



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONNIE STEELE,)
Defendant-Below,)
Appellant,)
v.) No. 234, 2023
STATE OF DELAWARE)
Plaintiff-Below,)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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DATED: October 24, 2023

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
NATURE AND STAGE OF THE PROCEEDINGS	1
SUMMARY OF THE ARGUMENT.....	2
STATEMENT OF FACTS.....	3
ARGUMENT	
I. NO RATIONAL TRIER OF FACT COULD FIND BEYOND REASONABLE DOUBT THAT STEELE WAS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR A COMBINATION OF BOTH AT THE TIME HE WAS FOUND ASLEEP IN HIS TRUCK.	9
Conclusion.....	20
February 21, 2023 Verdict.....	Exhibit A
June 9, 2023 Sentence Order	Exhibit B

TABLE OF AUTHORITIES

Cases:

<i>Brinegar v. United States</i> , 338 U.S. 160 (1949)	13
<i>Brummell v. State</i> , 2016 WL 286907 (Del. Jan. 22, 2016)	18
<i>Church v. State</i> , 11 A.3d 226 (Del. 2010).....	18
<i>Head v. State</i> , 693 S.E.2d 845 (2010)	16
<i>Lambert v. State</i> , 110 A.3d 1253 (Del. 2015)	17
<i>Mills v. State</i> , 732 A.2d 845 (Del. 1999).....	9
<i>People v. Hagmann</i> , 572 N.Y.S.2d 952 (N.Y. S. Ct. App.Div, 3d Dept. 1991).....	19
<i>Schmerber v. California</i> , 384 U.S. 757 (1966)	17
<i>Serrano v. State</i> , 263 A.3d 126 (Del. 2021).....	18
<i>State v. Gatien</i> , 688 N.E.2d 54 (Ohio Mun. Ct. 1997).....	18
<i>State v. Kent</i> , 610 So. 2d 265 (La. Ct. App. 5th Cir. 1992).....	18
<i>State v. Maxwell</i> , 624 A.2d 926 (Del. 1993).....	12, 13
<i>State v. Sampia</i> , 696 So. 2d 618 (La. Ct. App. 1st Cir. 1997).....	18
<i>Stevens v. State</i> , 129 A.3d 206 (Del. 2015)	18
<i>Stivers v. State</i> , 978 S.W.2d 749 (Ark.App. 1998)	14
<i>Wainwright v. State</i> , 504 A.2d 1096, 1100 (Del. 1986).....	9
<i>Willingham v. State</i> , 297 A.3d 287 (Del. 2023)	9

Statutes:

21 Del.C. § 4177	<i>passim</i>
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Rules:	
Del.Supr. Ct. R. 8	10

NATURE AND STAGE OF THE PROCEEDINGS

The State indicted Ronnie Steele, (“Steele”), on 1 count each of Driving While Under the Influence, Driving Without a Valid License and No Proof of Insurance.¹ The indictment was issued after Trooper Fiore responded to what he believed to be a “medical assist” call and found Steele asleep in his truck, parked with its engine running, in the bay of a car wash. The trooper had no interactions with Steele at the scene.

On January 24, 2023, Steele filed a motion to suppress the statements he made to the trooper after he had been treated at the scene and treated in an ambulance and while he was still being treated at the hospital. The State responded to the motion and the judge denied it. Coincidentally, the State dropped the second two charges at that time.²

On February 21, 2023, a one-day jury trial was conducted that resulted in a guilty verdict on Driving While Under the Influence.³ Then, on June 9, 2023, the judge sentenced Steele to 5 years Level V suspended after 6 months for probation.⁴

This is his Opening Brief in support of a timely-filed appeal.

¹ A1

² A1-3

³ February 21, 2023 Verdict, attached as Ex.A.

⁴ June 9, 2023 Sentence Order, attached as Ex. B

SUMMARY OF THE ARGUMENT

1. Despite the ability and opportunity to do so, Trooper Fiore chose not to have any chemical tests conducted in this case. As a result, there was no measurement available for the jury to assess any potential drug or alcohol levels that may have been in Steele's system at the time he was asleep in his truck. Thus, the State was required to rely on circumstantial evidence to prove Steele was under the influence of alcohol or drugs or a combination of both when he was in physical control of his truck. A person is "under the influence" when he "is, *because of* alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle."

