



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**HENRY C. TANG,**  
**Defendant Below,**  
**Appellant,**

**v.**

**STATE OF DELAWARE,**  
**Plaintiff Below,**  
**Appellee.**

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**No. 270, 2025**

**Appeal from Sussex County  
Superior Court**

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**APPELLANT'S OPENING BRIEF**

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## **NATURE OF PROCEEDINGS**

On May 17, 2024, the Defendant was arrested for Driving Under the Influence of Alcohol Third Offense in violation of 21 *Del. C.* § 4177 and Failure to Have Lighted Lamps when Required in violation of 21 *Del. C.* § 4331. The Defendant waived Preliminary Hearing on May 31, 2025. Prosecution of the Defendant's matter commenced in the Superior Court of Sussex County following the filing of Indictment on June 25, 2025.

Defense Motions to Suppress relating to the detention of the Defendant and the arrest of the Defendant were filed on February 18, 2025. Suppression hearings were held on May 14, 2025. Both of Defendant's Motions to Suppress were denied. A stipulated bench trial was held on May 28, 2025. The Defendant was found guilty of all charges and sentenced immediately. On June 26, 2025, Defendant filed a Notice of Appeal in this Court.

## **SUMMARY OF ARGUMENT**

- I. THE TRIAL COURT ERRED IN FINDING THAT A MOBILE VIDEO RECORDING OF THE ALLEGED TRAFFIC VIOLATIONS WAS NEVER MADE.**
- II. THE TRIAL COURT ERRED IN FINDING THAT *DEBERRY V. STATE* DID NOT APPLY TO ALLEGED DRIVING INFRACTIONS THAT WERE RECORDED BUT NOT PRESERVED.**
- III. THE TRIAL COURT ERRED IN FINDING REASONABLE ARTICULABLE SUSPICION FOR THE SEIZURE OF THE DEFENDANT'S VEHICLE.**
- IV. THE TRIAL COURT'S DECISION TO ADMIT DEFENDANT'S BLOOD ALCOHOL CONCENTRATION WITHOUT THE PROPER FOUNDATION OVER DEFENDANT'S OBJECTION WAS AN ABUSE OF DISCRETION THAT PRECLUDED DEFENDANT'S ABILITY TO HAVE A FAIR TRIAL AND REQUIRES REVERSAL AND REMAND.**

## **STATEMENT OF FACTS**

Henry Tang, the Defendant Below, was arrested on May 17, 2024, for 3rd Offense Driving a Vehicle Under the Influence of Alcohol in violation of 21 *Del. C.* § 4177, and Failure to Have Lights on When Required in violation of 21 *Del. C.* § 4331. (Ai)

### **The Suppression Hearing**

Defendant filed Motions to Suppress on February 18, 2025, and a Suppression hearing was held on May 14, 2024. (Aii) At the hearing, the State called the arresting officer, Sgt. Jonathon Moyer of the Lewes Police Department. (A16) Sgt. Moyer testified that he had been employed with the by the City of Lewes for approximately eleven years, participated in DUI investigations, and commonly encountered people who were under the influence of alcohol or drugs. (A17, A18) He testified that while on duty on May 17, 2024, at approximately 11:30 p.m., he observed a vehicle traveling westbound on Savannah Road with its lights off. (A19, A20) When he pulled out behind the vehicle, it turned on its lights. He followed it. (A21)

On cross-examination, Sgt. Moyer testified that he followed the vehicle for approximately 30 seconds prior to activating his emergency equipment. (A32) He explained that “if [people] pull out of a parking lot, it gets darker as you pass Rite Aid, you leave the downtown area, there’s less streetlights, so it’s not a super



uncommon thing to see somebody not turn their lights on.” (A32) He made the decision to collect the evidence and continue to observe the vehicle and saw indications that the driver may or may not be under the influence. (A33) Specifically, he testified that the vehicle was weaving within the lane. (A21) On cross-examination, the officer was unable to say whether the vehicle was weaving within its lane before or after the vehicle had crossed the fog line. (A37) However, it was hard to say that the vehicle was weaving at all because of how wide the lane is in town. (A37)

Sgt. Moyer also asserted the vehicle crossed the fog line with its passenger-side wheels by the bike trail just before exiting the jurisdictional limits of Lewes, Delaware. (A21) On cross-examination, Sgt. Moyer testified there were not any obstructions in the shoulder including pedestrians, parked cars, or cones. (A36) He there was nothing unsafe about the vehicle’s alleged cross of the fog line aside from the actual crossing itself. (A36, A37)

On cross-examination, Sgt. Moyer was asked why he decided not to initiate a traffic stop of the vehicle after allegedly observing the vehicle’s lights out, the crossing of the fog line, and the weaving. (A39) Sgt. Moyer testified:

Well, typically for DUI’s and stuff, if we are stopping somebody, we want to develop enough to show the individual is struggling to maintain control of the vehicle.”  
“Of themselves individually, an individual not having their

lights on is not indicative of any kind of issues as far as control.” “Again, weaving within the lane, it’s not of itself something I would stop somebody for unless I have other concerns that are on top of that.” “The crossing of the fog line, again, there was no urgency, there was nobody there, there was no vehicles, there wasn’t somebody in danger at that point.” “So, the decision was made to continue to follow this vehicle to determine whether there’s other issues going on. (A39, A40)

On cross-examination, Sgt. Moyer testified that approximately 40 seconds elapsed between the vehicle’s crossing of the fog line and the activation of the MVR. (A40) Once the MVR was activated, Sgt. Moyer was outside of the jurisdictional limits of Lewes. (A40) On direct examination, Sgt. Moyer testified that as the vehicle continued down Savannah Road, the vehicle started approaching another car that was ahead of it. (A22) Sgt. Moyer asserted the vehicle hit its brakes multiple times as it approached the vehicle in front of it. (A22) He testified it was as if the driver was having trouble maintaining his speed to match the vehicle in front of him. (A22) On cross-examination, he testified that he could not tell how close the vehicle was to the vehicle traveling in front of it, but he assumed it was within a car length. (A41)

When asked on cross-examination if he could tell whether the vehicle in front of the Defendant’s vehicle was slowing down, Sgt. Moyer testified that he did not observe any taillights coming on the vehicle in front of the Defendant's vehicle. (A42) Sgt. Moyer acknowledged that a driver utilizing their brakes and thereby

activating their brake lights is not the only way a vehicle could slow down, agreeing a driver could let off the gas and slow down without hitting their brakes. (A42)

