge a short video he had later "recreated to show… what I was experiencing… what the road type looked like… the visual aspect of us riding side-by-side down Tuttle Road." *App.* 9, *Tr.* 6. However, Appellant did not testify that the video correctly showed the position of himself or his cycling companion in the roadway when Chief Rumsey was behind them.[6]

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[6] Appellant testified that in the video "the area that I'm cycling in is approximately 4 feet," (*App.* 9, *Tr.* 7), but it is unclear if he meant his bicycle was 4 feet to the left of the fog line, or that it was 4 feet to the left of the edge of the pavement, or if he was referring

In fact, the video generally depicted Appellant on or to the right of the fog line, which was inconsistent with the testimony of both Chief Rumsey and Appellant that in fact he was further to the left, in the lane.

The District Court *(Goranites, J.)* engaged in a colloquy with Appellant and confirmed that the limited purpose of the video was only to show the area where the incident occurred (not Appellant's position in the roadway).

> THE COURT: How long is this video?
> THE DEFENDANT: It – it's, I think, a minute and a half.
> THE COURT: Sure. We'll take a look at it. […] *This is not a video of the event. This is simply… a video of the area in which the violation allegedly occurring [sic],* is that correct?
> THE DEFENDANT: That's correct.

Id. (emphasis added). The District Court then watched the video. *App.* 9, Tr. 7-8.[7]

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to the width of the paved shoulder to the right of the fog line. In any event, he did not testify that the video showed his actual position in the roadway at the time of the incident.

[7] The video, which lasts 79 seconds, was not marked as an exhibit or properly admitted at trial, but on May 7, 2024, the Law Court granted Appellant's unopposed motion to add it to the record.

Regarding the condition of the road surface, before playing the video Appellant testified "the road surface in this area has some undulations, some bumps… some imperfections." *App.* 9, *Tr.* 7. As he played the video, he narrated "there you can see some imperfections in the road, utilities." *App.* 9, *Tr.* 7-8. Later, he also said "there are impediments in the road." *App.* 10, *Tr.* 11. However, Appellant did not testify that the condition of the road prevented him from operating his bicycle further to the right (like his companion), nor did he testify that he had determined it was unsafe to operate his bicycle further to the right. In fact, he claimed that even though he remained alongside his bicycling companion, he was "following the intent of… [the] statute, riding to the right." *Id.*

The video demonstrated the road surface was safe for a bicyclist riding on the portion of the way farthest to the right. In fact, it showed that the travel lane and the paved shoulder to the right of the fog line appeared to be in about the same condition, and that the paved shoulder actually had *fewer* cracks and imperfections than the travel lane, as shown below.


Video 00:00


Video 00:23


Video 00:57


Video 01:10

Contrary to Appellant's testimony about "impediments" in the road, the video also showed there were no potholes or obstacles in the road or on the paved shoulder, with the possible exception of a small water drainage grate next to the curb that was not an obstruction because it's top was level with the road surface.


Video 00:15.

The video showed the posted speed limit was 25 miles per hour (see below, left). Although it also showed the area had crosswalks, pedestrian signs, and a school zone with a sign stating "Speed Limit 15 When Flashing," there was no evidence that the reduced speed limit sign actually was flashing, or that any

pedestrians actually were present, or that any school children actually were present (unlikely at 7:45 AM in the summer).

Video 01:01


Video 00:29


Video 00:51

Video 00:12

The video showed that sometimes Appellant was passing an intersection or a driveway where a right turn was permitted, but it also showed that at other times he was in places where no right turn was permitted.


Video 00:35


Video 00:46

Video 01:02

During the trial, Appellant did not assert he had determined it was unsafe to operate his bicycle further to the right, nor did he assert he failed to operate further to the right because it was necessary to avoid hazardous conditions, nor did he assert the lane was too narrow for a bicycle and a vehicle to travel safely side by

side. Appellant also did not challenge the lawfulness of the investigation or the judicial proceedings, nor did he assert any discovery violations.

At the conclusion of the trial, the District Court found by a preponderance of the evidence that Appellant committed the traffic violation and imposed the standard fine of $151. *App.* 4, 6. The District Court explained its analysis as follows.

