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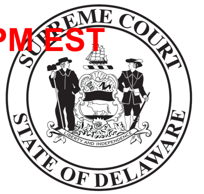

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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 REPLY BRIEF

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DATED: December 7, 2023

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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.

What material defect is more basic, serious and fundamental in character and is a clearer deprivation of an accused's substantial right than a conviction of a crime based on less than proof beyond reasonable doubt? Such a conviction is necessarily "infected with plain error and constitute[s] a miscarriage of justice." [1] When courts initially placed limits on review, they did not do so with an intent to prevent action "when rights absolutely vital to defendants" are at stake.[2] That is why, this Court must apply a plain error standard of review to the "issue of the sufficiency of the evidence to convict"[3] in this case even though no motion for judgment of acquittal was filed.

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[1] *United States v. Johnson*, 19 F.4th 248, 256 (3d Cir. 2021).
[2] *United States v. Morton*, 993 F.3d 198, 202 (3d Cir. 2021) (citing *Wiborg v. United States*, 163 U.S. 632, 658 (1896) and *Clyatt v. United States*, 197 U.S. 207, 221–22 (1905)). Federal courts are clear that, for jury trials, "[u]nder plain-error review, insufficient evidence requires reversal when upholding the conviction would "result[ ] in a fundamental miscarriage of justice." *United States v. Castro*, 704 F.3d 125, 137–38 (3d Cir. 2013) (quoting *United States v. Barel*, 939 F.2d 26, 37 (3d Cir. 1991)). This Court follows the federal courts' application of the standard of review of sufficiency of the evidence at a bench trial. Consistent with those cases, "where the defendant has entered a plea of 'not guilty' but fails to formally move for a judgment of acquittal in a bench trial, the issue of the sufficiency of the evidence will be reviewed the same as if there had been a formal motion for a judgment of acquittal." *Williamson v. State*, 113 A.3d 155, 158 (Del. 2015) (collecting cases).
[3] *Monroe v. State*, 652 A.2d 560 (Del. 1995).

The State is correct that "[e]vidence of a defendant's guilt may be proven exclusively through circumstantial evidence."[4] However, in our case, "when viewing [the] circumstantial evidence in the light most favorable to the State," given the alternative reasons for Steele's impairment, "no rational trier of fact could conclude, to the exclusion of [the] alternative reasons," that Steele was impaired because he was under the influence of alcohol, drugs or a combination of both.[5]

The State cites to only a few cherry-picked circumstances. What the State conveniently leaves out are the facts in the record that allow a rational trier of fact to infer that Steele's impairment was from possible kidney failure, or from the administration of an unknown substance and/or other treatment by medical personnel. Fiore had no interaction with Steele at the scene and there is no indication that Fiore consulted with any medical personnel to find out whether Steele's unresponsiveness, profuse sweating and suspected urination were indicators of alcohol and/or drug impairment or whether they were, instead, symptoms of Steele's medical condition.[6]

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[4] Ans. Br. at 15.
[5] See *Hoennicke v. State*, 13 A.3d 744, 749 (Del. 2010); *Monroe*, 652 A.2d at 566–67.
[6] *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).

Fiore did detect an odor of alcohol on Steele's breath at the hospital and Steele did admit that he "had some vodka a while ago." However, Trooper Fiore "could not testify as to when [any] consumption occurred, nor did he point to any evidence that could otherwise indicate temporal proximity to" the driving. Nor could the trooper say whether there was any relationship between the odor of alcohol on Steele's breath and the recency of consumption of any alcohol. "Absent a time marker of when alcohol was consumed, no rational inference can be drawn regarding intoxication."[7] And while there was an odor of alcohol in the truck, there was no presence of opened beer containers in and around his vehicle.

Finally, the only evidence in the record as to whether any narcotics may have been in Steele's system at the time he was operating his truck was Fiore's speculation as to the contents of the needle and, according to the State, Steele's statement that his head was spinning from Narcan. First, there is nothing in the record that defines Narcan or explains when, why or to whom it might be administered. Thus, this adds nothing to the State's case. Second, the State relays Fiore's theory that heroin and/or Fentanyl were in the needle, but, the State fails to relay the fact that later in his testimony, Fiore told the jury that his theory was simply "speculation" in this case. He stated, "I want

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[7] *State v. Sexton*, 2020 WL 755172, at *3–4 (Del. Com. Pl. Feb. 14, 2020).

to be perfectly clear. I can't say that [his theory] happened in this case."[8] He also acknowledged that the lack of drug paraphernalia inside and around the truck was inconsistent with that "theory."[9]

Viewing the evidence in the light most favorable to the State, the signs of impairment at the scene and at the hospital[10] could just as plausibly have been attributed to Steele's medical condition, the administration of the unknown substance, and/or other medical treatment as it could be to Steele being under the influence of alcohol, drugs or a combination of both.[11]

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[8] A54-55

[9] A56

[10] 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 he 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; odor of alcohol on his breath but felt that he did not appear highly intoxicated).

[11] *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

CONCLUSION

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

Respectfully submitted,

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DATED: December 7, 2023

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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).