Sgt. Moyer then testified that the vehicle crossed over the center of the yellow line with both his driver's wheels. (A22) On cross-examination, he testified that he did not see any other vehicles immediately in the lane. (A42, A43) The Trial Court, *sua sponte*, requested a play-back of the MVR believing a truck can be observed in the lane. (A43) Prior to playback, Sgt. Moyer stated that he believed the truck was in the eastbound lane, not the turn lane. (A43) The Trial Court still requested a playback of the MVR. (A43)

Sgt. Moyer activated his emergency equipment to initiate a traffic stop. (A22) He testified that he used his horn and siren before the vehicle pulled over. (A22, A23) Following this testimony, the State introduced Sgt. Moyer's MVR recording into evidence. (A23, A24) Prior to the admission of the MVR, Sgt. Moyer testified that the moment emergency equipment is activated, the MVR records back 30 seconds and records the whole traffic stop. (A23) The Trial Court requested Sgt. Moyer narrate the MVR as it played. (A25, A26) He testified that the MVR footage began after he had begun following the vehicle. (A26) In fact, the MVR recording began in Quakertown, just outside the city of Lewes. (A26) On cross-examination, Sgt. Moyer testified that the jurisdictional limit of Lewes was around Atlantic Drive.

(A30, A31) Atlantic Drive was estimated to be between a quarter mile and a half mile behind Sgt. Moyer. (A31)

On cross-examination, Sgt. Moyer officer clarified that he allegedly observed the vehicle 1.) drive without its headlights on, 2.) weave within its lane of travel, and 3.) cross over the fog line while in the jurisdiction of Lewes, prior to the activation and preservation of the MVR. (A32, A33) On cross-examination, he agreed that the MVR can be activated several different ways including 1.) when the patrol vehicle goes over a certain speed, 2.) when the officer manually turns the MVR on, and 3.) when the officer activates their emergency equipment. (A28, A29) Sgt. Moyer agreed that the MVR is constantly recording, testifying that that is how the MVR can produce a 30-second preview following activation. (A29) He testified that his understanding of the 30-second preview is to capture the events that led up to the activation, agreeing that the 30-second preview gives objective proof of the reason for the stop. (A29, A30)

Sgt. Moyer admitted that he made the conscious decision not to manually activate his MVR. (A44) Sgt. Moyer admitted that he followed the vehicle for a minimum of 30 seconds outside of the jurisdictional limits of Lewes before activating his emergency equipment. (A32) Sergeant Moyer also admitted that had his MVR been activated, it would have shown the alleged driving infractions. (A44)

During argument, Defense Counsel asserted the argument as to a Reasonable Articulate Suspicion Motion to Suppress was layered. (A45) First, in regards to an evidentiary preservation standpoint, pursuant to *Lolly*, *DeBerry*, or *Hunter*, and Sgt. Moyer's testimony, had Sgt. Moyer's MVR been activated at the initiation of the investigation, the MVR would have captured the only alleged objective evidence of the vehicle's light's being out, the vehicle's moving within the lane, and the vehicle's crossing of the fog line. (A45-A47) Therefore, the only objective evidence of what happened within the jurisdictional limits of Lewes, pursuant to Sgt. Moyer's testimony, was collected and then lost, or not preserved. (A46) As a result, Defense Counsel argued any testimony regarding the un-preserved evidence should not be considered in a Reasonable Articulate Suspicion analysis and should therefore be suppressed. (A50)

Second, once the MVR is activated, a traffic stop is conducted outside of the jurisdiction of the arresting officer. (A47) Defense Counsel argued that while statewide jurisdiction exists for DUI's, it does not permit a municipal officer to stop a vehicle for routine traffic violations outside of its jurisdiction. (A47, A48)

The Trial Court rejected the arguments of Defense Counsel. (A48-A52) More specifically, the Trial Court held MVR footage capturing the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware was never made, therefore, *DeBerry v. State* did not apply, the Defendant was not entitled to a

missing evidence instruction, and the Trial Court would accept testimony from Sgt. Moyer regarding the alleged traffic violations not preserved on MVR. (A50-A54) At the conclusion of the Suppression Hearing, the Trial Court found Reasonable Articulate Suspicion existed. (A54-A56)

### **The May 23, 2025 Office Conference**

Subsequently, in preparation for trial, Defendant raised the issue of the missing Intoxilyzer 9000 manufacturer's manual and requested an office conference. On May 23, 2025, an office conference was held to address Defense Counsel's Motion to Compel the manual for the Intoxilyzer 9000 device and the State's assertion that according to the State Chemist, a manual regarding the device's set-up and use does not exist. (A92) The State provided Defense Counsel with a one-page Standard Operating Procedure and the Intoxilyzer 9000 guide but clarified that it is not a manual but a series of instructions. (A93) The State was aware that the Defendant may waive jury and have a stipulated trial. The Trial Court declared that the Defense would not be able to cross-examine a road officer on the intricacies of the Intoxilyzer 9000 or the difference between it and the prior version, the Intoxilyzer 5000 EN, and limited Defense Counsel's cross-examination to the officer's training, and understanding of it. (A93) The Court concluded that if the Defense had the steps that have to be followed per the manufacturer as to how the device was to be used, then Defense Counsel has what they are entitled to. (A94)

There was some discussion about a New Castle County Superior Court case in which a related issue is pending. (A94-A95) The State offered to provide all the exhibits in that matter. (A94) When Defense Counsel clarified that he was specifically requesting the manufacturer's manual because Defense Counsel was previously involved in litigation, State v. Florentine Rendon, regarding a prior version of the Intoxilyzer and a central point was the manufacturer's manual, and the manual was central to the Defense's ability to question whether a result was admissible. (A95-A96) The Trial Court declared that the proceedings were "passed the line of a Motion in Limine like having a full Judge Miller hearing," and when Defense Counsel argued that it was a foundational issue, the Trial Court agreed stating:

If the officer says...this is the machine, I was trained on it, it was tested before, I followed the steps as the manufacturer says I'm to do, I got this result, it appeared as if the machine operated properly, the machine was tested afterwards, then that's the foundation. (A97)