> The issue here… is fairly straightforward. You're claiming… that you have permission under the statute to ride side-by-side with another cyclist on the right-hand side of the road, and that when a vehicle is approaching from behind, you are not required to move as far to the right as practicable, and that your reading of the statute is you don't have to move any further to the right than you are permitted by the cyclist who's beside you. Which is not the way I read the statute.
>
> I think the statute reads that you… as a cyclist, have an affirmative responsibility to move as far to the right as possible to let traffic pass. And if there's a companion cyclist, you have to… make accommodation for that by either slowing down or speeding up and then moving to the right. It's the way I read that statute… It says you are required to move as far to the right as practical to allow traffic to pass you. […] Your view is you are over far enough. The fact that there's another cyclist beside you tells you that there was a lot more room to the right that would have been practical to move over had you not persisted in going side-by-side down the road. […] So I find the offense has been committed.

App. 10; *Tr.* 11-13.

Appellant did not request further factual findings or conclusions of law. On January 24, 2024, Appellant filed timely notice of appeal. *App.* 4.

ISSUE PRESENTED FOR REVIEW

1. Whether the District Court's decision that Appellant committed the traffic violation was clearly erroneous?

2. Whether the Law Court should vacate the District Court's decision based on Appellant's new arguments that exceptions to the statute apply and that the decision constituted obvious error?

3. Whether the Law Court should vacate the District Court's decision based on Appellant's new arguments that the investigation and the judicial proceedings were unlawful and that the decision constituted obvious error?

ARGUMENT

The Law Court should affirm the decision that Appellant violated the statute because the District Court correctly applied the law and the decision was supported by competent evidence in the record. The Law Court should reject Appellant's new claims that an exception to the statute applied, and that the investigation and the judicial proceedings were unlawful, because he failed to preserve those issues for appellate review and because he has failed to demonstrate obvious error.

1) The District Court's decision that Appellant committed a traffic violation was not clearly erroneous because it correctly applied the law and it was supported by competent evidence in the record.

Appellant argues the District Court's decision that he committed a traffic violation was clearly erroneous because it misinterpreted the statute, failed to apply the correct statutory criteria, and was not supported by competent evidence. *Appellant's Brief,* 9, 14, 23-24. To the contrary, the District Court's decision was not clearly erroneous because it correctly applied the law and it was supported by competent evidence in the record.

a) The standard of review.

On appeal the Law Court reviews the trial court's statutory interpretations de novo. *State v. Santerre,* 2023 ME 63, ¶ 8-10, 301 A.3d 1244. The goal of statutory interpretation is to give effect to the Legislature's intent. *Id.* The first step is to examine the plain meaning of the statutory language, in the context of the whole statutory scheme. *Id.* Only if the statutory language is silent or ambiguous may the Law Court consider other evidence of legislative intent. *Id.* A statute authorizing imposition of a fine is penal and therefore is construed strictly, but strict construction "is subordinate to the rule that the judicial interpretation must be reasonable and sensible, with a view to effectuating the legislative design and the true intent of the Legislature." *Id.*

Regarding factual determinations, the Law Court views the evidence in the light most favorable to the prevailing party, and it must give substantial deference to the trial court's unique opportunity to assess the credibility of witnesses and to determine how much weight to give their testimony. M.R. Civ. P. 52(c); *In re Alijah K.,* 2016 ME 137, ¶ 15, 147 A.3d 1159; *State v. Chase,* 2017

ME 43, ¶ 1, 157 A.3d 1291; *State v. Arnheiter,* 598 A.2d 1183, 1185 (Me. 1991).

In the absence of a motion for further findings of fact pursuant to M.R. Civ. P. 52, the Law Court must assume the trial court found all facts necessary to support its judgment. *Coppola v. Coppola,* 2007 ME 147, ¶ 25, 938 A.2d 786; *Estate of Turcic,* 2017 ME 118, ¶ 5, 164 A.3d 134. That rule applies even when a litigant represented himself at trial, as pro se litigants are held to the same standard as represented litigants. *Estate of Turcic,* 2017 ME 118, ¶ 5, 164 A.3d 134. In this case, because Appellant did not request additional findings of fact or conclusions of law, we must assume the trial court made all findings necessary to support its decision unless there is no competent evidence in the record to support such a finding. *Coppola,* 2007 ME 147, ¶ 25, 938 A.2d 786.[8]

[8] Even if a factual finding by the trial court was clearly erroneous, the decision will not be overturned on appeal if the error was harmless, meaning if it is highly probable that the error did not affect the judgment. M.R. Civ. P. 61; *State v. Arnheiter,* 598 A.2d 1183, 1185 (Me. 1991).

b) The District Court correctly applied the law, and competent evidence supported its finding that Appellant violated the statute.

