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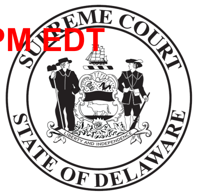

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RANDON WILKERSON,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 47, 2024
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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TABLE OF CONTENTS

PAGE

Table of Citations ii

Nature and Stage of Proceedings 1

Summary of the Argument 3

Statement of Facts 4

Argument 16

I. THE SUPERIOR COURT DID NOT ERR IN GRANTING THE STATE'S MOTION *IN LIMINE* 16

Conclusion 54

TABLE OF AUTHORITIES

CASES **PAGE**

Banks v. State, 93 A.3d 643 (Del. 2014)..16, 51

Clark v. State, 539 N.E.2d 9 (Ind. 1989) 35

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) 22,
.... 40, 41, 42, 44, 52

Farmer v. State, 411 S.W.3d 901 (Tex. Crim. App. 2013) 34

Fuller v. State, 860 A.2d 324 (Del. 2004) 16

General Elec. Co. v. Joiner, 522 U.S. 136 (1997)..41, 45

Gutierrez v. State, 842 A.2d 650 (Del. 2004) 37, 38, 39

Harris v. State, 2011 WL 754396 (Tex. Crim. App. Mar. 3, 2011)......................39

Holmes v. South Carolina, 547 U.S. 319 (2006) 25, 26, 50, 51

Hudson v. State, 312 A.3d 615 (Del. 2024) 41

McClain v. Metabolife Intern., Inc., 401 F.3d 1233 (11th Cir. 2005) 45

Palmer v. State, 719 P.2d 1285 (Okla. 1986) 32

People v. McMillen, 961 N.E.2d 400 (Ill. App. Ct. 2011)..............................30, 31

People v. Vang, 262 P.3d 581 (Cal. 2011)...46

People v. Velez, 175 Cal.App.3d 785 (Cal. Ct. App. 1985) 32

Polk v. State, 567 A.2d 1290 (Del. 1989) 29, 30

Porter v. Whitehall Laboratories, Inc., 9 F.3d 607 (7th Cir. 1993) 42

Small v. State, 51 A.3d 452 (Del. 2012) 48

State v. Bigelow, 931 N.W.2d 842 (Neb. 2019)....35, 36

State v. Hall, 214 N.W.2d 205 (Iowa 1974) 33

State v. McClenton, 781 N.W.2d 181 (Minn. Ct. App. 2010) 31, 32, 34

State v. Sette, 611 A.2d 1129 (N.J. Super. Ct. App. Div. 1992)....32

State v. Wilkerson, Del. Super., ID Nos. 2104013901, 2104013945, 2104013877, Karsnitz, J. (June 16, 2023) .... *passim*

Tolson v. State, 900 A.2d 639 (Del. 2006) 41

Tumlinson v. Advanced Micro Devices, Inc., 81 A.3d 1264 (Del. 2013)....40, 41, 44, 45

United States v. Bindley, 157 F.3d 1235 (10th Cir. 1998)....32

United States v. F.D.L., 836 F.2d 1113 (8th Cir. 1988) 32

United States v. Kamra, 2022 WL 4998978 (3d Cir. Oct. 4, 2022) 52

United States v. Lopez-Perez, 514 F. App'x 463 (5th Cir. 2013)....52

United States v. Stanford, 823 F.3d 814 (5th Cir. 2016) 52

Unitrin, Inc. v. American Gen. Corp., 651 A.2d 1361 (Del. 1995)....48

Williams v. State, 2014 WL 708445 (Del. Feb. 19, 2014)....26

Wyant v. State, 519 A.2d 649 (Del. 1986) 28, 29, 49, 50, 51

STATUTES AND RULES

11 *Del. C.* § 303....22, 47

11 *Del. C.* § 303(a).... 37, 38, 47, 48

11 *Del. C.* § 303(b) 37

11 *Del. C.* § 304 47

11 *Del. C.* § 304(a) 48

11 *Del. C.* § 304(b) 48, 49

11 *Del. C.* § 401(c) 33

11 *Del. C.* § 421 .... 26, 28

11 *Del. C.* § 423 .... 21, 22, 26, 27

11 *Del. C.* § 424 28

16 *Del. C.* § 4701(29) 35

D.R.E 401 51

D.R.E 402 51

D.R.E 403 .... 51, 52

D.R.E 702 .... 22, 25, 39, 40, 41, 42, 47, 52

OTHER AUTHORITIES

Delaware Criminal Code with Commentary (1973) 27, 28

Synopsis to H.B. 831 128th Gen. Ass'y. 29

U.S. Const. amend. VI 24, 25

U.S. Const. amend. XIV 23, 25

NATURE AND STAGE OF THE PROCEEDINGS

On April 25, 2021, Randon Wilkerson ("Wilkerson") was arrested after he brutally attacked multiple individuals, including Delmar Police Department Corporal Keith Heacook, who ultimately succumbed to death.[1] On June 14, 2021, a Sussex County grand jury returned an indictment that charged Wilkerson with two counts each of first-degree murder and first-degree assault, five counts of possession of a deadly weapon during the commission of a felony, three counts of possession of a deadly weapon by a person prohibited, and one count each of first-degree burglary, third-degree assault, and terroristic threatening.[2]

Prior to trial, Wilkerson raised the possibility of presenting the affirmative defense of involuntary intoxication.[3] The State filed a motion *in limine* to preclude him from doing so at trial.[4] After receiving Wilkerson's response to the motion and the State's reply, the Superior Court granted the motion on June 16, 2023.[5]

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[1] A1 at D.I. 1; A36-46.

[2] A1 at D.I. 4. Wilkerson was also charged by information with offensive touching. A141.

[3] *See* A146.

[4] A8 at D.I. 60.

[5] A8-9 at D.I. 67-69.

The parties then agreed for the Superior Court to conduct a stipulated bench trial.[6] On October 16, 2023, a Superior Court judge found Wilkerson guilty of all charges after a one-day trial.[7] On December 8, 2023, following a pre-sentence investigation, the judge sentenced Wilkerson to serve a total of two life sentences plus 212 years in prison.[8]

On February 5, 2024, Wilkerson timely filed a Notice of Appeal. On April 29, 2024, Wilkerson filed his opening brief. This is the State's answering brief.

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[6] A9-10 at D.I. 76, 77.

[7] A10-11 at D.I. 80.

[8] Opening Br. Ex. A. On January 29, 2024, the Superior Court reissued the sentence order. A12 at D.I. 90.

SUMMARY OF THE ARGUMENT

I. Denied. The Superior Court did not err in granting the State's motion *in limine* and thereby preventing Wilkerson from presenting an involuntary intoxication defense at trial. Wilkerson's constitutional right to present a complete defense was not violated. This right was not absolute, and, as a matter of law, involuntary intoxication was unavailable to Wilkerson as a defense. Even if involuntary intoxication was an available defense, the Superior Court could have properly excluded Wilkerson's proffered evidence. Wilkerson did not present some credible evidence of involuntary intoxication, much less evidence establishing the defense by a preponderance of the evidence. Wilkerson's proffered lay testimony was speculative, and his expert opinions were inadmissible. The Superior Court could have properly excluded Wilkerson's evidence as irrelevant, based on inadmissible hearsay, or unreliable. His evidence's probative value, if any, was substantially outweighed by the risk of misleading or confusing the jury. Finally, any error in excluding Wilkerson's evidence was harmless.

STATEMENT OF FACTS

Evidence presented at Wilkerson's stipulated bench trial established that, at 5:14 a.m. on April 25, 2021, Corporal Heacook was dispatched to a residence located at 11773 Buckingham Drive in Delmar, Delaware, in response to a 911 call made by Charles Meagher ("Meagher").[9] At 5:27 a.m., Corporal Heacook reported that he had arrived on scene.[10] Shortly thereafter, dispatchers tried contacting Corporal Heacook but received no response.[11] At 5:36 a.m., additional units were dispatched to the location.[12] At 5:48 a.m., Delaware State Police Corporal James Wharton and Wicomico County Deputy Sheriff Michael Houck arrived at the residence.[13] Deputy Houck observed that the residence's garage door had a broken window with apparent blood on the outside.[14] Both officers entered the residence and, in the living room, found Corporal Heacook lying unconscious and face down in a pool of blood.[15] The house was extremely cluttered, and there were indications of a struggle.[16]

Deputy Houck dragged Corporal Heacook's body from the living room into

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[9] A502-03.