Defense Counsel agreed, adding that Defense Counsel has to have the manufacturer's manual to know that, not what the State Chemist tells Defense Counsel. The Court agreed. (A97) The conference was adjourned with instructions for the State to produce what was produced in the New Castle County hearing. (A98)

### **The May 27, 2025 Office Conference**

Subsequently on May 27<sup>th</sup>, 2025, the Trial Court held another office conference at the parties' joint request, the Trial Court discussed Defense Counsel's issue that Defense Counsel requested the manual for the Intoxilyzer 9000 device but the State's claim that there is not one – essentially claiming that it does not exist. (A106-A107) Defense Counsel sought to keep the Intoxilyzer result from being entered into evidence in the manual's absence. (A107) The Trial Court denied the request and provided reasoning:

So, I mean, in all cases where the Intoxilyzer was used...the State's not going to get to put in evidence of the breathalyzer result. I mean that's essentially what would happen. I'm going to deny it. I just don't know what else to do.” (A107)

With that, Defense Counsel advised that it was Defendant's intention to waive jury, stipulate to the admission of the Suppression Hearing testimony, and begin with evidence on the Intoxilyzer 9000. (A107-A108)

### **The Trial**

The matter proceeded to Trial on May 28, 2025. The Trial Court began proceeding by docketing the two e-mail requests from Defense Counsel that prompted the prior office conferences. (A111-A118, A121-A122) The three attachments to the e-mail were the submissions in the New Castle County case and included the Intoxilyzer 9000 Guide Subject Test by Operator, the Standard



Operating Procedure for the Intoxilyzer, the Standard Operating Procedure for the Intoxilyzer 9000, and the 9000 Exception Message Information Guide. (A122) Having provided these materials, the State purported that it provided the manual. (A122) When asked if the Defense had anything to add to the record following the summary of ruling, Defense Counsel provided that he understood all of the documents provided in the New Castle County case to be a product of the State of Delaware and/or the State Chemist's Office and that no documents nor testimony were presented from manufacturer, CMI, only the State's Chemist and a former employee of CMI. (A123) No transcript was available at the time. (A124) The Court confirmed that the documents were generated by the State of Delaware or the State Chemist's office (A124)

Further, Defense Counsel asserted that Defendant was entitled to documentation, manuals, other types of writings from CMI regarding the Intoxilyzer 9000 and that their absence "prevents any meaningful challenge, cross-examination, or otherwise questioning the result of that test," the result of which once admitted, cannot be challenged per 4177(15)(g). (A124) Defense Counsel requested that the Trial be delayed until the conclusion of the pending New Castle County Superior Court *Daubert* proceedings as the basic reliability of the machine would have to be decided first. The Trial Court declined to "stall the entire docket for DUI's" and denied the motion. (A128)

The Trial proceeded with Sgt. Moyer testifying about his training on and use of the Intoxilyzer 9000 in his interaction with the Defendant. (A131) He testified that he believed that Defendant was under the influence of alcohol, so he placed him under arrest and transported him to Troop 7 for a breath test using the Intoxilyzer 9000. (A132-A133) He administered the breath test to the Defendant and described the process as follows: that after the machine initially warms up, the user is entered into the system, which puts you into a cue. (A133) Then after 20 minutes passes, it allows you to enter the subject's information before it runs its calibration and checks. (A133-A134) Once clear, it prompts you to conduct a breath sample. It tells the user if the sample was proper, then gives you the results, after which it goes into a second sample. It goes through calibration and checking, allows three minutes for a sample, then produces a result. (A134)

Sgt. Moyer received his training through the Delaware Crime Lab and became a certified operator in November 2023. (A134) The training was a half day where participants were presented a Power Point slide, and it was explained to them how to operate the Intoxilyzer 9000. They then were required to operate the machine to demonstrate their understanding. (A136) Calibration records were admitted for the Intoxilyzer utilized by Sgt. Moyer, who then testified that he administered the breath test to Defendant. (A136-A140)

On voir dire, Sgt. Moyer advised that he did not believe that he had seen anything from the manufacturer of the Intoxilyzer. (A147-A148) He was not provided any documents during the training but was shown the Power Point and a list of steps to guide him through the process. (A147) He only left the training with his training card. (A148) And, he did not recall taking a test to get certified, nor is he aware of a recertification process. (A149-A150) He was not aware of a manual for the Intoxilyzer 9000, though there was one for 5000 model. (A150) No one at the training represented to him that the training was based on the manufacturer's information or its manual. (A150-1A51) He believed that the Power Point was put together by the State. (A150)

As of the time of the trial, Mr. Tang was the first and only Defendant to which Sgt. Moyer administered the Intoxilyzer 9000. (A166) The result was 0.162. (A158). The officer attested that he had no personal knowledge as to how it worked or the processes, admitting that he was just trained to do certain steps, and then the machine spits out a result. (A166) After Sgt. Moyer completed his testimony, the State moved to admit the BAC result. (A167) Defense objected that Sgt. Moyer did not qualify as an expert witness per Delaware Rule of Evidence 702 because the State failed to present the manufacturer's manual or evidence that it guided the training process in any way, and the evidence did not provide where the training materials came from or their accuracy. (A168-A170)

The Court rejected the Defendant's argument finding that he heard the officer testify about the in detail training that he received on the Intoxilyzer 9000 and that "simply because there's no manual it doesn't make the machine unreliable or the training unreliable. There's no indication of that." (A175) Accordingly, it admitted the BAC result. (A177)

Defendant was found guilty of Driving under the Influence and Failure to Have Headlights On when Required. (A180-A182, A183) Defense Counsel informed the Court of Defendant's intent to appeal and requested a Stay of Sentencing pending that appeal; the State took no position. (A183, A184) The Trial Court denied the request to stay and accordingly sentenced Defendant after which Defendant was remanded to the custody of the Department of Corrections. (A185-A187). This appeal followed.