The District Court correctly applied the law, and competent evidence supported its finding that Appellant violated 29-A M.R.S. § 2063(2). The plain language of the statute clearly and unambiguously establishes a general rule that a bicyclist on a roadway traveling less than the normal speed of traffic must keep as far to the right portion of the way as practicable.

> A person operating a bicycle… upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time and place shall operate on the right portion of the way as far as practicable…[.]

29-A M.R.S. § 2063(2) (2023).[9]

Because the statute does no define "practicable," that word retains its common, ordinary meaning. *Thornton Academy v. Regional School Unit 21,* 2019 ME 115, ¶ 5, 212 A.3d 340. According to the *American Heritage Dictionary* (2nd College Ed.,

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[9] Despite the plain language of Section 2063(2), Appellant asserts "there is no language anywhere in the statute that requires bicyclists to move as far to the right as practicable when a vehicle is approaching from behind." *Appellant's Brief,* 22. To the contrary, that is exactly what the statute requires if the bicyclist is operating at less than the normal speed of traffic moving in the same direction and if no statutory exception applies.

1985), practicable means "capable of being effected, done or executed; feasible," while *Webster's Collegiate Dictionary* (9th ed. 1985) similarly defines it as "possible to practice or perform: feasible." Practicable is not synonymous with practical, which means "level-headed, efficient and unspeculative" and the difference in meaning and usage is further explained as follows:

> *Practicable* describes that which can be put into effect. *Practical* describes that which is also sensible and worthwhile. It might be *practicable* to transport children to school by balloon, but it would not be *practical.*

American Heritage Dictionary (2nd College Ed., 1985). Therefore, operating "on the right portion of the way as far as practicable" means as far to the right portion of the way as the bicyclist is capable of moving, not merely as far to the right as the bicyclist feels is sensible or efficient.

Note that the statute establishes a duty to operate a bicycle on the right portion of the *way*, not the right portion of the individual traffic lane. For purposes of Maine's motor vehicle laws, the term "way" is specifically and expansively defined as "the entire width between boundary lines of a road, highway… [or] street." 29-A

M.R.S. § 101(92) (2023).[10] Additionally, Maine's motor vehicle statutes clearly indicate that a way is not limited to a single lane, because a way may consist of multiple lanes. 29-A M.R.S. § 2051 (2023) (providing that a single "way" may be "divided into 2 or more clearly marked lanes.").[11] Thus, the statute's requirement that a bicyclist must operate "on the right portion of the way as far as practicable" means as far to the right as practicable within the entire width of the paved roadway, including the paved shoulder,

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[10] Appellant now raises a definition of "roadway" contained in the Uniform Vehicle Code [UVC] (a compendium of proposed standardized traffic laws) to argue for the first time that the term roadway excludes the shoulder, and therefore that 29-A M.R.S. § 2063(2) does not require a bicyclist to move onto the paved shoulder. *Appellant's Brief,* 19-20, n.17; Uniform Vehicle Code § 1-186 (2000 Revision). However, Appellant's reliance on the UVC is misplaced for two reasons. First, Maine has not adopted the UVC in general, nor its proposed definition of "roadway" in particular. See 29-A M.R.S. § 101 (2023). Second, the relevant portion of 29-A M.R.S. § 2063(2) requires bicyclists "to operate on the right portion of the *way* as far as practicable," not the right portion of the roadway. Thus, the issue at hand is not the definition of "roadway" but rather the definition of "way," for which the UVC contains no proposed definition. See Uniform Vehicle Code § 1 (2000 Revision).

[11] Thus, the words way, roadway and lane are not synonymous and interchangeable, despite Appellant's repeated arguments to the contrary. *Appellant's Brief,* 4, 14, 17-20, 29.

not merely as far to the right as practicable within an individual lane of travel.[12]

The statute also creates limited exceptions to the general rule requiring a cyclist to move to the right portion of the way as far as practicable, including "[w]hen proceeding straight in a place where right turns are permitted" (29-A M.R.S. § 2063(2)(C)), "when it is unsafe to do so as determined by the bicyclist" (29-A M.R.S. § 2063(2)), and "[w]hen necessary to avoid hazardous conditions" (29-A M.R.S. § 2063(2)(D)). *Semian v. Ledgemere Transp., Inc.,* 2014 ME 141, ¶ 27, 106 A.3d 405.[13]

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[12] Appellant argues that 29-A M.R.S. § 2063(2) does not under any circumstances require a bicyclist to ride on the paved shoulder, asserting that such an interpretation would contradict 29-A M.R.S. § 2063(2-A), which provides that "notwithstanding subsection 2, a person operating a bicycle… may travel on paved shoulders." *Appellant's Brief,* 20-21. Appellant's reasoning is unsound and illogical, because the two subsections are consistent with one another and also consistent with a definition of way that includes the paved shoulder. Whereas subsection 2063(2) establishes a bicyclist's duty to keep as far to the right portion of the way as practicable, subsection 2063(2-A) merely establishes that the bicyclist may travel on the paved shoulder and clarifies that a bicyclist need not move to the right beyond the paved shoulder in order to make room for faster vehicles (i.e., a bicyclist need not move to the curb, the sidewalk, or the unpaved shoulder).