[10] A503.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] A503-04.

[16] A504.

the front yard, and he began performing CPR.[17] Other officers arrived on scene, and efforts to resuscitate Corporal Heacook continued.[18] Corporal Heacook was taken by ambulance to TidalHealth (formerly Peninsula Regional Medical Center) in Salisbury, Maryland, and he was subsequently transported to the University of Maryland Shock Trauma Center.[19] But Corporal Heacook never regained consciousness, and he was pronounced dead on April 28, 2021.[20]

Around the time that Deputy Houck and Corporal Wharton were arriving on scene, Steven Franklin ("Steven"), a 73-year-old man who lived across the street, called 911 to report that his neighbor (Wilkerson) had assaulted him and his elderly wife, Judith.[21] Steven later told police that he woke up around 5 a.m. that day, and Judith said there was someone knocking on the back door of their residence.[22] When Steven asked who was at the back door, Wilkerson replied, "I live across the street with Chuck [Meagher] and a rape of a kid is going on over there. Chuck says you can help."[23] Steven opened the door and allowed Wilkerson into the residence.[24]

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[17] *Id.*

[18] *Id.*

[19] A504, A506.

[20] *Id.*

[21] A504-05, A516.

[22] A516-17.

[23] A517.

[24] *Id.*

Wilkerson asked Steven about AR-15 rifles that Steven had previously owned.[25] Steven invited Wilkerson to sit on the couch.[26] Then, completely unprovoked, Wilkerson punched Steven and Judith.[27] Steven managed to get to the front foyer of his home but, he could not see well without his glasses.[28] Wilkerson struck both Steven and Judith with glass figurines and threatened to kill Steven.[29] Wilkerson then abruptly stopped the attack and walked out the front door.[30] Steven identified Wilkerson as the assailant from a show-up.[31] Steven was treated at a hospital for a laceration and a skull fracture, while Judith received medical attention for facial lacerations and orbital and nasal fractures.[32]

Meanwhile, police removed several people from 11773 Buckingham Road, but Wilkerson had jumped from a second-story bedroom window at the back of the residence.[33] Around 5:59 a.m., police found Wilkerson walking behind the

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[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] A518.

[31] *Id.*

[32] *Id.*

[33] A504-05.

residence.[34] Wilkerson appeared to be talking to someone or on a cell phone.[35] But no phone was located, and no one was nearby.[36] Wilkerson was also bleeding from his hands.[37] Police took Wilkerson into custody.[38]

During a search of 11773 Buckingham Drive, police found a large pool of blood where Corporal Heacook had been lying, and there was blood spatter on the walls, the floor and a nearby cardboard box.[39] Near the pool of blood, police located Corporal Heacook's collapsible baton, in an extended position and with its end cap missing.[40] Police also found Corporal Heacook's flashlight and a 20-pound dumbbell nearby.[41] Additional blood was found throughout the house.[42]

Maryland's Office of the Chief Medical Examiner performed an autopsy on Corporal Heacook and listed the manner of his death as head injuries/homicide.[43] The autopsy revealed at least 10 distinct impact sites on Corporal Heacook's head.[44]

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[34] A505.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] A505-06.

[40] *Id.*

[41] A506.

[42] *Id.*

[43] A520.

[44] A520-22.

It also indicated that these injuries were inflicted by a heavy object and that a dumbbell could have caused these types of injuries.[45] Corporal Heacook also suffered a fracture to the base of his skull, and lacerations to his upper lip, his right ear, and the top of his scalp.[46] An upper tooth was torn from its socket, and he had contusions inside of his mouth.[47] There were further impact sites on his upper chest, upper right thigh, arms, and hands.[48]

Wilkerson was transported to Delaware State Police Troop 5 upon his arrest.[49] While in a detention area at the troop, police overheard Wilkerson admit, "I beat the cop in the head. I smashed his head."[50] Police then placed a digital recorder in the detention area, which captured Wilkerson stating:

- "I killed him. I killed that b***h;"
- "I smashed him over the head with the weight. Then I went across the street, and I told them, and they said I was the one who did it;"
- "I killed that police officer that walked in that house;" and

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[45] A520.

[46] A520-21.

[47] *Id.*

[48] A521.

[49] A506.

[50] A506-07.

- "I beat that man."[51]

Police interviewed the individuals they removed from 11773 Buckingham Drive. Monique Windsor ("Windsor"), who resided there, told police that she, Wilkerson, and Amanda Rooks ("Rooks")—Wilkerson's girlfriend—were celebrating Wilkerson's birthday on April 25.[52] Wilkerson wanted to drink shots of vodka, and they were together in the bedroom shared by Wilkerson and Rooks around midnight.[53] Both she and Wilkerson smoked crack cocaine that evening.[54] Wilkerson was trying to have Windsor smoke from his crack pipe, but she did not think that the substance tasted like crack cocaine.[55] Wilkerson continued to bang on the doors of the house to get her and the home's other occupants to partake of shots for his birthday.[56] Meagher tried to calm Wilkerson, but Wilkerson was calling Rooks names and yelling at her for cheating on him and giving him an STD.[57] Wilkerson's mood then changed, and he said that he was not being mean to Rooks and loved her.[58] Rooks then asked Windsor if she could hide in Windsor's bedroom

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[51] A507.

[52] A511-12.

[53] A512.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] A512-13.

until Wilkerson calmed down because she was scared of him and his behavior.[59]

Windsor tried to calm Wilkerson, while Meagher attempted to physically restrain Wilkerson.[60] Windsor said Rooks told her that Wilkerson had smoked methamphetamine, and Windsor believed this caused the pipe's bad taste.[61] Windsor went upstairs and heard a door chime, indicating that someone had left the house.[62] Windsor believed that Meagher had opened the door and was smoking a cigarette when Wilkerson attempted to run past Meagher.[63] Wilkerson slammed the door into Meagher and then punched Meagher in the eye.[64] At one point, Wilkerson told Windsor that "this isn't me; it's the meth."[65] Windsor returned upstairs, but she and Rooks heard rumbling downstairs.[66] Windsor went downstairs and saw Meagher "laid out" in the living room.[67] As Windsor tried to wake Meagher, Wilkerson was talking to an imaginary person by a chair in the living room and was rapping to the

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[59] A513.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] A513-14.

[67] A514.

chair.[68] Windsor managed to get Meagher to his room and tried calling 911 with Meagher's phone, but Wilkerson started to come up the stairs and was yelling, "Who is calling the f*****g cops? I'll kill them."[69] Windsor hung up the phone.[70]

Windsor returned to her room but continued to hear a lot of commotion from downstairs.[71] Windsor then thought she heard a dog growling, so she crept down the stairs to look.[72] She saw a man lying face down in the living room and snoring, but Windsor believed he was knocked out.[73] Based on his vest, Windsor believed the man was a police officer.[74] Windsor then saw Wilkerson come into the room and slam his foot into the officer's face, resulting in blood "just coming up."[75] Windsor said that she ran back to her room and told Rooks that she needed her phone because "there is a cop dead in our living room."[76] Windsor started communicating with 911 through a text application, but she did not believe she responded when

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[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] A515.