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED IN FINDING THAT A MOBILE VIDEO RECORDING OF THE ALLEGED TRAFFIC VIOLATIONS WAS NEVER MADE.**

**Question Presented:** Whether the Trial Court erred in holding that a Mobile Video Recording of the alleged traffic violations that was ultimately recorded by Sgt. Moyer was created for the purposes of preservation and disclosure pursuant to Criminal Rule 16. This issue was raised in a timely manner prior to Trial in a Suppression Hearing held May 14, 2025. (A44-A54)

**Scope of Review:** The Delaware Supreme Court affords Trial Court's factual findings high level of deference and will not disturb them so long as they are sufficiently supported by record, are product of orderly and logical reasoning process, and are not clearly erroneous. *In re Columbia Pipeline Grp., Inc. Merger Litig.*, No. 281, 2024, 2025 WL 1693491 (Del. June 17, 2025)

**Merits of Argument:** On May 17, 2024, the Defendant was arrested for Driving Under the Influence of Alcohol Third Offense in violation of 21 *Del. C.* § 4177 and Failure to Have Lighted Lamps when Required in violation of 21 *Del. C.* § 4331. Motions to Suppress regarding the detention and arrest of the Defendant were filed February 18, 2025. A Suppression Hearing was held on May 14, 2025. Defense Counsel's Motions to Suppress were denied. A Stipulated Bench Trial was

held May 28, 2025. The Defendant was found guilty of all charges and sentenced immediately.

At the Suppression Hearing, the State's sole witness was Sgt. Moyer of the Lewes Police Department, the arresting officer. He testified that he had been employed by the City of Lewes for approximately eleven years, participated in DUI investigations, and commonly encountered people who were under the influence of alcohol or drugs. Sgt. Moyer's testimony can be broken down into two parts: 1.) alleged driving infractions observed within the jurisdictional limits of Lewes, Delaware but not preserved on Mobile Video Recorder (hereinafter referred to as "MVR"), and 2.) alleged driving infractions observed outside of the jurisdictional limits of Lewes, Delaware and preserved on MVR.

As to the first part, Sgt. Moyer alleges he began following the Defendant after initially observing the Defendant allegedly operating his motor vehicle without his lights on. Also, while in the jurisdictional limits of Lewes, Delaware, Sgt. Moyer alleges the Defendant's vehicle weaves within its lane of travel and crosses the fog line with its passenger-side wheels. Sgt. Moyer repeatedly asserted that he made the decision not to seize the Defendant's vehicle to continue to collect evidence, observe the vehicle, and determine if there were other issues going on. Sgt. Moyer testified that as he followed the Defendant, the Defendant continued to show indications that he may or may not be under the influence.

Sgt. Moyer initiated a traffic stop outside of the jurisdictional limits of Lewes, Delaware. As stated, the alleged traffic violations occurring within the jurisdictional limits of Lewes were captured on MVR but not preserved. The Trial Court held MVR footage capturing the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware was never made, therefore, *DeBerry v. State* did not apply, the Defendant was not entitled to a missing evidence instruction, and the Trial Court would accept testimony from Sgt. Moyer regarding the alleged traffic violations not preserved on MVR.

On-cross examination, Sgt. Moyer's knowledge of and experience with the MVR was developed. He testified that there a couple of different ways in which the MVR "activates" including 1.) when the patrol vehicle goes over a certain speed, 2.) when the officer manually turns it on, and 3.) when the officer activates their emergency equipment. However, he testified that the MVR is constantly recording. As a result, the MVR can produce a thirty-second playback, the objective of which is to capture the events that led up to the ultimate initiation of a seizure.

Sgt. Moyer knew his MVR was constantly recording. The MVR's ability to produce a thirty-second preview demonstrates that the MVR is constantly recording. Therefore, a recording of the Defendant's alleged commission of traffic offense in Lewes, Delaware was absolutely made, however, it was not preserved. The "activation" of the MVR, whether it be by reaching a certain speed, manual

activation, or activation of the emergency equipment, is not the commencement of the recording, it is the commencement of the preservation of the prior 30 seconds of the recording and so forth. The “case law is clear in holding there is no duty to create an MVR,” however, “there is a duty to preserve an MVR once it is made, provided the MVR is likely to be probative.” *State v. Aklilu*, 2017 WL 66340 4(Del. Com. Pl. Jan. 4, 2017). Pursuant to testimony from Sgt. Moyer, an MVR was made and the contents of the MVR, the alleged events that led to the ultimate seizure and arrest of the Defendant, would have been probative.

Based on the above, it is submitted that the Trial Court erred in finding that an MVR of the alleged traffic violations was never recorded.



**II. THE TRIAL COURT ERRED IN FINDING THAT *DEBERRY V. STATE* DID NOT APPLY TO ALLEGED DRIVING INFRACTIONS THAT WERE RECORDED BUT NOT PRESERVED.**

**Question Presented:** Whether the Trial Court erred in denying a missing evidence instruction and considering testimony from Sgt. Moyer regarding alleged driving infractions that were recorded but not preserved? This issue was raised in a timely manner prior to Trial in a Suppression Hearing held May 14, 2025. (A44-A54)

**Scope of Review:** Claims that the Trial Court improperly denied a missing evidence instruction are reviewed *De Novo*. *McCrely v. State*, 941 A.2d 1019, 2 (Del. 2008).

**Merits of Argument:** Defense Counsel argued, pursuant to *DeBerry v. State*, 457 A.2d 744 (Del. 1983) and *Lolly v. State*, 611 A.2d 956 (Del. 1992) that the MVR evidence depicting the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware, which was captured but not preserved, could not be considered as a factor in the Reasonable Articulate Suspicion analysis and should be suppressed. The Trial Court declined to apply *DeBerry* and *Lolly* to the Defendant's case, holding the MVR depicting the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware were never captured.

Defense Counsel argued that application of *DeBerry* and *Lolly* would require the State to stipulate at trial that the missing evidence was exculpatory. The Trial Court ruled *DeBerry* and *Lolly* did not apply, again ruling that the evidence was never collected, further ruling *DeBerry* and *Lolly* did not apply to Suppression Hearings.

“The obligation to preserve evidence is rooted in the Fourteenth Amendment to the United States Constitution and Article 1 § 7 of the Delaware Constitution.” *Deberry v. State*, 457 A. 2d 744 (Del. 1983). The test promulgated in *DeBerry v. State* serves as a roadmap for examination when Courts are presented with the question: “what relief is appropriate when the State had or should have had the requested evidence, but the evidence does not exist when the Defense seeks its production?” *Id.* At 750. The *DeBerry* test is summarized below:

Would the requested material, if extant in the possession of the State at the time of the Defense request, have been subject to disclosure under Criminal Rule 16 or *Brady*?