Competent evidence supported the District Court's finding, by a preponderance of the evidence, that the statute's general rule applied to Appellant.[14] The testimony of Chief Rumsey and Appellant, as well as the video, established that Appellant was operating his bicycle on Tuttle Road at about 17 miles per hour, well below the posted speed limit of 25 miles per hour. Chief Rumsey testified that as he approached in a motor vehicle he could not safely pass Appellant and his bicycling companion, so he had to slow down. That evidence supported the District Court's finding that the statutory criteria were met, in that Appellant was operating a bicycle on a roadway at a speed less than the normal speed of traffic moving in the same direction at that time and place, such that Appellant generally was "required to move as far to the right as

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[13] 29-A M.R.S. § 2063(2)(A) & (B) identify two other limited exceptions to the general rule that bicyclists must keep to the right to allow faster traffic to pass, but Appellant concedes those exceptions do not apply. *Appellant's Brief,* 27.

[14] Traffic infractions are civil proceedings requiring proof by a preponderance of the evidence. 29-A M.R.S. § 103 (2023); M.R. Civ. P. 80F(j); *State v. Anton,* 463 A.2d 703, 708 (Me. 1983).

practicable… to let traffic pass." *App.* 10, *Tr.* 11-12; 29-A M.R.S. § 2063(2) (2023).[15]

Additionally, competent evidence supported the District Court's finding that Appellant violated the statute by failing to operate on the right portion of the way as far as practicable in order to let faster traffic pass. Specifically, Chief Rumsey testified that as he followed behind the bicyclists and waited for an opportunity to safely pass them, Appellant failed to change to single file and move to the right, and instead he and his bicycling companion continuously rode along, side-by-side in the roadway, at just 17

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[15] Appellant argues the District Court committed clear error by finding that he was travelling "at a speed less than the normal speed of traffic moving in the same direction," because in determining the normal speed of traffic it failed to consider the slower speed of Appellant and his companion, or the fact that briefly Chief Rumsey also was traveling at their slow speed as he waited for an opportunity to pass. *Appellant's Brief,* 14, 17, 22-25. The State concedes that the definition of "traffic" as used in Title 29-A generally includes bicycles. 29-A M.R.S. § 101(83) (2023). However, Section 2063(2) clearly differentiates between the speed of a bicyclist and the normal speed of *other* traffic moving in the same direction at that time and place. Otherwise, the statutory language would be redundant and nonsensical, because it is impossible for a bicyclist to operate at less than his *own* speed. Also, it would illogically defeat the very purpose of the statute if a bicyclist in the middle of the roadway could dictate "the normal speed of traffic" by refusing to move to the right and thereby forcing approaching motorists to slow down to match his speed indefinitely.

miles per hour.[16] The testimony of Chief Rumsey and Appellant established that Appellant was operating in the roadway, to the left of the fog line and to the left of his companion, and therefore was not to the right portion of the way "as far as practicable."

Additionally, competent evidence supported the District Court's implicit finding that the statutory exceptions did not apply. Regarding the exception under 29-A M.R.S. § 2063(2)(C), although the video showed that at times Appellant was proceeding straight in a place where a right turn was permitted (and therefore in those places he was not required to move to the right as far as practicable in the way), it also showed that at *other* times Appellant was *not* in a place where a right turn was permitted, yet he continuously failed to move to the right.

Regarding the exception under 29-A M.R.S. § 2063(2), there was no evidence that Appellant actually had determined it was unsafe to keep to the right, because Appellant did not so testify at

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[16] Unlike motorcycles, Maine law does not establish a right of bicyclists to ride side-by-side on a public roadway, nor does it expressly prohibit them from doing so. Compare 29-A M.R.S. §§ 101(6-C) & 2062(4) (2023) (providing that 2 motorcyclists lawfully may operate side-by-side in the same lane, and prohibiting "autocycles" - or three-wheeled motorcycles - from doing so).

trial, nor did he assert any safety concerns to Chief Rumsey at the time of the traffic stop.[17]

Regarding the remaining exception for hazardous conditions under 29-A M.R.S. § 2063(2)(D), although Appellant testified that the road surface had some "undulations," "bumps" and "imperfections," he did not testify that the roadway condition was better where he was positioned to the left, nor did he testify that his failure to move to the right was necessary to avoid hazardous conditions.[18] Indeed, the video showed that the portion of the way toward the right was in better condition and had fewer cracks.