[76] *Id.*

asked about the location of the emergency.[77]

Windsor and Rooks remained in Windsor's room hiding from Wilkerson.[78] Wilkerson attempted to enter the room and asked for help multiple times.[79] Windsor heard Wilkerson coming and going based on the sound of the door chimes.[80] Windsor heard someone screaming "at the top of her lungs" from outside of the home.[81] Windsor and Rooks were about to run from the residence, but Wilkerson reentered the home and tried to come into Windsor's room.[82] Windsor heard a lot of banging and additional voices, including from someone who said "Heathcook," whom she knew to be a police officer.[83] Windsor was met by police, but she no longer saw the officer lying on the floor.[84]

Rooks told police that she had resided at 11773 Buckingham Drive with Wilkerson since March 2021.[85] Rooks said that she injected methamphetamine into

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[77] *Id.*

[78] *Id.*

[79] A516.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] A510.

Wilkerson's arm around 10:30 or 11:00 on the prior night.[86] Rooks knew that Wilkerson could not handle methamphetamine so she watered it down.[87] At around 11:50 p.m., her drug dealer delivered more crack and cocaine, and Wilkerson smoked a small amount of crack and ingested cocaine.[88] Throughout the prior day and night, Wilkerson and Meagher drank about 100 small bottles of vodka.[89] Wilkerson started acting crazy and threw a dumbbell into a bedroom door.[90] Wilkerson grabbed Rooks' vagina, accused her of sleeping with someone, and called her names.[91] Rooks gathered items that could be used as weapons and threw them out a window.[92] When Wilkerson started to fight with Meagher, Rooks hid under a bed in Windsor's bedroom.[93] Rooks did not call the police because she was afraid that police would kill Wilkerson because of the way he was acting.[94] Rooks spent most of the night trying to manage Wilkerson's behavior.[95] Before the police

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[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] A510-11.

[91] A511.

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

arrived, Wilkerson beat on the door to Windsor's bedroom and pleaded, "Monique [Windsor], the police are here. You've got to help me."[96] Rooks believes that Wilkerson jumped from a second-floor window in their bedroom.[97]

Wilkerson was interviewed by police and said that he had not slept in three days.[98] He admitted to consuming alcohol, methamphetamine, and heroin.[99] Wilkerson confessed to attacking Steven with a figurine and wrestling with Meagher, but he denied seeing or interacting with any police officers at his residence, except for those who arrested him.[100] After the interview, a phlebotomist, Sarah Emory, came into the room to obtain Wilkerson's blood sample pursuant to a search warrant.[101] After several attempts to locate a vein, Wilkerson kicked her.[102]

Despite Wilkerson's denials of involvement in the homicide, forensic testing revealed that Wilkerson's DNA was on Corporal Heacook's baton, his notepad, and the Franklins' rear exterior door, while the corporal's DNA was on the 20-pound dumbbell near his body.[103] Wilkerson is a person prohibited from owning or

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[96] *Id.*

[97] *Id.*

[98] A519.

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] A519-20.

possessing a deadly weapon.[104]

The Delaware Division of Forensic Science ("DFS") tested Wilkerson's blood sample.[105] According to the report prepared by Delaware's Chief Forensic Toxicologist, Wilkerson's blood tested positive for methamphetamine, cocaine, and fentanyl.[106] DFS tested for a variety of cathinones (bath salts), but none were detected.

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[104] A507.

[105] A198.

[106] A198-99.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ERR IN GRANTING THE STATE'S MOTION *IN LIMINE*.

Question Presented

Whether the Superior Court erred in granting the State's motion *in limine* and thus precluding Wilkerson from raising an involuntary intoxication defense at trial.

Standard and Scope of Review

This Court normally reviews a trial court's evidentiary rulings for an abuse of discretion.[107] But this Court reviews *de novo* alleged constitutional violations related to a trial court's evidentiary rulings.[108]

Merits

Wilkerson argues that, in granting the State's motion *in limine*, the Superior Court "violated his due process right to present a complete defense to the charges."[109] Wilkerson contends that "[t]he great weight of authority cautions against the elimination of a defense by way of a prosecutorial pretrial motion" and that "a defendant has the right to present evidence of defenses that are not very believable or highly improbable."[110] Wilkerson posits that, instead of granting the State's

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[107] *Fuller v. State*, 860 A.2d 324, 329 (Del. 2004).

[108] *Banks v. State*, 93 A.3d 643, 646 (Del. 2014).

[109] Opening Br. at 27.

[110] *Id.*

motion, "[t]he trial court should have admitted the evidence, then heard an application as to whether [his] jury would be instructed on involuntary intoxication."[111] Wilkerson is mistaken.

A. The Proposed Involuntary Intoxication Defense

1. Rooks' Interview

As part of its investigation, the defense retained Private Investigator Kelly Jansen ("Jansen") to interview Rooks in July 2022.[112] According to Jansen's interview notes, Rooks said that she and Wilkerson were awake for two days using drugs before the attacks.[113] Rooks advised that Windsor obtained methamphetamine for them and that Rooks shot up a "tiny bit," but Wilkerson "did a lot" of the drug.[114] Rooks said that Wilkerson began acting weird after using the methamphetamine, including acting aggressively towards her.[115] Rooks tried to remove anything that Wilkerson could use as a weapon, and she grabbed a "bag of dope" and her purse

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[111] *Id.*

[112] A214.

[113] *Id.*

[114] A215.

[115] A215-16.

and hid under a bed.[116] Rooks claimed to have texted her drug dealer for help in calming Wilkerson.[117]

After Wilkerson's arrest, Rooks spoke with "some people (she) knew" about Wilkerson's erratic behavior.[118] Rooks said her friend "Jay" believed that Wilkerson had consumed bath salts based on Wilkerson's actions and Jay's experience in using the drug.[119] Rooks claimed that she knew the difference in how methamphetamine made one feel.[120] Rooks did not tell police about her fear and paranoia on the night before the attacks based on her belief that Wilkerson had consumed bath salts and did not explain to Jansen why she never mentioned this fear when she spoke with police, believing that she was "pretty sure" she had told the police that she did not think the substance was methamphetamine.[121]

Rooks also told Jansen that she had stayed a "couple of days" at the methamphetamine dealer's house in Maryland, whom she identified as someone named "Travis," and that Travis purchased his drugs from a woman in Delaware.[122]

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[116] A216.

[117] A217.

[118] A218.

[119] *Id.*

[120] *Id.*

[121] *See* A219.

[122] *Id.*

Travis believed he had sold them methamphetamine, but Rooks believed that this woman knows that the drugs were bath salts.[123] Rooks also obtained some additional drugs from Travis that looked and tasted the same, although she denied doing them.[124] Rooks also took this substance to her friend "Jay," who visually confirmed that the substance that Rooks had obtained was bath salts.[125] Rooks said she disposed of the substance after Jay's inspection.[126]

2. Attempted Blood Testing

Before trial, Wilkerson's counsel contacted the State about having Wilkerson's blood sample independently analyzed, and arrangements were made for NMS Laboratories ("NMS") to test the sample.[127] The State of Delaware's Chief Forensic Toxicologist packaged a test tube containing Wilkerson's blood for transport to NMS via FedEx and in accordance with NMS's instructions.[128] Because of events beyond the control of the parties, the test tube broke in transit, leaving no

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] A212.

[128] A205-06.

volume suitable for testing.[129] The remaining amount of Wilkerson's blood in the State's possession was insufficient to conduct this testing.[130]

3. Defense Expert Witnesses

In January 2023, the defense provided two expert reports to the State, authored by Andrew Ewens, PhD ("Ewens") and Wilkie A. Wilson, PhD ("Wilson"). According to Ewens, he has a PhD in pharmacology, board certification in "general toxicology," and "twenty-seven years of experience in the biomedical fields."[131] Based on his review of DFS's toxicology report, the toxicology litigation package, Jansen's notes from interviewing Rooks, NMS's test catalog, and NMS's forensic sample submission form, among other conclusions, Ewens opined that NMS tests for bath salt varieties that DFS does not.[132] As such,"[w]ithout the testing of [his] blood by NMS labs, the possibility of [him] having consumed bath salts can't be ruled out."[133]

Wilson states that he is a "neuropharmacologist (Professor Emeritus) at Duke University . . . and a Professor of Prevention Science."[134] Wilson's expert report

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[129] A205.

[130] A204-05.

[131] A268.