Here, to prove Steele was "under the influence," the State relied solely on a trooper's unconfirmed suspicions, speculation, and observations made after Steele received medical treatment, after he received at least one unknown substance from medical personnel and while he was suffering a serious medical condition. When all of the circumstances in the record are considered, no rational trier of fact could conclude beyond reasonable doubt that Steele was "under the influence" when he was found asleep in his truck.

STATEMENT OF FACTS

On August 2, 2021, at some time between 5:00 a.m. and 6:00 a.m., Ronnie Steele, (“Steele”), having recently been released from the hospital, was at his fiancée’s house. According to his fiancé, Steele was moving slowly and had not been looking after himself.⁵ However, he was not consuming any drugs or alcohol that morning.⁶

Shortly thereafter, around 6:30 a.m., Trooper Fiore received, via dispatch, information from a 911 call that there was an individual asleep in a truck, parked with its engine running, in a bay of a car wash located at a gas station.⁷ Based on this information, the trooper thought this was a “medical assist” call.⁸

The trooper arrived at the car wash about the same time as the Claymont EMS and the New Castle County paramedics. They found a white Ram 1500 truck parked as the 911 caller described. The only person in the

⁵ A81

⁶ A82

⁷ A24-25. See State’s Trial Exhibit # 4. The trooper acknowledged that there was an inaccuracy with respect to the driver’s ethnicity. A52-57

⁸ A27 Neither Fiore nor a trooper who arrived on the scene later made any effort to obtain security video from the gas station to find out what happened prior to their arrival. A53

truck was in the driver's seat and he appeared unresponsive.⁹ The trooper later learned that Steele was the "driver."

When the responders opened the driver's door, Fiore smelled an odor of alcohol inside. The trooper claimed that Steele was not only unresponsive, he was sweating profusely and appeared to have a pool of liquid around his crotch which led the trooper to suspect he had urinated himself.¹⁰ The trooper told the jury that he also observed a needle, containing some brown liquid substance, injected into Steele's right hand.¹¹ He then deferred to the medical professionals and stood about a foot away while they "worked on" the driver.

Fiore did a cursory search of the truck. He looked for an insurance card and registration. He found neither.¹² He also found no alcohol of any kind, no empty containers, no drugs and he found no drug paraphernalia (beyond the needle in Steele's hand) in or around the truck.¹³ Trooper Ruszkay arrived on the scene at some point and had the vehicle towed. It was his responsibility to conduct an inventory search. According to Fiore, there was no indication that any contraband was found during that search.¹⁴

⁹ A25-26, 28

¹⁰ A29

¹¹ A27

¹² A53

¹³ A26-28

¹⁴ A53

As the EMT's continued to treat Steele, they placed him on a gurney and put him in the back of an ambulance. While the door remained open, the trooper stood about 5 to 10 feet away. From there, he saw the EMT's “start[] an IV and administer[] intravenous drugs” to Steele.¹⁵ According to Fiore, the unknown drugs “revived” Steele.¹⁶ Shortly thereafter, EMT's took Steele via ambulance on a 10 to 15 minute ride to St. Francis hospital. Fiore followed behind in his own vehicle.¹⁷

Fiore testified that he went to the hospital because he suspected Steele was under the influence of alcohol or drugs or a combination of both. When he arrived, he found Steele on a gurney in a treatment room being tended to by hospital personnel. Once there was a “break” in the treatment, the trooper, for the first time that morning, interacted with Steele. It was at this time that he smelled an odor of alcohol on Steele’s breath, heard him slur his words and saw his bloodshot, watery, glassy eyes.¹⁸

The trooper sought to explain his suspicions to Steele. Without having been informed of his *Miranda* rights, Steele told the trooper that he “had some vodka a while ago.” However, he did not say how much he consumed or when

¹⁵ A30, 43

¹⁶ A30-31

¹⁷ A31-32

¹⁸ A33

he consumed it.¹⁹ He also denied that the needle the trooper claimed to have found belonged to him.²⁰

At one point, Steele complained that his “head was spinning from the Narcan.” This appears to be speculation on Steele’s part as nothing in the record reveals that Narcan was administered or needed to be administered. And, there was no explanation of the substance. However, Fiore was informed at the hospital that Steele was “likely going to be admitted” due to “something like possible kidney failure.”²¹