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[17] Although Appellant now assets he "had… determined that the area to his right where his fellow cyclist was riding… was unsafe" (*Appellant's Brief,* 5), he did not so testify at trial. Appellant also now tries to argue in the negative, asserting "there is no competent evidence that… [Appellant] *did not* determine it was unsafe for him to ride further right" (*Appellant's Brief,* 25-27, emphasis added), but contrary to that argument the statute does not create a presumption that a bicyclist who fails to keep to the right has determined it is unsafe to do so.

[18] Although Appellant now asserts that he "testified he was riding further left because doing so was necessary to avoid hazardous conditions" (*Appellant's Brief,* 5), he did not so testify at trial. The closest he came to that was testifying "there… are impediments in the road, and I believe that I still was following the intent… of this statute, riding to the right[.]"

Nor was the District Court required to *infer* that Appellant had determined it was unsafe to keep to the right, or that hazardous conditions prevented him from doing so. We must give due regard to the trial court's unique opportunity to assess the credibility of witness testimony and to decide how much weight it deserves. M.R. Civ. P. 52(c). We also must assume that, based on the evidence, the District Court found that Appellant failed to keep to the right as far as practicable for other reasons. Perhaps he did not keep to the right simply because he preferred to ride alongside his cycling companion, or perhaps because he wished to obstruct vehicular traffic. After all, Appellant remained alongside his cycling companion throughout the entire period of Chief Rumsey's observation of them (*App.* 10; *Tr.* 12-13), and when asked to change to single file Appellant yelled, "you can go F yourself." *App.* 8; *Tr.* 5. Appellant's vitriolic response could support a reasonable inference that his motivation was hostility towards motorists, not concerns about safety based on the road conditions. Either way, the evidence supports a finding that safety was not the reason for Appellant's failure to keep to the right as far as practicable.

Moreover, the District Court was justified in placing substantial weight on the fact that Appellant's bicycling companion in fact rode further to the right portion of the way than Appellant, which demonstrated conclusively that the conditions in that portion of the way were not too hazardous for a bicyclist. Indeed, the District Court expressly and reasonable found that because Appellant's companion was able to safely ride a bicycle further to the right, Appellant could have done so as well. *App.* 10; *Tr.* 12-13.

2) The Law Court should not vacate the District Court's decision based on Appellant's new arguments that exceptions to the statute apply, because Appellant did not preserve those arguments for appellate review and because Appellant has failed to demonstrate obvious error.

a) The standard of review.

"To preserve an issue for appeal, the issue must first be presented to the trial court." *In re Anthony R.,* 2010 ME 4, ¶ 8, 987 A.2d 532, citing *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.,* 546 U.S. 394, 401 (2006). The Law Court will not reach an unpreserved issue unless there was obvious error, meaning error that should have been apparent to the trial court, resulted in substantial injustice and affected substantial rights. *In re Anthony R.,* 2010 ME 4, ¶ 9, 987 A.2d 532.

Because Appellant did not request additional findings of fact or conclusions of law, the Law Court must assume that the District Court made all findings necessary to support its decision, unless there is no competent evidence in the record to support such a finding. M.R. Civ. P. 52(c); *Coppola,* 2007 ME 147, ¶ 25, 938 A.2d 786; *Estate of Turcic,* 2017 ME 118, ¶ 5, 164 A.3d 134.

b) The District Court did not commit obvious error in finding that the statutory exceptions did not apply.

At trial, Appellant did not assert that any of the statutory exceptions applied. Specifically, he did not assert that at all times he was proceeding straight in a place where right turns were permitted (29-A M.R.S. § 2063(2)(C)), nor that he had determined it was unsafe to operate his bicycle further to the right (29-A M.R.S. § 2063(2)), nor that he failed to operate further to the right because it was necessary to avoid hazardous conditions or that the lane was too narrow for a bicycle and a vehicle to travel safely side-by-side (29-A M.R.S. § 2063(2)(D)). If Appellant had raised those issues during the trial, or even after the trial in a motion for further findings of fact pursuant to M.R. Civ. P. 52(b), then the trial court

could have addressed them. Because Appellant did not preserve those issues, the Law Court should not consider them on appeal.