[132] *See* A269-70.

[133] A270.

[134] A310.

described bath salts and compared their effects to those of other drugs, such as methamphetamine, fentanyl, and cocaine.[135] Wilson relied on peer reviewed medical literature containing scholarly studies and educational material from websites belonging to the National Institute of Drug Abuse.[136] Wilson concludes that, based on bath salts' effectiveness in releasing dopamine and norepinephrine and their ineffectiveness in releasing serotonin, "bath salt users can be like a runaway train with no way of stopping until a crash occurs."[137] Yet Wilson's report does not evidence that he reviewed materials specific to Wilkerson's case.

B. State's Motion *in Limine*

In May 2023, the State filed a motion *in limine* to preclude Wilkerson from presenting the defense of involuntary intoxication. The State argued that, under the circumstances of this case, this defense involved only a legal question and that "the clear answer is that a defendant may not present an involuntary intoxication defense when they voluntarily took illegal drugs, and the illegal drugs were either different than the defendant thought [they] w[ere] taking or were laced with additional substances."[138] The State contended that, while the commentary to 11 *Del. C.* §

[135] A311.

[136] A310.

[137] A312.

[138] A425.

423—the statute governing involuntary intoxication—provides that an individual should not be criminally responsible for conduct that was not freely done, Wilkerson "freely chose to consume illegal drugs."[139] To conclude otherwise "would open a veritable Pandora's Box into drug-related crimes because literally every drug user would be able to claim that illegal drugs are impure in some fashion."[140] Nonetheless, the State posited that Wilkerson's proffered evidence did not constitute "some credible evidence" under 11 *Del. C.* § 303.[141] The State highlighted numerous problems with Rooks' claims that Wilkerson had ingested bath salts.[142] The State further contended that the expert opinions provided by Ewens and Wilson did not meet the threshold standards for admissibility under D.R.E. 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc*. ("*Daubert*").[143] Rather, their testimony would confuse the jury as Wilkerson was not entitled to an involuntary intoxication defense instruction.[144]

In support of its motion, the State provided an expert report prepared by Christopher Holstege, M.D. ("Holstege"), a professor at the University of Virginia

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[139] A187.

[140] *Id.*

[141] A188-90.

[142] *See* A188-90.

[143] 509 U.S. 579 (1993); A190-93.

[144] A194.

("UVA") School of Medicine, Chief of UVA's Division of Medical Toxicology, and Medical Director of the UVA Health's Blue Ridge Poison Control Center.[145] Holstege reviewed various materials in this case and questioned the abilities of Ewens and Wilson to opine about the clinical effects of the substances they discussed because they do not care for patients, do not have expertise in patient management, and are not medical doctors.[146] Holstege stated that "[t]heir opinions are not based on any experience in caring for patients, but rather their review of the literature published by clinicians such as [himself] that actually manage patients who abuse these substances."[147] Holstege noted that Wilson did not account for the issue of dosage, which "is never known in these cases," and that the clinical effects of amphetamine, methamphetamine, and cocaine are similar depending on their doses.[148] Holstege observed that Ewens did not mention the similarities in the clinical effects of the substances he discussed.[149]

By comparison, Wilkerson argued that the State's motion "should be denied because it seeks to deprive [him] of his constitutional right to present a defense" under the Due Process Clause of the Fourteenth Amendment to the United States

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[145] A314.

[146] A318.

[147] *Id.*

[148] A318-19.

[149] *See* A318.

Constitution or the Compulsory Process Clause of the Sixth Amendment.[150] Wilkerson contended that "a body of law has developed condemning the use of motions *in limine* to choke off a valid defense in a criminal action or to knock out the entirety of the evidence supporting a defense before it can be heard by a jury."[151] Wilkerson claimed that "Drs. Ewens and Wilson are experts in their field and well-qualified to render their opinions" and that, without support, "[t]he State endorses its expert's view that only clinicians may render expert medical opinions."[152]

In granting the State's motion, the Superior Court concluded that a hearing on the motion was "neither necessary nor desirable in this case."[153] The court determined that the issue was whether a defendant could, as a matter of law, raise an involuntary intoxication defense where the defendant "voluntarily ingests illegal drugs, and the illegal drugs were either different from the drugs the defendant thought he or she was taking, or were laced with additional substances."[154] Finding no Delaware decisions directly on point, the Superior Court reviewed persuasive authorities and held that this defense was unavailable to Wilkerson "because of his

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[150] A328.

[151] A330 (cleaned up).

[152] A339.

[153] Opening Br. Ex. B at 8 (hereinafter "Mem. Op.").

[154] *Id.* at 15.

voluntary consumption of illegal drugs."[155] The court also concluded that the State's motion did not deprive Wilkerson of his constitutional right to present a complete defense.[156] The motion allowed the court to "exercise [its] gatekeeper function in keeping clearly irrelevant, inadmissible, or prejudicial matters from being admitted into evidence at trial before the jury."[157] The court found that, even if this defense was legally available to Wilkerson, his expert opinions were inadmissible under D.R.E. 702 and *Daubert* and "would only confuse the jury."[158] The court further determined that Wilkerson's proffered evidence did not satisfy § 303. For the reasons below, the Superior Court did not err in granting the State's motion.

C. Right to Present a Complete Defense

The United States Supreme Court has held that "[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."[159] But

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[155] *Id.* at 25 (emphasis in original).

[156] *Id.* at 32.

[157] *Id.* at 32-33.

[158] *Id.* at 33-35.

[159] *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

"a defendant's right to present defense theories and evidence is not absolute."[160] "[T]he Constitution permits judges to exclude evidence that is repetitive . . . , only marginally relevant or poses an undue risk or harassment, prejudice, [or] confusion of the issues."[161]

D. No Constitutional Violation

As will be discussed, Wilkerson's constitutional right to present a complete defense was not violated. An involuntary intoxication defense was legally unavailable to him. Even if this defense was available, Wilkerson did not present credible evidence to support it. Wilkerson's evidence on the issue of his intoxication based on bath salts was inadmissible.

1. Involuntary Intoxication Legally Unavailable as a Defense

A review of 11 *Del. C.* §§ 421 and 423—the operative Delaware statutes governing the defenses of voluntary and involuntary intoxication—demonstrates that Wilkerson could not rely on his intoxication as a defense. Section 423 provides:

> In any prosecution for an offense, it is a defense that, as a result of intoxication which is not voluntary, the actor at the time of the conduct lacked substantial capacity to appreciate the wrongfulness of the conduct or to perform a material element of the offense, or lacked

[160] *Williams v. State*, 2014 WL 708445, at *3 (Del. Feb. 19, 2014) (upholding trial court's decision to prevent defendant from eliciting certain evidence where justification and choice of evils defenses were legally unavailable).

[161] *Holmes*, 547 U.S. at 326-27 (cleaned up).

> sufficient willpower to choose whether the person would do the act or refrain from doing it.[162]

"Intoxication" is defined as "the inability, resulting from the introduction of substances into the body, to exercise control over one's mental faculties."[163]

The Commentary to the Criminal Code states that the statute "recognizes that a man should not be held criminally responsible for conduct which he did not freely choose to do."[164] It is "meant to cover cases in which the actor is forced to take intoxicants, as well as cases in which he was unaware of the intoxicating nature of the substance taken."[165] The commentary also notes that a defendant must "present *some credible evidence* that his conduct resulted from the intoxication and that the intoxication was so severe" that it meets the requirements of § 423.[166] The defense "is not limited to the simple inability to form the requisite state of mind for guilt," nor must it "lead to an outright acquittal."[167] Rather, "[i]f the intoxication negates the requisite state of mind which is an element of an offense but does not affect the defendant's appreciation of right and wrong nor his ability to control his actions, the

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[162] 11 *Del. C.* § 423.

[163] 11 *Del. C.* § 424(1).

[164] Delaware Criminal Code with Commentary at 90 (1973).

[165] *Id.*

[166] *Id.* at 90-91 (emphasis added).