If so, did the government have a duty to preserve the material?

If there was a duty to preserve, was the duty breached, and what consequences should flow from a breach?

*Id.* (citing Super. Ct. Crim. R., Rule 16, and, *Brady v. Maryland*, 373 U.S. 83 (1963)).

**A. The Mobile Video Recording footage would have been subject to disclosure under Criminal Rule 16 or *Brady*.**

Defense Counsel filed a Discovery Request on July 23, 2024. Defense Counsel’s Discovery Request largely encompasses the language of Superior Court

Criminal Rule 16, making a specific production request regarding any in-car videotapes, or, alternatively, a statement as to why the in-car videotape does not exist. The State provided incomplete MVR footage in the normal course of Discovery without objecting to disclosure on the grounds of immateriality or that the request was unreasonable, therefore the State is precluded now from arguing that the complete MVR, if preserved, was not subject to disclosure under Criminal Rule 16. *Id.* at 751.

MVR footage constitutes information subject to disclosure pursuant to Superior Court Criminal Rule 16(a)(1)(C). The MVR was within possession of the State, Sergeant Moyer of the Lewes Police Department. Sgt. Moyer testified that had the MVR been preserved, it would have depicted alleged traffic violations, the commission of which, were considered by Sgt. Moyer when initiating a seizure of the Defendant and the Trial Court when deciding Reasonable Articulate Suspicion. The MVR footage would have been material to the Defendant's ability to defend himself, confront Sgt. Moyer, and effectively challenge the seizure. Therefore, had the MVR been preserved, it would have been subject to disclosure under Criminal Rule 16 or *Brady*.

**B. The arresting officer had a duty to preserve the only objective evidence of the alleged traffic violations observed within the jurisdiction of Lewes, Delaware.**

Sgt. Moyer testified that regarding DUI's, his goal is to develop enough evidence to show the individual is struggling to maintain control of their vehicle. Sgt. Moyer testified that by itself, an individual not having their lights on, weaving within the lane, and crossing the fog line was not, in his opinion, enough to meet that goal, so he continued to follow the Defendant's vehicle and collect evidence. The totality of the collected evidence led to a seizure and arrest of the Defendant. The evidence, some preserved on Sgt. Moyer's MVR, some testified to by Sgt. Moyer was eventually used to secure a conviction against the Defendant. The Defendant was entitled to the totality of the recorded investigation.

"The duty of preservation extends not only to the Attorney General's office, but all investigative agencies, local, county, and state." *Id.* (citing *United States v. Bryant*, 439 F.2d 642, 651 (D.C. Cir. 1971)). Therefore, Sgt. Moyer had a duty to preserve the totality of the investigation that Sergeant Moyer understood was being recorded. This Court did "not purport to explicitly prescribe what administrative procedures are necessary for the Attorney General and the various law enforcement agencies in this State to fulfill the duty to preserve evidence," however, in accordance with Superior Court Criminal Rule 16(b), a Defendant need only show that an item "may be material to the preparation of his defense" to be discoverable. *Deberry v. State*, 457 A.2d 744 (Del. 1983) (*Cf. United States v. Bailleaux*, 685 F.2d 1105 (9th Cir. 1982)). Therefore, this Court advised agencies that create rules for

evidence preservation to broadly define discoverable evidence to include any material that could be favorable to the Defendant. *Id.* at 744 (*see also United States v. Bryant*, 439 F.2d at 652 n. 21.)

Sgt. Moyer testified, to prompt the MVR to begin preservation of the video and also the prior thirty-seconds, Sergeant Moyer had to either 1.) reach a certain speed, 2.) manually activate his MVR, or 3.) activate his emergency equipment. Therefore, in order to balance Sgt. Moyer's desire to continue pursuing the Defendant without initiating a traffic stop and the Defendant's constitutional rights, Sergeant Moyer would only have been required to manually activate his MVR.

"The duty of disclosure attaches in some form once the Government has first gathered and taken possession of the evidence in question." *Deberry v. State*, 457 A.2d 744 (Del. 1983) *citing United States v. Bryant*, 439 F.2d 642, 651 (D.C. Cir. 1971). Considering Sgt. Moyer's rank and experience, he should understand the importance of the events leading up to the seizure of the Defendant's vehicle in a DUI investigation, specifically regarding Motions to Suppress, potential resolutions, and ultimately at trial. Involved in an active DUI investigation, Sgt. Moyer had a duty to preserve the totality of the alleged traffic violations. "Otherwise, disclosure might be avoided by destroying vital evidence before prosecution begins or before Defendants hear of its existence." *Deberry v. State*, 457 A.2d 744 (Del. 1983) *citing United States v. Bryant*, 439 F.2d 642, 651 (D.C. Cir. 1971).

“The failure of the government ‘to take adequate steps to preserve evidence may deny a Defendant Due Process and thereby jeopardize otherwise viable convictions.’” *Deberry v. State*, 457 A.2d 744 (Del. 1983) (*E.g., Government of the Virgin Islands v. Testamark*, 570 F.2d 1162, 1165-66 & n. 7 (3d Cir. 1978.)) Sgt. Moyer was actively collecting evidence for use in a potential DUI investigation. Evidence he testified individually was not indicative of an individual struggling to maintain control of their vehicle. Yet, he made the conscious decision not to preserve the only objective evidence allegedly justifying the seizure of the Defendant.

Sgt. Moyer had a duty to manually activate his MVR and thereby preserve the totality of the MVR footage when he decided to initiate an investigation into the Defendant and collect evidence. The manual activation of the MVR would have 1.) captured the totality of the alleged traffic violations that ultimately led to a seizure and arrest, 2.) allowed Sgt. Moyer to continue to pursue the vehicle without activation of his emergency equipment, and 3.) protected the Defendant’s Fourth and Sixth Amendment rights.

- C. The arresting officer's breach of the duty to preserve evidence deprived Defendant of his ability to effectively cross-examine the officer as guaranteed by the Sixth Amendment and to challenge his seizure as guaranteed by the Fourth Amendment and thereby required a *DeBerry* instruction and should not have been considered in a Reasonable Articulate Suspicion analysis.