Furthermore, as discussed above, competent evidence in the record supported the District Court's implicit finding that the statutory exceptions did not apply to Appellant. Although there was evidence that sometimes Appellant was proceeding straight where a right turn was permitted, there also was evidence that at other times no right turn was permitted yet he still failed to move as far to the right portion of the way as practicable. Similarly, although there was evidence that there were some imperfections in the road surface, there was no testimony or other evidence that hazardous conditions actually made it unsafe for a bicyclist to operate further to the right than Appellant's position. Indeed, the fact that his bicycling companion did so demonstrated conclusively that a bicyclist could safely ride further to the right. Finally, although Appellant testified that the traveling lane was 11 feet wide and that the normal width of a car was 6½ feet, that testimony (if the District Court found it credible) did not establish that the lane was too narrow for a bicycle and a vehicle to travel safely side-by-side. After all, the law requires that a motorist passing a bicyclist must allow a

distance of not less than 3 feet (29-A M.R.S. § 2070(1-A)), and simple math tells us that would leave a foot and a half to spare within the lane (6½' + 3' + 1½' = 11').

Nor did Appellant testify that he had in fact determined it was unsafe for him to operate further to the right. By its plain language, the statutory exception requires that the bicyclist actually "determined" it was unsafe at the time of the event, not that the bicyclist could have or might have determined it was unsafe. 29-A M.R.S. § 2063(2) (2023). There is no evidence in the record to establish that Appellant actually made such a determination, nor to refute the District Court's implicit finding that he did not.

Therefore, even if the Law Court decides to reach this unpreserved issue, the evidence in the record does not support Appellant's argument that the District Court committed obvious error in finding that the statutory exceptions did not apply.

3) The Law Court should not vacate the District Court's decision based on Appellant's new arguments that the investigation and the judicial proceedings were unlawful, because Appellant did not preserve those arguments for appellate review and because Appellant has not demonstrated obvious error.

In this appeal Appellant raises several new claims challenging the lawfulness of the investigation and the judicial proceedings, including arguing that the traffic stop was unlawful, the police violated his right to free speech, the police wrongfully withheld a video recording of the stop, the police wrongfully withheld evidence at trial, and the District Court violated his right to a fair trial. However, the Law Court should not vacate the District Court's decision based on Appellant's new claims that the investigation and the judicial proceedings were unlawful, because Appellant did not preserve those issues for appellate review and Appellant has not demonstrated obvious error.

a) The standard of review.

Appellant concedes he did not challenge the lawfulness of the investigation or the lawfulness of the judicial proceedings before the District Court. *Appellant's Brief*, 33. As discussed above, the Law Court will not reach an issue that was not presented to the trial

court, even a claimed constitutional violation, unless there was obvious error, meaning error that should have been apparent to the trial court, resulted in substantial injustice, and affected substantial rights. *In re Anthony R.,* 2010 ME 4, ¶ 9, 987 A.2d 532. The Law Court's review of the merits of an appeal "is limited to the facts and evidence in the record before the trial court." *Lincoln v. Burbank,* 2016 ME 138, ¶ 60, 147 A.3d 1165.

b) The traffic stop was lawful.

Appellant challenges the lawfulness of the traffic stop based on the fact that there was no evidence that Chief Rumsey was in uniform, citing 29-A M.R.S. §§ 105(1) & 2063(5) (2023), which authorize a uniformed police officer to stop a motor vehicle or a bicyclist in order to issue a summons for a traffic violation. *Appellant's Brief,* 7, 24. Because Appellant did not raise that claim in the District Court, the parties did not develop a factual record on the issue and therefore the evidence does not indicate whether Chief Rumsey was in uniform or not. Because the issue was not preserved, and because the record does not substantiate Appellant's claim that Chief Rumsey was not in uniform, the argument necessarily fails.

Furthermore, even if Chief Rumsey was not in uniform, Appellant's argument would fail because the Law Court has held that a traffic stop based on reasonable and articulable suspicion is lawful even if the police officer was not wearing a uniform, noting that the presence or absence of a uniform becomes significant only when the operator fails or refuses to stop. *State v. Swiek,* 2008 ME 132, ¶¶ 6-8, 955 A.2d 255, citing *State v. Lemieux,* 662 A.2d 211, 212-13 (Me. 1996).[19] Chief Rumsey had reasonable and articulable suspicion based on his own observation of Appellant's failure to keep as far to the right portion of the way as practicable while operating a bicycle below the normal speed of traffic. Therefore, the stop was lawful.