[167] *Id.* at 91.

defendant might still be guilty of a lesser offense for which that state of mind is not required."[168]

By comparison, § 421 states that "[t]he fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary."[169] Voluntary intoxication includes, generally, "intoxication caused by substances which the actor knowingly introduces into the actor's body, the tendency of which to cause intoxication the actor knows or should know."[170]

The current version of § 421, enacted in 1976, expanded the unavailability of voluntary intoxication as a defense to include crimes committed intentionally, knowingly, or recklessly.[171] Thus, § 421 "renders irrelevant and inadmissible . . . any testimony, expert or lay, as to the effect of defendant's intoxication upon the issue of intent and proof of the required state of mind for conviction of the charged

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[168] *Id.*

[169] 11 *Del. C.* § 421.

[170] 11 *Del. C.* § 424(2).

[171] *Wyant v. State*, 519 A.2d 649, 651 (Del. 1986).

offenses."[172] This amendment evidences a legislative intent to restrict the availability of intoxication as a defense.[173]

As the Superior Court noted, no Delaware case has squarely addressed whether an involuntary intoxication defense may be raised where the defendant voluntarily ingests illegal drugs that were different from those the defendant believed they were taking or were laced with additional substances.[174] The most analogous case is *Polk v. State*, where the defendant argued that the Superior Court erred by granting the State's motion *in limine* and preventing him from offering expert and lay witness evidence regarding involuntary intoxication.[175] Polk wanted to demonstrate that his crack cocaine use was involuntary because (1) he was a drug addict and (2) unbeknownst to him, the cocaine may have contained impurities.[176] In rejecting his first argument, this Court concluded that it was "obvious that [his] use of cocaine was voluntary within the meaning of the statute and that, as a matter of law, [he] was voluntarily intoxicated on cocaine on the night in question."[177]

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[172] *Id.*

[173] The synopsis to the 1976 legislation amending § 421 described the statute's convoluted history. But the amendment reflected the legislature's reaffirmation of its intention to make voluntary intoxication no defense to criminal conduct. *See* B1.

[174] Mem. Op. at 15.

[175] 567 A.2d 1290, 1292 (Del. 1989).

[176] *Id.*

[177] *Id.*

Accordingly, expert testimony that "addiction made Polk unable to control his consumption of cocaine was irrelevant."[178] In rejecting his second argument, this Court concluded that the proffered evidence—an expert opinion about the impurity of street drugs in Delaware, Polk's testimony, and testimony from another witness about Polk acting differently on the night of the incident when he took cocaine versus when he had otherwise used the drug—was "too obscure" because there was an absence of blood tests of the defendant or analysis of the cocaine in question.[179]

And there is substantial persuasive authority that involuntary intoxication cannot be based on an argument that the illicit drugs were laced with additional substances and thus different from what the defendant had expected them to have been, or that their exact type was unknown to the defendant. For example, in *People v. McMillen*, the Illinois appellate court rejected the argument that involuntary intoxication was an available defense based on the defendant "experience[ing] unwarned and unexpected adverse side effects of prescription medication and cocaine."[180] Illinois law imposed criminal liability for someone who was "in an intoxicated or drugged condition," except where the "condition [wa]s involuntarily produced and deprive[d] him of substantial capacity either to appreciate the

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[178] *Id.*

[179] *Id.*

[180] 961 N.E.2d 400, 403, 407 (Ill. App. Ct. 2011).

criminality of his conduct or to confirm his conduct to the requirements of law."[181] The defense was legally unavailable based on the "knowing, or voluntary, ingestion of cocaine or other illegal drugs."[182] The court concluded that the defendant had not testified that "his ingestion of cocaine was the result of something other than his conscious choice or free will."[183]

Similarly, in *State v. McClenton*, the Minnesota appellate court upheld the trial court's preclusion of evidence regarding involuntary intoxication because the defense was legally unavailable to the defendant.[184] In this decision, the defendant, who had committed a robbery, contended that he was involuntarily intoxicated as "unbeknownst to him, the marijuana he smoked was laced with phencyclidine (PCP)."[185] Minnesota law permitted an involuntary intoxication defense where a defendant "was innocently mistaken as to the nature of the substance taken."[186] The court found that the defendant could not legitimately claim that he was unaware of the nature of the substance, observing that "[t]o hold otherwise would effectively permit an involuntary-intoxication defense for individuals who use less 'pure'

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[181] *Id.* at 404 (cleaned up).

[182] *Id.* at 405.

[183] *Id.* at 404.

[184] 781 N.W.2d 181, 184 (Minn. Ct. App. 2010).

[185] *Id.* at 187, 189.

[186] *Id.* at 189 (cleaned up).

drugs."[187] In other words, "by voluntarily choosing to smoke marijuana, any resulting intoxication (whatever that may have been) was likewise voluntary."[188] Many jurisdictions have held that a defendant is not entitled to an involuntary intoxication defense based on illicit drugs having been laced with additional unknown substances and thus different from what the defendant had expected them to have been.[189] And, similarly, at least one jurisdiction has concluded that "[t]he involuntary intoxication defense has been rejected systemically where any part of the intoxication resulted from voluntary use of illegal drugs or of legal intoxicants for which the defendant had a known tolerance."[190]

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[187] *Id.* at 192.

[188] *Id.*

[189] *See*, *e.g.*, *United States v. F.D.L.*, 836 F.2d 1113, 1117-18 (8th Cir. 1988) (marijuana cigarettes that, unknown to the defendant, were allegedly laced with PCP); *United States v. Bindley*, 157 F.3d 1235, 1241-43 (10th Cir. 1998) (defendant alleged that "marijuana cigarette must have been laced with another drug" as it "tasted funny and made him feel different than he had felt after smoking other marijuana cigarettes"); *People v. Velez*, 175 Cal.App.3d 785, 795-96 (Cal. Ct. App. 1985) (concluding that "a reasonable person has no right to assume that a marijuana cigarette furnished to him by others at a social gathering will not contain PCP" or that such cigarette "will produce any predictable intoxicating effect"); *Palmer v. State*, 719 P.2d 1285, 1287 (Okla. 1986) (in rejecting involuntary intoxication defense for marijuana cigarette allegedly laced with PCP, noting "there is no evidence . . . that appellant's intoxication or mental condition was the result of anything other than his own voluntary action" and that testimony from a psychiatrist, based on the appellant's description, was insufficient to corroborate the appellant's bare assertion).

[190] *State v. Sette*, 611 A.2d 1129, 1139-44 (N.J. Super. Ct. App. Div. 1992) (upholding the trial judge's jury instruction indicating the unavailability of an

In *State v. Hall*, the Iowa appellate court upheld the trial court's denial of the defense's requested jury instruction about temporary insanity from drug intoxication constituting a complete defense where the defendant testified that casual acquaintances in California had provided him with a pill, described as a "little sunshine" that would make him feel excellent.[191] According to the defendant, he ingested the pill in Iowa and began hallucinating, believing that a travel companion was similar to an animal that his stepfather had shot.[192] He allegedly became scared, picked up a gun, and shot and killed the companion.[193] At trial, physicians opined that the drug was LSD.[194] In rejecting the defendant's reliance on caselaw involving involuntary intoxication, the appellate court's majority noted that "assuming he did take a drug, . . . no one tricked him into taking it or forced him to do so."[195] He had not "take[n] the pill by mistake—thinking, for example, it was candy," and "[i]f his own testimony is believed, he knew it was a mind-affecting drug."[196] Similarly, one

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involuntary intoxication defense based on the defendant's voluntary use of cocaine, marijuana, and Tylenol).

[191] 214 N.W.2d 205, 206, 208 (Iowa 1974). Under Delaware law, insanity proximately caused by voluntary intoxication is generally not a defense. 11 *Del. C.* § 401(c).

[192] *Id.* at 206.

[193] *Id.*

[194] *Id.* at 207.

[195] *Id.* at 208.