In any event, Fiore went on to explain to Steele the need to obtain blood from him based on his suspicions. In doing so, he explained the principle of “consent” to draw blood versus the consequences of “implied consent.”²² But, as the trooper told the jury, Steele “didn’t understand how he could be charged with DUI if he refused the blood draw.”²³ Steele simply “just was not comprehending the process.”²⁴ Ultimately, in response to continued questions, Steele told the trooper, “fuck you.”²⁵

¹⁹ A57 None of Steele’s statements were recorded. A58

²⁰ A34

²¹ A64-65

²² A34

²³ A34-35

²⁴ A34, 37

²⁵ A37

The trooper characterized Steele's demeanor at the hospital as "argumentative," "uncooperative," "belligerent" and "extremely disorderly."²⁶ However, as he acknowledged, this characterization was based solely on Steele's use of profanity, not on any physical conduct.²⁷ Nonetheless, even though he asserted he was lawfully permitted to do so, Fiore cited Steele's "behavior" for his decision not to obtain a blood sample.²⁸ Instead, the trooper went out, obtained a citation, returned to the hospital and arrested Steele.²⁹ Fiore admitted that this choice not to have the blood drawn made it impossible for him to tell the jury how much alcohol may have been in Steele's system.³⁰

Fiore never collected the needle that he purportedly found injected into Steele's right hand. He "assume[d]" one of the EMT's discarded it.³¹ Accordingly, the substance was never tested. As a substitute for that evidence, the State presented Fiore's speculation at trial. Fiore initially claimed that the brown liquid substance, in a powder form is heroin and Fentanyl and appears tannish in color. He stated that if someone heats the powder, it turns into a

²⁶ A34

²⁷ A57

²⁸ A35-36

²⁹ A59

³⁰ A61-62

³¹ A31, 50 Despite having the capability to do so, the trooper never even took a picture of the needle containing the substance. A44-49

dark or medium brown liquid that an individual can put in a needle to inject.³² Only moments later, however, he told the jury that whether those substances were involved in this case and whether that process occurred in this case was “just all speculation[.]” In fact, he emphatically told the jury, “I want to be perfectly clear. I can’t say that that happened in this case.”³³ He also acknowledged that the lack of drug paraphernalia inside and around the truck was inconsistent with his description of converting heroin and Fentanyl into a liquid for injection.³⁴

³² A37-38

³³ A54-55

³⁴ A56

I. NO RATIONAL TRIER OF FACT COULD FIND BEYOND REASONABLE DOUBT THAT STEELE WAS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR A COMBINATION OF BOTH AT THE TIME HE WAS FOUND ASLEEP IN HIS TRUCK.

Standard of Review

Generally, this “Court reviews claims of insufficient evidence to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt[.]”³⁵ When a defendant does not “make a motion for acquittal to the trial court,” this Court applies a plain error standard of review to the “issue of the sufficiency of the evidence to convict[.]”³⁶ To amount to plain error, the error must be “so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”³⁷ A conviction despite the State’s failure “to prove a criminal defendant's guilt beyond a reasonable doubt” is a due process violation³⁸ and must be considered plain.

Question Presented

Whether any rational trier of fact could find beyond reasonable doubt that it was because of alcohol or drugs or a combination of both that Steele

³⁵ *Willingham v. State*, 297 A.3d 287 (Del. 2023).

³⁶ *Id.* at n.15.

³⁷ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

³⁸ *Mills v. State*, 732 A.2d 845, 852 (Del. 1999).

was “less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving” at the time he was found asleep in his truck when the State’s case rested on a trooper’s unconfirmed suspicions, speculation, and observations made after medical treatment was rendered, at least one unknown substance was administered by medical personnel and while Steele was suffering a serious medical condition.³⁹

Argument

Despite the ability and opportunity to do so, Trooper Fiore chose not to have any chemical tests conducted in this case. As a result, there was no measurement available for the jury to assess any potential drug or alcohol levels that may have been in Steele’s system at the time he was asleep in his truck. Thus, the State was required to rely on circumstantial evidence to prove its case, via 21 Del.C. § 4177 (a) (1), (2) or (3):

- No person shall drive a vehicle:
- (1) When the person is under the influence of alcohol;
 - (2) When the person is under the influence of any drug;
 - (3) When the person is under the influence of a combination of alcohol and any drug;

For purposes of these subsections, a person is “under the influence” when he “is, *because of* alcohol or drugs or a combination of both, less able than the

³⁹ See Del.Supr. Ct. R. 8.

person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.”⁴⁰ Here, to prove Steele was “under the influence,” the State relied solely on Trooper Fiore’s unconfirmed suspicions, speculation and observations made under circumstances tending to render those observations unreliable.