Appellant also now claims for the first time that Chief Rumsey's conduct was "dangerous and unlawful" because it violated the requirement under 29-A M.R.S. § 2070(1-A) (2023) that a motorist passing a bicyclist must leave a distance of at least 3

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[19] Appellant incorrectly argues that that Chief Rumsey needed probable cause to stop Appellant. *Appellant's Brief,* 31. The legal standard to justify a traffic stop is merely reasonable and articulable suspicion, not probable cause. 29-A M.R.S. § 105(1) (2023); *Hayes v. Florida,* 470 U.S. 811, 816 (1985).

feet, embellishing upon his trial testimony that Chief Rumsey pulled alongside his bicycle "in what I considered a more aggressive manner" (*App.* 9; *Tr.* 6). *Appellant's Brief,* 6 & n.7, 31. However, that unpreserved claim is unsupported by any evidence in the record, since at trial Appellant gave no explanation of why he considered Chief Rumsey's conduct "aggressive" and there was no evidence whatsoever that Chief Rumsey's vehicle approached within 3 feet of Appellant's bicycle.

Finally, Appellant now accuses Chief Rumsey of being "retaliatory," asserting that his issuance of a traffic ticket constituted "an abuse of power" based on his "ego." *Appellant's Brief,* 10, 23-24, 31-32. However, that unpreserved claim is unsupported by any evidence in the record. Furthermore, the District Court, which had the opportunity to observe Chief Rumsey's demeanor when he testified at trial, gave no indication of any perceived bias, impropriety, or unprofessionalism.

Furthermore, even if the traffic stop was unlawful, that would not render the resulting evidence inadmissible in a civil proceeding for a traffic violation (as opposed to a criminal proceeding). *Plumbago Mining Corp. v. Sweatt,* 444 A.2d 361, 370 (Me. 1982) (the

exclusionary rule based on a Fourth Amendment violation does not apply to civil action); *Powell v. Secretary of State,* 614 A.2d 1303, 1306-1307 (Me. 1992) (noting that the exclusionary rule based on a Fourth Amendment violation generally applies only to criminal cases, and holding it does not apply to an administrative license suspension proceeding).[20]

c) Chief Rumsey did not violate Appellant's right to free speech.

Appellant also now argues for the first time that Chief Rumsey's issuance of a traffic ticket violated his constitutionally protected right to free speech, because it happened immediately after Appellant yelled at him "you can go F yourself." *Appellant's Brief,* 6-7, 32. That unpreserved claim fails to meet the obvious error standard because competent evidence supports the conclusion that Chief Rumsey issued the traffic ticket based on

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[20] Even if the traffic stop was unlawful, and even if this was a criminal case, the evidence of Appellant's traffic violation would not be suppressed because it did not *result* from the traffic stop. *State v. Boyington,* 1998 ME 163, ¶ 9, 714 A.2d 141 (holding that the exclusionary rule applies only to "fruits" of government misconduct, meaning evidence that would not have come to light but for the illegal actions of the police), citing *Wong Sun v. United States,* 371 U.S. 471, 488 (1963). Chief Rumsey already had observed Appellant's unlawful bicycle operation before the traffic stop.

Appellant's conduct in failing to keep to the right, not based on his speech. Furthermore, yelling hostile obscenities at a passing motorist does not qualify as constitutionally protected free speech. *Chaplinksy v. New Hampshire,* 315 U.S. 568, 573-74 (1942) (holding that the constitutional right to freedom of expression does not extend to "fighting words" that are "likely to cause a breach of the peace.")

d) Chief Rumsey did not violate Appellant's discovery rights or his rights under the Freedom of Access Act.

Next, Appellant argues for the first time that Chief Rumsey wrongfully withheld a cruiser video recording from him in violation of a request under the Freedom of Access Act (FOAA) (1 M.R.S. §§ 400-414 (2023)). *Appellant's Brief,* 7-8 & n.10. That unpreserved claim fails the obvious error test, because there is no evidence in the record whatsoever concerning a FOAA request or the response (or lack of response) from the Cumberland Police Department. Therefore, there is no evidence of a FOAA violation.

Moreover, even if evidence in the record supported Appellant's claim, the remedy for a FOAA violation would be limited to a fine, or possibly declaratory or injunctive relief to compel compliance, but

there is no statutory basis to dismiss a civil action or even to exclude evidence based on a FOAA violation. 1 M.R.S. § 410 (2023) (providing that willful violation of FOAA is a civil violation for which the remedy is merely a fine). Therefore, Appellant has failed to show that the alleged (and unproven) FOAA violation resulted in substantial injustice and affected his substantial rights at trial.