[196] *Id.*

Texas appellate court upheld the trial court's denial of a jury instruction involving involuntary intoxication based on the defendant's assertion that he had accidentally, and thus involuntarily, taken Ambien, noting that he "makes no allegation that his arm movement to pick up and ingest the medication was the result of anything other than his own conscious action" and that he was aware of the intoxicating nature of the medication.[197]

Here, as the Superior Court reasonably determined, Wilkerson's "defense fails on its face because of his *voluntary* consumption of illegal drugs."[198] Wilkerson "freely chose to consume illegal drugs;" "[n]o one forced him to take drugs nor was he unaware that the substances he was taking were intoxicating."[199] There is no evidence establishing that Wilkerson was unaware of the nature of the drugs he took. Rather, "[h]e intended to become intoxicated on illegal drugs."[200] "[B]y voluntarily consuming an illegal drug, [he] cannot claim that he was innocently mistaken as to the nature of the drug."[201] And, as the Superior Court also reasonably determined, "it is common knowledge that illicit street drugs contain a variety of substances in addition to or, in some cases, in lieu of, the primary substance that the illicit drug

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[197] *Farmer v. State*, 411 S.W.3d 901, 908 (Tex. Crim. App. 2013).

[198] Mem. Op. at 25 (emphasis in original).

[199] *Id.*

[200] *Id.*

[201] *McClenton*, 781 N.W.2d at 192.

intends to consume."[202] "It would defy logic to allow illicit drug users to shield themselves from criminal liability based on impurities or misrepresentations about the illegal drugs they consume."[203] Rather than *involuntary* intoxicated, Wilkerson was *voluntarily* intoxicated. And Wilkerson's claim about the presence of bath salts in the drugs he ingested is pure speculation.

In arguing about the availability of an involuntary intoxication defense, Wilkerson relies on *State v. Bigelow*.[204] Yet his reliance on this decision is misplaced. In *Bigelow*, the defendant assaulted a police officer in a hospital emergency room after the defendant ingested methamphetamine and the hospital had administered three medications to relax him.[205] At trial, the defense presented an expert witness who testified that the defendant's behavior "was caused by the 'effect' of the three drugs given to him."[206] The trial court gave both voluntary and involuntary intoxication instructions.[207] On appeal, the Nebraska Supreme Court

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[202] Mem. Op. at 26; *see Clark v. State*, 539 N.E.2d 9, 12 (Ind. 1989) ("It is common knowledge, which we must assume was known to the legislature, that drugs such as cocaine are not sold on the street in their pure form."); 16 *Del. C.* § 4701 (29) (defining "narcotic drug" to include a "mixture" that "contains any quantity" of various controlled substances).

[203] Mem. Op. at 26.

[204] 931 N.W.2d 842 (Neb. 2019).

[205] *Id.* at 844.

[206] *Id.* at 848.

[207] *Id.* at 845.

upheld the instructions because "there was evidence in this case of both voluntary intoxication, caused by [the defendant's] use of methamphetamine, and involuntary intoxication, caused by the three drugs given to him at the hospital."[208] Moreover, "the jury could have found [the defendant's] behavior . . . was caused . . . by an interaction of the drugs given at the hospital with the methamphetamine he had voluntarily ingested."[209] Even if *Bigelow* allows for an involuntary intoxication defense based on the interaction of legal and illegal substances, it does not matter under Wilkerson's circumstances as his defense is based only on ingesting *illicit* drugs. In sum, the Superior Court properly found that, as a matter of law, an intoxication defense was unavailable to Wilkerson.

2. Absence of Credible Evidence

The Superior Court also reasonably determined that, even if an involuntary intoxication defense was legally available to Wilkerson, he did not present credible evidence to support this defense. The court's analysis focused on the unsupported testimony of Rooks and the contradictory toxicological evidence.[210] Yet, as explained below, Wilkerson's proffered expert testimony was not credible evidence supporting this defense. And, in any case, as previously explained, the

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[208] *Id.* at 849.

[209] *Id.*

[210] *See* Mem. Op. at 35-37.

circumstances presented by Wilkerson did not satisfy the legal requirements of the defense.

a. Standard

Under 11 *Del. C.* §303(a), "[n]o defense . . . may be considered by the jury unless the court is satisfied that some credible evidence supporting the defense has been presented."[211] "Evidence supports a defense when it tends to establish the existence of each element of the defense."[212] "'Credible' can be defined as '*[c]apable* of being believed" and may include "affirmative evidence [that is] not very believable."[213] In other words, "credible" is where "if the defendant's rendition of events, *if taken as true*, would entitle him to the instruction."[214] But this standard does not mean that trial judges must completely abrogate their gatekeeping function. A trial judge still has a two-fold role as a gatekeeper to ensure (1) "that the affirmative defense describes a situation that is within the realm of possibility" and

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[211] 11 *Del. C.* § 303(a).

[212] 11 *Del. C.* § 303(b).

[213] *Gutierrez v. State*, 842 A.2d 650, 652 (Del. 2004) (emphasis in original).

[214] *Id.* at 652 (emphasis in original).

(2) that the situation would satisfy the legal requirements of the defense.[215] The trial judge properly exercised his role as gatekeeper here.

b. Evidence Did Not Meet the Requirements of § 303(a).

i. Situation Was Not Within the Realm of Possibility.

Wilkerson's proffered evidence described a situation—his unknowing consumption of bath salts—that amounted to speculation and was not within the realm of possibility. Considering Rooks' "investigation," as the Superior Court highlighted, she (a drug user) stayed with someone named "Travis" (a drug dealer) for two days while claiming that she did not use any drugs at his residence.[216] The Superior Court determined that she was an "interested party—Wilkerson's girlfriend—and has remained so during the pendency of this case."[217] Her information about the woman who supposedly supplied Travis with the drugs seems as shadowy as her description of Travis himself. The drugs in this case were not preserved, and "it would be impossible to connect the drugs purchased by Rooks from Travis with those used on the night of the incident by [Wilkerson]."[218] Moreover, "any statements made by Travis would be inadmissible hearsay."[219] Her

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[215] *Id.* at 653.

[216] Mem. Op. at 36.

[217] *Id.* at 35-36.

[218] *Id.* at 36.

[219] *Id.*

hindsight conclusion that Wilkerson must have used bath salts is belied by her statements to police immediately after the incident in which she did not mention bath salts but disclosed that Wilkerson voluntarily used cocaine and methamphetamine and had acted violent and crazy on those drugs.[220]

Further, as the Superior Court concluded, the "proffered evidence ignores the toxicological evidence in this case."[221] Wilkerson's blood tested positive for cocaine, methamphetamine, and fentanyl.[222] DFS tested for bath salts, but none were detected. The existence of bath salts is mere speculation. While evidence must be viewed in the light most favorable to the defendant,[223] this does not mean that the trial judge was required to have embraced speculation.[224] The judge properly concluded that there was no credible evidence supporting Wilkerson's theory.

This reasonable determination is further evidenced by the inadmissibility of the expert opinions of Ewens and Wilson. D.R.E. 702 governs the admissibility of

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[220] *See* A226-28, A235, A256-57.

[221] Mem. Op. at 37.

[222] A198.

[223] *See Gutierrez*, 842 A.2d at 653.

[224] *See Harris v. State*, 2011 WL 754396, at *4 (Tex. Crim. App. Mar. 3, 2011) (in leniently reading the record for some evidence of insanity from intoxication based on the claim that the defendant's friend had spiked his beer with Xanax "because [the friend] had a prescription for Xanax and he had found out that [the friend has put something in someone else's drink sometime before," concluding that "[a]t most, this self-serving testimony amounts to mere speculation, not evidence").

expert testimony and provides that "[a] witness who is qualified as an expert by knowledge, skill, experience, or education may testify in the form of an opinion or otherwise."[225] The trial court must determine if "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;" "the testimony is based on sufficient facts or data;" "the testimony is the product of reliable principles and methods;" and "the expert has reliably applied the principles and methods to the facts of the case."[226]

D.R.E. 702 is identical to its federal counterpart, and this Court has adopted the United States Supreme Court's decision in *Daubert* and its progeny in construing the rule's requirements.[227] In accordance with *Daubert*, this Court has articulated a five-part test in determining whether scientific or technical expert testimony is admissible:

> (1) "the expert was qualified;"
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> (2) "the evidence is otherwise admissible, relevant and reliable;"
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> (3) "the bases for the opinion are those reasonably relied upon by experts in the field;"
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> (4) "the specialized knowledge being offered will assist the trier-of-fact to understand the evidence or to determine a fact in issue;" and

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[225] D.R.E. 702.