The Trial Court allowed Sgt. Moyer to testify as to the alleged driving infractions observed while within the jurisdictional limits of Lewes, Delaware. The Trial Court also viewed Sgt. Moyer's MVR footage, encompassing the alleged traffic violations committed outside of the jurisdictional limits of Lewes, Delaware. It is submitted that Sgt. Moyer's testimony regarding the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware was inconsistent, wrongfully considered in a Reasonable Articulate Suspicion analysis, and not enough to justify a seizure.

When deciding whether the State has breached its duty to preserve evidence, and if so, what effect such breach has on the conviction, "the State must justify the conduct of the police or prosecutor, and the Defendant must show how his defense was impaired by loss of evidence." *Deberry v. State*, 457 A.2d 744 (Del. 1983). The *Deberry* Court named several factors for consideration including, 1.) the degree of negligence or bad faith involved, 2.) the importance of the lost evidence, and 3.) the sufficiency of the other evidence adduced at trial to sustain the conviction. *Id.* at 752 (citing *United States v. Loud Hawk*, 628 F.2d 1139, 1152 (9th Cir. 1979)).

Regarding the first factor, the degree of negligence of bad faith involved, it is submitted that Sgt. Moyer acted in disregard for the interests of the accused and, at minimum, was negligent in failing to adhere to established and reasonable standards of care for police and prosecutorial functions. *Id.* at 752.

Sgt. Moyer testified that individually, the alleged traffic violations, in his opinion, were not enough to initiate a traffic stop, however, considering the ultimate later seizure of the Defendant, the totality of the alleged traffic violations were eventually enough. Sgt. Moyer testified that he made the conscious decision not to manually activate his MVR, therefore, he made the conscious decision not to preserve the totality of probative and potentially exculpatory evidence. Considering Sgt. Moyer's rank and experience, he could reasonably expect that the objective evidence of the reason for the seizure would be crucial evidence of the Defendant's guilt or innocence in a DUI investigation, more specifically, a determination of Reasonable Articulate Suspicion. Therefore, Sgt. Moyer's conscious decision not to preserve the totality of his DUI investigation was made in bad faith and in disregard for the interests of the Defendant.

Sgt. Moyer's actions directly affected the interests of the Defendant, more specifically his ability to defend, to confront Sergeant Moyer, and effectively challenge the seizure. Similarly to the analysis in *DeBerry*, the Defendant had no way of preserving or protecting the video depicting the alleged driving infractions



justifying the ultimate seizure, however, Sgt. Moyer, was in an absolute superior position to do so easily. *Id.* at 753

Regarding the second factor, the importance of the lost evidence, it is submitted that Sgt. Moyer failed to preserve the totality of the only objective evidence allegedly justifying the reason for the seizure. Sgt. Moyer testified that the missing MVR footage would have presumably shown the alleged driving infractions committed within the jurisdictional limits of Lewes, Delaware.

The Defendant is entitled to all the evidence, especially evidence that “may be material to the preparation of his defense.” *Id.* at 751. (*Cf. United States v. Bailleaux*, 685 F.2d 1105 (9th Cir. 1982)). Objective evidence allegedly displaying the reasons for a seizure in a DUI investigation is crucial evidence material to the Defendant’s guilt or innocence, more specifically, crucial to the Defendant’s ability to challenge the seizure.

Regarding the final factor, the sufficiency of the other evidence adduced at trial to sustain the conviction, it is submitted that the cumulative evidence adduced is not enough to sustain a conviction. The testimony of Sgt. Moyer, the arresting officer and sole witness against the Defendant, was conflicting and inconsistent, and therefore wrongfully considered in a Reasonable Articulate Suspicion analysis and therefore insufficient to sustain a conviction.

The partial MVR footage depicting alleged traffic violations committed later in Sgt. Moyer's DUI investigation is not relevant for the purposes of this analysis because the footage does not corroborate Sgt. Moyer's conflicting testimony and begins once Sgt. Moyer, a municipal officer, has traveled outside of the jurisdictional limits of Lewes and initiates a seizure. The Trial Court was devoid of any reliable, objective evidence of the alleged traffic violations committed within the jurisdictional limits of Lewes, evidence crucial to a Reasonable Articulate Suspicion analysis and ultimate conviction. As a result, the Trial Court erred in considering the arresting officer's testimony regarding the alleged contents of the MVR footage, in finding Reasonable Articulate Suspicion existed and in finding that the evidence adduced at trial was enough to sustain a DUI conviction.

### III. THE TRIAL COURT ERRED IN FINDING REASONABLE ARTICULABLE SUSPICION FOR THE SEIZURE OF THE DEFENDANT'S VEHICLE.

**Question Presented:** Whether the alleged traffic violations committed outside the jurisdiction of Lewes, Delaware and preserved on MVR amounted to Reasonable Articulate Suspicion justifying the seizure of the Defendant? This issue was raised in a timely manner prior to Trial in a Suppression Hearing held May 14, 2025. (A44-A54)

**Scope of Review:** A Trial Court's determination whether a peace officer possessed reasonable and articulable suspicion to detain an individual is an issue of law and fact. *Jones v. State*, 745 A.2d 856 (Del. 1999.) In the present case there are no disputed issues of fact. Therefore, the applicable standard of review is *De Novo*. *Id.* at 856.

**Merits of Argument:** 11 *Del. C.* § 1911 governs police officers' statewide authority. 11 *Del. C.* § 1911(c) states "an on-duty police officer may arrest upon view and without a warrant at any location within the State any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or physical injury to another person or which constitutes a violation of § 4177 of Title 21." Pursuant to 11 *Del. C.* § 1901(1) "arrest" is defined as "the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime."

**A. The arresting officer's seizure of the Defendant's vehicle outside of the jurisdictional limits of Lewes, Delaware was improper and violative of 11 Del. C. § 1911.**

The preserved MVR footage begins after Sgt. Moyer has followed the Defendant's vehicle outside of the jurisdictional limits of Lewes, Delaware. During argument, Defense Counsel argued that the Trial Court should not consider Sgt. Moyer's testimony regarding the alleged traffic violations committed within the jurisdictional limits of Lewes, Delaware due to Sgt. Moyer's failure to preserve the MVR footage capturing said alleged violations, leaving the Trial Court with the MVR footage capturing the alleged traffic violations committed outside of the jurisdictional limits of Lewes, Delaware for consideration in a Reasonable Articulate Suspicion analysis.