At trial, when asked directly why he believed Steele was driving under the influence of alcohol or drugs or a combination of both, the trooper responded,

Totality of everything. Based on my prior training and experience, the brown liquid substance in the syringe I know based on the one-week drug investigators class and just having with the opioid epidemic being what it is, I come in contact with Fentanyl and heroin on almost a daily basis on the job. The brown liquid substance in a powder form, heroin and Fentanyl appears tannish in color, heat it up, put it in a needle to inject it, it turns to a dark brown to a medium shade of brown. So based on my training an experience, I suspected that to be heroin and/or Fentanyl that was in the needle. The profuse sweating is also an indicator. The possible – possibility that the defendant had urinated himself is an indicator. The odor of alcohol from the vehicle, the odor of alcohol from the defendant’s breath as he spoke to me, his bloodshot, glassy, watery eyes, his slurred speech, his belligerent behavior. It was kind of the totality of everything led me to believe that he was impaired on either a narcotic or alcohol or a combination of both.⁴¹

⁴⁰ § 4177 (c) (11) (emphasis added).

⁴¹ A37-38

The reality is that the trooper did not consider all of the circumstances in this case and he later conceded that his “suspicion” about the contents of the discarded needle was actually just speculation. When all of the circumstances in the record are considered, no rational trier of fact could conclude beyond reasonable doubt that Steele was “under the influence” when he was found asleep in his truck.⁴²

Unconfirmed Suspicions and Unreliable Observations

Prior to Fiore’s arrival on the scene, the only information he had about Steele’s condition was that he was asleep in the driver’s seat of a truck that had its engine running while parked in a car wash. The trooper believed the dispatch was for a “medical assist,” not for a DUI. Upon arrival, the trooper found a white Ram 1500 truck parked as described in the 911 call. The trooper had no idea why the truck was there, how the truck got there, the manner in

⁴² While the State was permitted to rely on the same observations the trooper relied on to establish probable cause to arrest Steele, “[a] finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not.” *State v. Maxwell*, 624 A.2d 926, 930 (Del. 1993). For purposes of probable cause, the trooper was “only required to present facts which suggest, when *those facts* are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.” *Id.* Thus, even if the trooper’s observations may have satisfied the standard of probable cause, they simple did not rise to the level necessary to prove Steele’s guilt.

which the truck had been driven or even if the truck had been involved in any accidents.

When the responders opened the door to the truck, the trooper observed Steele to be unresponsive and sweating profusely. Steele also purportedly had a pool of liquid around his crotch which led the trooper to suspect Steele had urinated himself. The trooper also claimed that he observed a needle, containing an unknown brown liquid substance, injected into Steele's right hand.⁴³ While these were among the suspicions that led the trooper to believe that Steele was under the influence of alcohol, drugs or both, the trooper did nothing to follow up on them.

Shortly upon leaving the scene, as part of his active investigation, Fiore went to the hospital to speak with Steele. He learned from medical personnel that Steele was suffering from possible kidney failure.⁴⁴ Yet, there is no indication that Fiore consulted with any medical personnel either at the scene or at the hospital to find out whether Steele's unresponsiveness, profuse sweating and suspected urination were indicators of alcohol and/or drug

⁴³ A27

⁴⁴ Even for purposes of determining probable cause, that Steele would likely be admitted for possible kidney failure would have been a relevant factor for Fiore to consider because it was a "fact[] and circumstance[] within [his] knowledge and of which [he] had reasonably trustworthy information. *Maxwell*, 624 A.2d at 930 (quoting *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (internal quotation marks and citations omitted)).

impairment or whether they were, instead, symptoms of Steele's medical condition.⁴⁵ In fact, the State introduced no evidence at trial to answer that question from any medical personnel, medical records or any other source.