[226] *Id*.

[227] *Tumlinson v. Advanced Micro Devices, Inc.*, 81 A.3d 1264, 1268 (Del. 2013) (citing *Daubert*).

(5) "such evidence would not create unfair prejudice, confuse the issues or mislead the jury"[228]

Reliability is based on a non-exhaustive list of inquiries under *Daubert*, including:

(1) "Is the technique testable?"

(2) "Has it been subjected to peer review?"

(3) "What is the error rate and are there standards for lowering it?"

(4) "Is the technique generally accepted in the relevant scientific community?"[229]

These factors are not exclusive, and the trial judge is granted "broad latitude" in determining reliability.[230] This inquiry is flexible, although it "must be solely [focused] on principles and methodology, not on the conclusions that they generate."[231] Nonetheless, "conclusions and methodology are not entirely distinct from one another."[232] Although D.R.E. 702 mentions that a witness may be an expert by "knowledge, skill, experience, training or education," these qualities "are not the exclusive or sole indicia of reliability."[233] A court must "consider whether the

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[228] *Tolson v. State*, 900 A.2d 639, 645(Del. 2006) (cleaned up).

[229] *Hudson v. State*, 312 A.3d 615, 626 (Del. 2024).

[230] *Tumlinson*, 81 A.3d at 1269.

[231] *Id.* (quoting *Daubert*, 509 U.S. at 595) (cleaned up).

[232] *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

[233] *Tumlinson*, 81 A.3d at 1269 (quoting D.R.E. 702).

testimony has been subject to the scientific method; it must rule out 'subjective belief or unsupported speculation.'"[234]

Here, the Superior Court reasonably concluded that the "expert opinions of Ewens and Wilson did not meet the standards under D.R.E. 702 and *Daubert*."[235] Neither Ewens nor Wilson possessed sufficient knowledge, skill, experience, training, or education because neither one is a clinician or manages patients addicted to controlled substances.

Moreover, their reasoning or methodologies are not reliable. Their methods appear to have included educated guessing and "personal opinion[s] . . . formed by synthesizing peer reviewed foundational studies."[236] They seemingly attempted to extrapolate conclusions from general medical or toxicological literature or principles to Wilkerson's specific circumstances. Ewens concluded that "[i]t is possible for bath salts to have been mistakenly identified as methamphetamine" based on their appearances and that Wilkerson's "actions . . . could have been induced by the intoxicating effects of bath salts, PCP analogs, or ketamine analogs."[237] For his part, Wilson stated that bath salts are "ten times more potent than cocaine," and he opined

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[234] *Porter v. Whitehall Laboratories, Inc.*, 9 F.3d 607, 614 (7th Cir. 1993) (quoting *Daubert*, 509 U.S. at 590).

[235] Mem. Op. at 33.

[236] *Id.*

[237] A269, 273.

about their effects, including that "the user is flooded with dopamine which produces profound mental disturbances," "[t]hey have no brakes from serotonin that would normally temper their behavior," and "can be like a runaway train."[238] Contrary to Wilkerson's apparent claims, these experts were not merely providing generalized points in a vacuum for a jury to consider.[239] Rather, their opinions were designed to insinuate that Wilkerson had unwittingly ingested bath salts and to opine about his reaction to them. Otherwise, there appears to have been no purpose in calling them as witnesses at any trial.

But their opinions amount to speculation and fail the testability factor. As Holstege has noted, Wilson did not account for the issue of dosage, which is normally unknown.[240] It also appears that Ewens did not consider the issue of dosage in his expert conclusion that bath salts could have induced Wilkerson's behavior.[241] Holstege notes the similarities in the clinical effects between bath salts and other illicit substances depending on the dose that the individual user consumed.[242] Both experts also apparently failed to review certain basic, case-specific materials. The Superior Court highlighted that Ewens did not review Rooks' initial police interview

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[238] A312.

[239] *See* Opening Br. at 45-48.

[240] A318-19.

[241] *See* A273.

[242] A318.

or interview Rooks himself.[243] This same conclusion seemingly applies to Wilson. There is no indication that either expert interviewed Wilkerson or even "read the police reports in the case, reviewed interview recordings of [Wilkerson], or interviewed [him]."[244] Their opinions are speculative in view of DFS's toxicology testing not detecting bath salts, the lack of preservation of the specific drugs that Wilkerson had consumed that evening, Rooks never telling police during her initial interview about Wilkerson having consumed bath salts, and her beliefs from her spurious investigation. Their reasoning "lacked the specificity required to pass muster under *Daubert*'s 'testability' factor."[245]

Nor do their reports indicate how their methods had been peer reviewed or publicized. Under a "layered reliability analysis" "an expert's opinion, even if based on reliable, peer-reviewed sources, [must] demonstrate independent indicia of reliability."[246] This has not been shown here.

There is no information about any error rate, or even success rate, regarding these experts applying their apparent methodologies of educated guessing and extrapolation. Nor has Wilkerson demonstrated that Ewens and Wilson relied on

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[243] *Id.*

[244] *Id.*

[245] *Tumlinson*, 81 A.3d at 1271.

[246] *Id.*

techniques possessing "widespread acceptance in the scientific community."[247] Rather, their methods were significantly flawed. They seemingly did not review certain pertinent case materials, and they failed to account for dosage. In the context of toxic tort litigation, the absence of testimony about the dose-response relationship of a drug "casts suspicion on the reliability of [the expert's] methodology."[248] As the Superior Court determined, "[t]heir expertise in assessing the conduct of people under the influence of drugs is based upon a review of literature rather than real world experience."[249] Although "[t]rained experts commonly extrapolate from existing data, . . . nothing in either *Daubert* or the Federal Rules of Evidence requires a . . . court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."[250] Such was the case here. The data that these experts relied on was too generalized and attenuated to Wilkerson's circumstances. Their expert opinions were not reliable.

Considering the remaining factors under *Daubert*'s five-part analysis, the Superior Court reasonably determined that their opinions "are not based upon

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[247] *Id.* at 1272.

[248] *McClain v. Metabolife Intern., Inc.*, 401 F.3d 1233 (11th Cir. 2005).

[249] Mem. Op. at 33.

[250] *Joiner*, 522 U.S. at 146.

information reasonably relied upon by experts in the field."[251] As aforementioned, these experts seemingly did not review certain fundamental and case-specific materials or interview Wilkerson or Rooks themselves.

Nor would their testimony have assisted the jury in understanding the evidence or determining a fact at issue. Both experts can only speculate about the presence of bath salts in the drugs Wilkerson consumed. "Exclusion of expert opinions that rest on guess, surmise or conjecture . . . is an inherent corollary to the foundational predicate for admission of the expert testimony: will the testimony assist the trier of fact to evaluate the issues it must decide?"[252] "Expert testimony *not* based on the evidence will not assist the trier of fact."[253] Testimony from these experts would have been based on the hypothetical of Wilkerson having consumed bath salts. But a party cannot use hypothetical questioning "to place before the jury facts divorced from the actual evidence and for which no evidence is ever introduced."[254] Instead of assisting the jury, as the Superior Court determined, their testimony "would [have] only confuse[d] the jury" as "[i]t is highly generalized and conjectural, and relies upon very little specific information that either of them ha[d]

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[251] Mem. Op. at 33.

[252] *People v. Vang*, 262 P.3d 581, 586 (Cal. 2011).

[253] *Id.* (emphasis in original).

[254] *Id.*

reviewed about this case."[255] This is especially true as an involuntary intoxication was legally unavailable to Wilkerson as a defense.