Sgt. Moyer is a municipal officer, employed by the City of Lewes, therefore his ability to exercise his duties as a police officer are limited to the jurisdictional limits of Lewes, Delaware, with the exception of the specific circumstances cited in 11 Del. C. § 1911 including when probable cause exists to believe that the person is committing or attempting to commit 1.) any crime which creates a substantial risk of death or physical injury, or 2.) which constitutes a violation of § 4177 of Title 21.

While outside of the jurisdictional limits of Lewes, Delaware, Sgt. Moyer alleges to observe Defendant 1.) weave within the lane 2.) approach the vehicle ahead of him, 3.) utilize his brakes multiple times, and 4.) cross over the center

yellow line. Sgt. Moyer does not testify that he believed the Defendant was committing or attempting to commit any crime which creates a substantial risk of death or physical injury. Further, Sgt. Moyer does not testify that he believed he possessed Probable Cause to arrest for a violation of 21 *Del. C.* § 4177. At the time of the seizure, Sgt. Moyer did not have probable cause to arrest the Defendant or take the Defendant into custody to answer for the commission of a violation of § 4177.

**B. The alleged traffic violations observed outside of the jurisdictional limits of Lewes, Delaware, if observed within the jurisdictional limits of Lewes, Delaware, would not amount to Reasonable Articulate Suspicion to seize the Defendant's vehicle.**

If the alleged traffic violations observed outside of the jurisdictional limits of Lewes Delaware were observed inside the jurisdictional limits of Lewes, Delaware, Sgt. Moyer's ability to exercise his duty as a police officer would not be limited. However, pursuant to case law, even if the alleged traffic violations alone were observed within Lewes, Delaware, the alleged traffic violations observed would not amount to Reasonable Articulate Suspicion justifying a seizure of the Defendant's vehicle.

Once outside of the jurisdiction of Lewes, Sgt. Moyer alleges the Defendant approached another vehicle that was traveling in front of the Defendant and hit his brakes multiple times. Sgt. Moyer testified that he could not say the exact distance

between the Defendant's vehicle and the vehicle in front of the Defendant because Sgt. Moyer was traveling behind the Defendant's vehicle. Sgt. Moyer testified that he did not observe the vehicle traveling in front of the Defendant's vehicle using his brakes, however, he recognized a driver could let off the gas and slow down without utilizing their brakes, which would require the Defendant to brake in order to maintain a safe distance. Ultimately, he could not testify as to whether the vehicle traveling in front of the Defendant's vehicle was slowing down.

Sgt. Moyer did not testify that he considered the Defendant's actions unsafe or dangerous. He testified in a matter-of-fact manner, testifying to his alleged observations. Further, he did not allege that the Defendant's actions constituted a violation of Delaware Code. It is submitted, considering Sgt. Moyer's testimony, the Defendant's operation of his motor vehicle was not unsafe, dangerous, or unreasonable and therefore, not an indicator of impaired driving and did not constitute Reasonable Articulable Suspicion that criminal activity was afoot.

Sgt. Moyer then alleges that the Defendant crossed over the center of the yellow line separating a turn lane, with both driver's wheels, as a result, he initiated a traffic stop. 21 *Del. C.* § 4122 restricts a vehicle's ability to leave its designated lane of travel. However, § 4122 does not prohibit crossing lane lines, even for no apparent reason. *State v. Blank*, 2001 WL 755932 2 (Del Super.) § 4122 has a safe harbor provision, allowing a person to cross lane lines so long as the person first

determines that a lane change can be made safely before initiating the maneuver. *Id.* at 2001 WL 755932.

Pursuant to case law, Sgt. Moyer was required to demonstrate through his testimony that he possessed Reasonable Articulate Suspicion to believe that the Defendant crossed the yellow line without first ascertaining whether it was safe. *Id.* Sgt. Moyer's testimony failed to establish that Sgt. Moyer had Reasonable Articulate Suspicion to believe that the Defendant crossed the yellow line without first ascertaining whether it was safe. In fact, Sgt. Moyer's testimony echoed the Trooper's testimony in *Blank*, wrongfully considering the lane crossing in and of itself to be prohibited conduct. *Id.*

The Trial Court requested playback of the MVR, questioning the potential of an on-coming truck traveling in the lane. Sgt. Moyer testified he believed the truck was in the Eastbound Lane, not the turn lane. The Trial Court requested playback of the MVR.

When ruling on Defense Counsel's Motion to Suppress Reasonable Articulate Suspicion, the Trial Court acknowledged that both Defense Counsel and Sgt. Moyer did not view the Defendant's alleged crossing of the center yellow line as "scary", however, the Trial Court thought it was "scary."

Assuming *arguendo* the truck was traveling in the lane the Defendant's vehicle briefly entered, pursuant to case law, the Defendant's alleged actions are still not violative of § 4122. In *State v. Vasquez-Lopez*, the Court did not agree with the State's position that a vehicle traveling in the left-most lane was forced to take evasive action to avoid risk of collision after the Defendant's vehicle briefly entered the lane in which the vehicle was traveling. 2024 WL 4851469 2 (Del. Super. 2024.) The Court held the State's assertion was nothing more than speculation, holding the Defendant immediately correcting his steering and no appreciable danger resulted from the minimal diversion. *Id.* at 2024 WL 4851469. Therefore, in the present case, the Trial Court erred in finding the Defendant's brief deviation into a turn lane was unsafe and that the maneuver created Reasonable Articulate Suspicion that criminal activity was being committed.

The foregoing analysis assumes that the arresting officer's observations occurred within the jurisdictional limits of Lewes, Delaware, which they did not. As previously stated, the standard for a municipal officer to initiate a seizure outside of their jurisdiction is much higher.



**IV. THE TRIAL COURT’S DECISION TO ADMIT DEFENDANT’S BLOOD ALCOHOL CONCENTRATION WITHOUT THE PROPER FOUNDATION OVER DEFENDANTS’ OBJECTION WAS AN ABUSE OF DISCRETION THAT PRECLUDED DEFENDANT’S ABILITY TO HAVE A FAIR TRIAL AND REQUIRES REVERSAL AND REMAND.**

**Question Presented:** Whether the court erred by admitting the Defendant’s blood alcohol concentration produced by the Intoxilyzer 9000 despite the State’s failure to produce the manufacturer’s manual or any testimony therefrom to lay a proper foundation as to compliance with the manufacturer’s instructions? This issue was raised in a timely manner during trial. (A168-170).