Nor would the alleged FOAA violation constitute a violation of Appellant's right to discovery. In a civil traffic proceeding, "[d]iscovery shall be had *only* by agreement of the parties or by order of the court on motion for good cause shown." M.R. Civ. P. 80F(h) (emphasis added); *State v. Chubbuck,* 449 A.2d 347, 350, n.9 (Me. 1982) (noting a substantial difference between discovery rights in a criminal proceeding and a civil traffic infraction). Having failed in the District Court to request a discovery order or to otherwise assert a claim regarding a discovery violation, Appellant should not be heard on appeal to complain of a discovery violation, particularly where there is no evidence in the record to support such a claim.

e) Chief Rumsey did not violate Appellant's rights by omission of testimony.

Next, Appellant argues for the first time that Chief Rumsey's trial testimony "omitted material facts that went to the threshold statutory requirements… for the… citation to be lawful." *Appellant's Brief,* 7-8, 10. Appellant cites no legal authority for this argument, and there is none. The State has no legal obligation to present evidence for the defendant. As discussed above, the evidence at trial was sufficient to establish each element of the traffic violation, and to the extent that Appellant expected Chief Rumsey to provide further testimony, he had a full and fair opportunity to elicit such testimony during cross examination, which he declined to do. Therefore, Appellant's unpreserved claim regarding Chief Rumsey's omission of testimony fails to meet the obvious error standard.

f) The finding that Appellant committed a traffic violation did not violate Appellant's rights.

Finally, Appellant argues for the first time that the District Court's finding that he committed a traffic violation was obvious error because "the totality of force and effect of the evidence rationally persuades to a certainty that [it] does not represent the

truth and the right of the case," and because it "seriously impacted [Appellant's] substantial rights, harmed the public reputations of the law enforcement community and judicial proceedings, and compromised the fairness and integrity of the… trial." *Appellant's Brief,* 31-33. To the contrary, as discussed above, the District Court's decision was not erroneous because it correctly applied the law and was supported by competent evidence in the record.

Furthermore, there is no support in the record for Appellant's assertion that the decision "seriously impacted substantial rights." The record shows that during the traffic stop Appellant was merely detained for a few minutes in order to receive a ticket for a civil traffic violation, and upon conviction he was merely fined $151.

Nor is there support in the record for Appellant's assertion that the District Court's decision damaged the reputation of the police or the judiciary. It does not damage the reputation of the police when an officer who observes a traffic violation enforces the law by issuing a traffic ticket. It does not damage the reputation of the judiciary when the trial court finds based on competent evidence that a traffic violation occurred, after providing to the defendant reasonable notice of hearing and a meaningful

opportunity to present evidence and to confront and cross-examine witnesses. *Citibank, N.A. v. Moser,* 2024 ME 19, ¶ 8, 314 A.3d 194 (noting that the fundamental requirement of due process is reasonable notice and a meaningful opportunity to be heard).

Overall, it seems that Appellant's disagreement with the District Court's decision stems from his underlying disagreement with the statutory requirement that a bicyclist shall keep as far to the right portion of the way as practicable to let faster vehicular traffic pass. He clearly demonstrated that disagreement in his immediate and unkind verbal response to a passing motorist who merely requested that he move to the right, and he continues to demonstrate it today, asserting "the statutory mandate contained within Section 2063 did not and does not apply to Mr. Ray," and "no language anywhere in the statute… requires bicyclists to move as far right as practicable when a vehicle is approaching from behind." *Appellant's Brief,* 22-23. Regardless of Appellant's obvious disagreement with the law, it is the domain of the Legislature, not the individual bicyclist, to declare what the law requires, and the District Court and the Law Court are sworn to

uphold and apply the law as it was written, giving force to the intent of the Legislature as set forth in plain language of the statute.

CONCLUSION

For all of the foregoing reasons, the Law Court should affirm the decision of the District Court.

Respectfully submitted,

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Dated: June 24, 2024

/s/ Grant Whelan

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused two true copies of the foregoing brief to be served upon counsel for Appellant by first class United States mail, postage pre-paid, addressed to Lauri Boxer-Macomber, Esq., Kelly, Remmel & Zimmerman, 53 Exchange Street, Portland, Maine, 04101.

Dated: June 24, 2024

/s/ Grant Whelan

Grant Whelan
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