Finally, to extent Wilkerson would have attempted to rely on Rooks' conversations with Jay, who believed that Wilkerson had ingested bath salts, these discussions were inadmissible hearsay. Nonetheless, as the Superior Court concluded, Jay was not qualified to render an expert opinion, and his beliefs were inadmissible under D.R.E. 702.[256] In sum, Wilkerson's proffered evidence did not present a situation within the realm of possibility.

ii. Situation Did Not Satisfy the Legal Requirements for Involuntary Intoxication.

Besides the implausibility of Wilkerson's suggested circumstances, as previously discussed, his situation would not have satisfied the legal requirements of an involuntary intoxication defense. Accordingly, the Superior Court properly concluded that Wilkerson had not met the requirements of § 303(a).

3. Defense Not Established by Preponderance of the Evidence

While the Superior Court's analysis focused on § 303, it could have also relied on 11 *Del. C.* § 304 even if the defense of involuntary intoxication was legally available to Wilkerson. This Court has determined that involuntary intoxication is

[255] Mem. Op. at 34.

[256] *Id.* at 35.

an affirmative defense.[257] Under 11 *Del. C.* § 304(a), a defendant "has the burden of establishing [an affirmative defense] by a preponderance of the evidence."[258] A preponderance of the evidence is demonstrated where "evidence makes it more likely than not that each element of the affirmative defense existed at the required time."[259] Furthermore, under 11 *Del. C.* § 304(b), a court need not instruct the jury about the ability to acquit the defendant on an affirmative defense where "no reasonable juror could find [it] established by a preponderance of the evidence."[260]

Here, by not furnishing even some credible evidence of involuntary intoxication, Wilkerson's proffered lay witness and expert opinion testimony also did not establish this defense by a preponderance of the evidence. This affirmative defense was thus also precluded under § 304(b).[261]

4. No Violation of Right to Present a Complete Defense

Because, as a matter of law, Wilkerson could not rely on his intoxication as a defense, and this defense did not otherwise meet the threshold standards of § 303(a)

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[257] *See Small v. State*, 51 A.3d 452, 460 (Del. 2012) ("In Delaware, examples of excuses as affirmative defenses to criminal liability include . . . involuntary intoxication.").

[258] 11 *Del. C.* § 304(a).

[259] 11 *Del. C.* § 304(c).

[260] 11 *Del. C.* § 304(b).

[261] This Court may affirm for reasons different than those articulated by the Superior Court. *Unitrin, Inc. v. American Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

and § 304(b), the Superior Court did not violate his constitutional right to present a complete defense by excluding his proffered evidence. Relying on persuasive authorities, Wilkerson argues that the trial judge should have allowed his evidence to have been presented at trial and then ruled on the evidence's sufficiency to have given an involuntary intoxication instruction.[262]

But caselaw in this jurisdiction concerning motions *in limine* regarding *voluntary* intoxication eschews this approach. In *Wyant*, this Court found that the Superior Court had "correctly barred defendant from introducing any testimony in the nature of opinion evidence (or argument) for the purpose of establishing that defendant, by reason of being voluntarily intoxicated, lacked the intent or volition to commit [the crimes]."[263] Because the legislature had eliminated voluntary intoxication as a defense, this Court rejected the defendant's argument that he was entitled to have introduced lay witness and expert opinion evidence since intoxication remained a "fact" defense, and the Superior Court had thus violated his procedural due process rights.[264] This Court found that admission of such evidence would have produced an absurd result by "converting to a simple defense which the State must disprove what was formerly an affirmative defense for which the

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[262] *See* Opening Br. at 24-26.

[263] *Wyant*, 519 A.2d at 658.

[264] *Id.* at 654, 659-60.

defendant had the burden of proof."[265] This Court concluded that the defendant's due process claim was "premised upon an erroneous assumption that voluntary intoxication is a constitutionally protected defense to criminal conduct."[266] "Yet federal courts have traditionally deferred to the states to define the elements of offenses, the designation of defenses and the allocation of burden of proof."[267] Accordingly, the legislature's elimination of voluntary intoxication as a defense "does not implicate any recognized constitutional right."[268]

This analysis applies here. Because Wilkerson's intoxication was not *involuntary*, it was *voluntary* and no defense for his criminal conduct. As such, the Superior Court's ruling on the motion *in limine* was proper, and no constitutional violation of the right to present a complete defense occurred. Importantly, the court's ruling did not change or shift the burden of proof in this case, which remained with the State.[269] Wilkerson thus "received the process constitutionally due him."[270]

Moreover, under *Holmes*, the Superior Court was permitted to have excluded evidence "if its probative value is outweighed by certain other factors such as unfair

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[265] *Id.* at 658.

[266] *Id.* at 660.

[267] *Id.*

[268] *Id.*

[269] *Id.*

[270] *Id.*

prejudice, confusion of the issues, or potential to mislead the jury."[271] D.R.E. 403 reflects this principle, and such was the case here.[272] Since involuntary intoxication was not a legally available defense, Wilkerson's proffered evidence was inadmissible under D.R.E. 402, which provides that, with limited exception, "[r]elevant evidence is admissible," while "[i]rrelevant evidence is not admissible."[273] Wilkerson's voluntary intoxication did not make any "fact . . . *of consequence* in determining the action" "more or less probable than it would be without the evidence."[274] Under D.R.E. 403, the probative value of his evidence, if any, was substantially outweighed by the risk of misleading or confusing the jury.

Even if involuntary intoxication was a legally available defense, as *Holmes* instructs, the Superior Court could have properly excluded Wilkerson's proffered evidence nonetheless. Rooks' testimony regarding her "investigation" about Wilkerson's use of bath salts was speculative and thus immaterial under D.R.E 402. As the Superior Court determined, the drugs that Rooks purchased from Travis

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[271] *Banks v. State*, 93 A.3d 643, 651 (Del. 2014) (quoting *Holmes*, 547 U.S. at 326) (cleaned up).

[272] This rule provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." D.R.E. 403.

[273] D.R.E. 402; *Wyant*, 519 A.2d at 651 (applying D.R.E. 402 to exclude expert or lay witness testimony about defendant's intoxication).

[274] D.R.E. 401 (emphasis added).

following Wilkerson's arrest could not have been connected to those Wilkerson used on the night before his attacks, and Travis's statements to Rooks would have been inadmissible hearsay.[275] Further, for the reasons previously stated, Wilkerson's expert witnesses did not meet the standard for admissibility under D.R.E. 702 and *Daubert*. His evidence would have failed D.R.E. 403's balancing test.

E. Harmless Error

"Violations of a right to present a complete defense are reviewed for harmless error."[276] Even if the trial judge should have denied the State's motion *in limine* and allowed a jury to have potentially heard Wilkerson's evidence before ruling on the availability of an involuntary intoxication defense, any error was harmless. Ultimately, this defense would have been legally unavailable to Wilkerson based on his proffered evidence, and the evidence of Wilkerson's guilt was overwhelming in view of his own admissions, other eyewitness testimony, and DNA evidence linking him to these crimes.[277] Wilkerson's lay witness and expert opinion evidence concerning his intoxication from bath salts was inadmissible and, at the very least,

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[275] Mem. Op. at 36.

[276] *United States v. Stanford*, 823 F.3d 814 (5th Cir. 2016) (cleaned up).

[277] *See United States v. Lopez-Perez*, 514 F. App'x 463, 464 (5th Cir. 2013) (harmless error due to overwhelming evidence); *United States v. Kamra*, 2022 WL 4998978, at *5 n.8 (3d Cir. Oct. 4, 2022) (any error from trial court's exclusion of defense evidence would have been harmless due to evidence of defendant's guilt).

extremely weak for the reasons previously stated. Wilkerson did not suffer prejudice from the Superior Court's ruling on the motion *in limine*.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

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Dated: June 3, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RANDON WILKERSON,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 47, 2024
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 9,999 words, which were counted by Microsoft Word 2016.

Dated: June 3, 2024

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