Unreliable Observations

It was not until Fiore reached the hospital that he first interacted with Steele. It was during this interaction that the trooper first heard Steele's slurred speech, saw his bloodshot, watery eyes and observed his "belligerence." But, by this time, Steele had received extensive treatment by medical personnel at the scene, in the ambulance and at the hospital. And, at least one unknown substance had been administered to him during that treatment.

The State presented no evidence that Steele's physical manifestations were not from his medical condition, extensive treatment or any substances administered to him by medical personnel. Nor is there any evidence that the trooper sought to ascertain that information. Thus, the trooper's observations of Steele's speech, eyes and demeanor are unreliable and of very little to no value in determining guilt.

⁴⁵*Stivers v. State*, 978 S.W.2d 749 (Ark.App. 1998) (finding that it was reasonable to infer that the defendant's injuries and not his intoxication, could have caused his impairment).

Speculation

In explaining why he believed Steele was under the influence of drugs, Fiore relied heavily on the presence of the needle containing an unknown substance. Yet, he failed to collect the needle at the scene. He “assumed” it was discarded by the EMT’s. Thus, the substance was never tested. Nor did the trooper take any pictures or video of the needle before it was discarded.⁴⁶ And, even though he could have, the trooper had no chemical tests conducted to determine whether any drugs were in Steele’s system at the time he was found asleep in the truck.

Due to the trooper’s failure to collect and test the substance, the State was forced to rely on his⁴⁷ initial claim that there was heroin or fentanyl in the needle. Yet, the trooper admitted that he did not know what was in the syringe.⁴⁸ He conceded that his theory was just speculation and that the absence of drug paraphernalia in or around the truck is inconsistent with his speculative theory.⁴⁹ Thus, the trooper’s speculation alone or in conjunction with his observations, is not sufficient to allow a rationale trier of fact to

⁴⁶ A51-52

⁴⁷ A54-55

⁴⁸ A51-52

⁴⁹ A56

conclude, beyond reasonable doubt, that Steele was under the influence of drugs at the time he was found asleep in his truck.

Unconfirmed Suspicion

At the scene, the trooper smelled an odor of alcohol in the truck. However, he never found any alcohol or empty containers. At the hospital, he smelled alcohol on Steele's breath and Steele told him that he had "a vodka a while ago." In totality, these observations provided evidence that Steele consumed some alcohol at some point prior to being found asleep in the truck. It was not enough to prove that Steele consumed alcohol at some point before driving in order to establish that he was under the influence of alcohol or a combination of alcohol and drugs.

Because the trooper chose not to pursue obtaining a blood sample, no blood tests were done in this case. Therefore, "the record contains no evidence tending to explain the significance of any alcohol that may have been in" Steele's system.⁵⁰ Even assuming the presence of alcohol, there is no evidence as to its quantity or possible effect. Thus, it is unclear whether the quantity he may have consumed would cause any physical and/or mental impairment at all. Further, the trooper was unable to say what the relationship might be between the odor of alcohol on Steele's breath and the recency of

⁵⁰ *Head v. State*, 693 S.E.2d 845, 847–48 (2010).

consumption of any alcohol.

Ordinarily, when police are unable to interact with the driver at the scene, because the driver is unconscious or being treated, they seek a search warrant based on probable cause for driving under the influence to obtain a blood sample for testing.⁵¹ In this circumstantial case, given the alternative reasons for Steele's impairment, the failure to have blood drawn is significant. Therefore, the odor of alcohol in the truck and on Steele's breath along with Steele's statement to the trooper are not sufficient, either alone or in conjunction with the troopers other unconfirmed suspicions and speculation, to allow a rational trier of fact to conclude, beyond reasonable doubt, that Steele was under the influence of alcohol at the time he was found asleep in his truck.