**Scope of Review:** This Court reviews the admission of evidence over a Defendant’s timely objection under an abuse of discretion standard. *Clawson v. State*, 867 A.2d 187, 192 (Del. 2005).

**Merits of Argument:** Defense counsel specifically requested that the blood alcohol concentration (BAC) results from the Intoxilyzer 9000 be excluded from admission into evidence because the State could not produce a manual from its manufacturer. Defense counsel asserted that Defendant was entitled to documentation, manuals, other types of writings from CMI, the manufacturer, with regard to the Intoxilyzer 9000” and that their absence “prevents any meaning challenge, cross-examination, or otherwise questioning the result of the test, which once admitted could not be challenged per Delaware law at 21 *Del. C.* 4177(c)(15)(g), which states in pertinent part:

in any proceeding, the resulting alcohol...concentration reported when a test as defined in paragraph (c)(3) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

During the two pretrial conferences, there was some discussion about a New Castle County Superior Court case, *State v. Lambert Brown*, 2403014753, in which a Daubert decision was pending before the Honorable Judge Kathleen M. Miller on the admissibility of the Intoxilyzer 9000's results. The State offered to provide all of the exhibits in that matter, but the defense counsel clarified that he was specifically requesting the manufacturer's manual because he previously was involved in *State v. Rendon*, C. A. No. 0207002008 litigation regarding a prior version of the Intoxilyzer and a central point was the manufacturer's manual, and the manual was central to the defense's ability to question whatever the machine's result. The court declared that the proceedings were "passed the line of a motion in limine like having a full Judge Miller hearing," (A97) and when defense counsel argued that it was a foundational issue, the court agreed stating:

If the officer says...this is the machine, I was trained on it, it was tested before, I followed the steps **as the manufacturer says** I'm to do, I got this result, it appeared as if the machine operated properly, the machine was tested afterwards, then that's the foundation. (A97) (emphasis added)

Defense counsel agreed, adding that he also has to have the manufacturer's manual

to know that, not just what the State Chemist tells him, and the Court agreed. Then, on May 27<sup>th</sup>, the court held another office conference at the parties' request a jointly requested office conference, the court discussed Defense Counsel's issue that he requested the manual for Intoxilyzer 9000 device but the State's claim that there is not one--- essentially claiming that it does not exist. In that absence of a manufacturer's manual, Defense counsel accordingly sought to keep the Intoxilyzer result from being entered into evidence. The court denied the request based on this reasoning:

So, I mean, in all cases where the Intoxilyzer was used...the State's not going to get to put in evidence of the breathalyzer result. I mean that's essentially what would happen. I'm going to deny it. I just don't know what else to do." (A107)

"An abuse of discretion occurs when 'a court has . . . exceeded the bounds of reason in view of the circumstances, [or] . . . so ignored recognized rules of law or practice . . . to produce injustice." *Id.* (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)). The admission of the BAC results in light of the officer's testimony was an abuse of discretion, which was not harmless because the reading, which was in excess of .08 required Defendant to be convicted per 21 *Del. C.* 4177(c)(15)(g).

The pending New Castle County Case sought to have the Intoxilyzer 9000 qualified for admissibility but was not ruled on. Since it was not accepted, for

scientific evidence or testimony to be admissible under the Delaware Rules of Evidence, a trial court must also find the evidence sought to be admitted relevant and reliable. *Nelson v. State*, 628 A.2d 69, 74 (Del. Supr. 1993). DRE 702 requires an expert witness to be qualified:

by knowledge, skill, experience, training or education...if

- (a) 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;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied the principles and methods to the facts of the case.

Sgt. Moyer was presented as a proponent of the BAC results, and his testimony fell short in each of these areas. He testified about his training –how he received a half day of training where a PowerPoint presentation was given then each of the trainees each operated the Intoxilyzer then, without any proficiency testing, were given a certification. He could not testify as who prepared the training materials, or created the instructions for the machine, and most importantly, as to whether it was consistent with the manufacturer's instructions or otherwise endorsed or approved by it.

Sgt. Moyer did not believe that he had seen anything from the manufacturer of the Intoxilyzer. He was not provided any documents during the training but was shown the Power Point and a list of steps to guide him through the process. He only

left the training with his training card. And, he did not recall taking a test to get certified, nor is he aware of a recertification process. He was not aware of a manual for the Intoxilyzer 9000, though there was one for 5000 model. No one at the training represented to him that the training was based on the manufacturer's information or its manual. He believed that the Power Point was put together by the State. And, the BAC result that he sought to enter at trial was the only time he ever administered the Intoxilyzer 9000. Finally, he acknowledged that he had no personal knowledge as to how the Intoxilyzer 9000 worked or the processes, but he was just trained to do certain steps, and then the machine spits out a result. So, he presented no real knowledge, skill, experience, training or education on the Intoxilyzer upon which the court could rely to accept him as an expert or to give his testimony credence for foundational purposes.

Additionally, the aforementioned lack of familiarity with the manufacturer's manual, Sgt. Moyer was unable to present the testimony that the Court prior determined was a proper foundation for the entry of the BAC:

If the officer says...this is the machine, I was trained on it, it was tested before, I followed the steps as the **manufacturer** says I'm to do, I got this result, it appeared as if the machine operated properly, the machine was tested afterwards, then that's the foundation. (97)  
(emphasis added)

Yet, despite the insufficiencies, the court admitted the BAC results.

## **CONCLUSION**

Based on the foregoing argument, Defendant respectfully requests this Honorable Court find that the Trial Court erred in finding that a Mobile Video Recording capturing the alleged traffic violations was never created and thereby wrongfully considered testimony regarding the alleged traffic violations in lieu of the missing MVR, holding *DeBerry v. State* did not apply.

Further, Defendant requests this Honorable Court find that the Trial Court erred in finding Reasonable Articulate Suspicion existed justifying a seizure of the Defendant. Lastly, Defendant requests this Honorable Court find that the Trial Court's admission of the Defendant's BAC was an abuse of discretion that requires reversal and remand of Defendant's conviction for Driving Under the Influence and Failure to Have Lighted Lamps when Required.