

SUDDEN EMERGENCY

Once upon a time, "sudden emergency" was a thoroughbred in the defense attorney's stable of defenses. It was routinely pleaded in responsive pleadings and often asserted at trial. Arguing that the defendant was confronted with a sudden emergency played well to juries and often led to favorable results. Then the Supreme Court of Virginia began to severely limit the scope of the defense and the impact of the defense began to wain.

This article will take a look at the present status of the defense and comment on a more recent Supreme Court decision which may be illustrative of the future of the defense.

The Virginia Model Jury Instructions provide this instruction on sudden emergency:

"The defendant contends that he was confronted with a sudden emergency. A sudden emergency is an event or a combination of circumstances that calls for immediate action without giving time for the deliberate exercise of judgment.

If you believe from the evidence that the defendant, without negligence on his part, was con-

fronted with a sudden emergency and acted as a reasonable person would have acted under the circumstances of this case, he was not negligent."

It is important to note that the Virginia Model Jury Instructions now add the following comment in all caps: "This instruction should rarely be given."

Historically, before the Virginia Supreme Court began limiting the defense, sudden emergency was often asserted by defendants in car accident cases. If the defendant suffered an unexpected medical crisis or was confronted with an unexpected mechanical breakdown or road condition, the defense was effectively asserted.

In 1990, the Virginia Supreme Court issued an opinion in the case of *Garnot v. Johnson*, 239 Va. 81 (1990). In that matter, the plaintiff was stopped at a red light and began to proceed when the light turned green. When the traffic ahead stopped and caused the plaintiff to suddenly stop, the defendant struck the plaintiff's vehicle from behind. The Circuit Court allowed the defendant to offer a sudden emergency instruction and the jury returned a verdict in favor of the defendant. The plaintiff appealed and the Supreme Court reversed the trial court.

The court in *Garnot* commented that a "driver knows, or should know, that a car immediately in front of him may stop suddenly."

Id. at 86. Therefore, it was ruled that the circumstances of the accident did not support a sudden emergency instruction by the defendant.

In 1994, the Virginia Supreme Court again heard a sudden emergency appeal. In *Bentley v. Felts*, 248 Va. 117 (1994), the defendant's car had unexpectedly stalled as it approached an intersection. The defendant tried to apply his brakes but rolled into the intersection, causing the plaintiff to swerve and hit a guard rail. Again, the Circuit Court allowed the defendant to offer a sudden emergency jury instruction.

The Supreme Court reversed the Circuit Court and stated that the defendant's engine failure and resulting loss of brake power was not a sudden emergency. The Court concluded that because automobile engines "do occasionally cut off without warning, thereby requiring the operators to use increased brake force to stop cars ... automobile operators should anticipate this eventuality and be prepared to use increased force on the brakes." *Id.* at 120.

Additional decisions continued to erode the sudden emergency defense and in 2006, the Supreme Court commented in *Herr v. Wheeler*, 272 Va. 310 (2006) that jury instructions on the sudden emergency doctrine are "rarely appropriate."



In 2007, the case of *Vahdat v. Holland* provided insight into the Supreme Court's current interpretation of the sudden emergency defense. In *Vahdat*, the defendant asserted that he blacked out because of low blood sugar and lost control of his vehicle. The defendant asserted that he had never blacked out previously and had checked his blood sugar earlier on the day in question. Finding that the evidence was sufficient to support such an instruction, the Circuit Court ruled that the defendant could offer the sudden emergency instruction to the jury.

The Supreme Court ruled upon the sole question of what a sudden emergency instruction must include with regard to the defendant's evidentiary burden. The Court concluded that a defen-

dant claiming sudden emergency defense does not bear a burden to prove the existence of a sudden emergency by a preponderance of the evidence and held that a sudden emergency instruction need not include any reference to a defendant's burden to produce evidence of a reasonable explanation of the occurrence.

While the court in *Vahdat* again stated that sudden emergency instructions are "rarely appropriate," the existence of the sudden emergency defense in Virginia was somewhat validated. By discussing the evidentiary burden on a defendant asserting the sudden emergency defense, the Court seemed to convey that the defense is still alive, though it may indeed be on life support.

What should be concluded? A

liberal reading of *Vahdat* argues that defense counsel should continue to assert sudden emergency in extreme situations where the facts would support that the defendant was indeed confronted with an emergency situation and then responded as a reasonable person would have under the circumstances. While the defense will not be viable in run of the mill accident scenarios, the *Vahdat* ruling may offer support for the assertion that in true emergency situations, the sudden emergency defense is indeed proper and valid.



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