Insufficient Evidence That Steele Was Under The Influence Of Alcohol Or Drugs Or A Combination Of Both

"[T]he record is completely devoid of any evidence tending to show" Steele was under the influence of either alcohol or drugs, much less a

⁵¹ Generally, if there is probable cause that the defendant is driving under the influence or there is another recognized exception to the Fourth amendment and "the means and procedures" for taking the blood are reasonable, police are justified in requiring the suspect to submit to a blood test. *Schmerber v. California*, 384 U.S. 757, 768 (1966). See *Lambert v. State*, 110 A.3d 1253, 1254 (Del. 2015) (noting that officer obtained search warrant to have blood sample drawn because the defendant was semiconscious and unable to complete any field sobriety tests due to the collision).

combination of both substances.⁵² In fact, there is at least as much, if not more, evidence to suggest Steele may have been impaired because of a serious medical condition.⁵³ It is true that the physical manifestations cited by the trooper “been associated with someone who is under the influence”⁵⁴ and could, in some circumstances, allow the jury to reasonably infer that a defendant was under the influence.⁵⁵ However, during the trooper’s

⁵² *Id.*

⁵³ *State v. Gatien*, 688 N.E.2d 54 (Ohio Mun. Ct. 1997) (finding odor of alcohol on the defendant’s breath alone insufficient evidence of DUI where all other signs of alcohol intoxication, except bloodshot eyes, could have been caused by hypoglycemia arising from diabetes, and eye condition could have been caused by a cold); *State v. Sampia*, 696 So. 2d 618 (La. Ct. App. 1st Cir. 1997) (finding evidence of defendant being under the influence insufficient when officer observed defendant, four hours after accident, smelled of alcohol, had slurred speech, and swayed slightly, because most of these observations could have been attributable to factors other than intoxication, such as her emotional state); *State v. Kent*, 610 So. 2d 265 (La. Ct. App. 5th Cir. 1992) (prosecution failed to prove beyond reasonable doubt that defendant was driving while intoxicated, in view of evidence that defendant’s behavior upon being stopped by officer could just as plausibly have been attributed to anxiety as to alcohol consumption, that defendant almost passed field sobriety tests, and that defendant pulled over to side of highway immediately after police vehicle pulled behind defendant’s truck).

⁵⁴ *Stevens v. State*, 129 A.3d 206, 210–11 (Del. 2015) (upholding conviction where, in addition to other circumstances, the officer observed, *at the scene*, the defendant stumble, slur his words, hand his car keys over to the trooper twice, emanate an odor of alcohol from his breath and have glassy eyes).

⁵⁵ See, e.g., *Serrano v. State*, 263 A.3d 126 (Del. 2021) (upholding conviction where, in addition to other circumstances, the officer observed of the defendant, *at the scene*, a moderate odor of alcohol from her breath, bloodshot, watery, and glassy eyes, slowed and slurred speech); *Brummell v. State*, 2016 WL 286907 *3 (Del. Jan. 22, 2016) (upholding conviction where, officer observed, *at the scene*, in addition to other circumstances, the defendant

investigation, he learned that Steele was going to be admitted to the hospital due to possible kidney failure. While the trooper had the opportunity to do so, he never attempted to confirm with medical personnel whether the reason Steele had been unresponsive, sweaty and had possibly urinated himself was the result of the medical condition rather than alcohol and/or drugs. Instead, he relied on his suspicions that may have satisfied the standard of probable cause but does not rise to the level of proving guilt beyond reasonable doubt.⁵⁶ Thus, the trooper's unconfirmed suspicions and speculation are not sufficient to allow a rationale trier of fact to conclude, beyond reasonable doubt, that Steele was under the influence of a combination of alcohol and drugs at the time he was found asleep in his truck.

slurring his speech and unable to stand, the defendant's pupils non-reactive to light); *Church v. State*, 11 A.3d 226 (Del. 2010) (finding trooper's observations, *at the scene*, of alcohol on the defendant's breath and bloodshot, watery eyes, urination, in addition to car crash and instability allowed rational trier of fact, viewing the evidence in the light most favorable to the State beyond a reasonable doubt that defendant).

⁵⁶ See *People v. Hagmann*, 572 N.Y.S.2d 952, 952–53 (N.Y. S.Ct. App.Div, 3d Dept. 1991) (finding insufficient evidence that defendant was “under the influence” of alcohol because there was no evidence his physical or mental abilities were impaired before motor vehicle accident, no chemical test results, only impairment evidence was nurse’s testimony that, when the defendant came into the hospital on a stretcher wearing a neck brace and hooked up to an IV, he had a number of abrasions, his eyes looked dazed and his speech was slow; detected an odor of alcohol on his breath but felt that he did not appear highly intoxicated).

CONCLUSION

For the reasons and upon the authorities cited herein, Steele's conviction must be vacated.

Respectfully submitted,

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DATED: October 23, 2023