

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Pen-26-4

STATE OF MAINE
Appellee

v.

DARRELL SPROUL
Appellant

ON APPEAL from the Penobscot County
Unified Criminal Docket

REPLY BRIEF OF APPELLANT

Rory A. McNamara # 5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

ATTORNEY FOR DARRELL SPROUL

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ARGUMENT

The State committed obvious error by eliciting, and arguing about, investigating officers' subjective belief that defendant was impaired.

Impairment is a legal-factual¹ determination for the jury. Here, it was the *only* such issue in play. Yet, the State argues that its evidence and argument about what officers “determined”² about impairment – including whether they “felt”³ they had probable cause of impairment – did not constitute “a conclusion that the Defendant was impaired.” Red Br. 7. That contention, with all respect, fails at the starting line.

The State was the one who began the focus on its officers' opinions. If defense counsel later strayed into questioning about the officers' opinions, it was only because the State opened the can of worms, necessitating clean-up. In context, the State's elicitation and use of the evidence was improper vouching and usurpation of the jury's province by offering an ultimate opinion about defendant's guilt.

A. The State elicited, and argued about, officers' subjective opinions about the only issue before the jury.

A witness may not offer her legal conclusions vis-à-vis the applicable legal standard; such is a legal opinion. *Cf. State v. Wood*, 772 A.2d 908, 912

¹ The court instructed the jury in the standard. Tr. 170.

² *E.g.*, Tr. 14 (officer's “purpose” is “to **determine** impairment”); Tr. 152-53 (“continue her investigation to try to **determine** if Mr. Sproul was safe to drive or if he was operating under the influence of alcohol.”)

³ *E.g.*, Tr. 77 (“There are other tests that you can administer, but I **felt** as though, based off my observations of all those others that I had met my threshold that I **felt** comfortable with arresting him on.”).

(Me. 1995) (“[A] medical expert generally may not testify as to the state of mind of a criminal defendant.”). While Rule 704 authorizes *some*⁴ opinion testimony regarding ultimate issues, such does not encompass legal opinions or opinions about guilt. *See* 1974 Advisers’ Note to former M.R. Evid. 704 (“A lay opinion, for example, that the defendant was negligent would surely be rejected.”).

Were there any question about the import of the officers’ beliefs about the final issue, consider how the State made it quite clear in its closing:

[The lead-officer] proceeded to continue her investigation to try
**to determine if Mr. Sproul was safe to drive or if he was
operating under the influence of alcohol.**

Tr. 152-53 (emphasis added). Given all the references to “arrest/ed” and “probable cause,” nobody could miss the officers’ legal opinion/vouching: Defendant “was operating under the influence of alcohol.”

The State clearly invites jurors to credit the lead-officer’s “determin[ation]” that defendant was unsafe to drive and “was operating under the influence of alcohol.” This was not, as the State contends, simply attempt to buttress the jury’s faith in its investigation. It was a statement, over and over again, that the experienced officers “felt” and “determined”

⁴ And Rule 704 hardly authorizes all opinions, even about non-legal opinions. *Cf. State v. Cunningham*, 1997 ME 60, ¶ 6, 691 A.2d 1219 (improper for officer to offer opinion that the defendant was operating the vehicle when “[t]he jury could have made the same determination as [the officer] did based on the exact same facts as those on which the officer relied.”).

that defendant was unsafe to drive because he was impaired. This is ultimate-issue testimony asserting that defendant is guilty. *Cf. State v. Quaal*, 340 P.3d 213, 216-17 (Wash. 2014) (“Even though the testimony did not include a numerical blood alcohol level, the testimony implicitly includes a specific level of intoxication; that the alcohol consumed impaired the defendant, which is the legal standard for guilt.”).

B. The State opened the can of worms.

The State argues that defense counsel “opened the door” to its elicitation of and argumentation about the officers’ subjective opinions. Red Br. 9. But it was the State, on its direct of the lead-officer, that began with the theme from the outset:

Q. In a general sense, what is the purpose of these standardized and nonstandardized tests that you conduct[?]

A. Would be to **determine impairment**.

Q. And that **impairment** would be relative to any – any particular substance?

A. Yes. There are different cues and clues that you’re looking for – for the tests, but ultimately you’re just looking for **impairment**.

Q. Okay. And be fair to say, sometimes you **find impairment**, sometimes you don’t?

A. Correct.

Q. So is **the purpose to evaluate whether a person is safe to drive?** Is that a fair way to say it?

Tr. 14-15 (emphasis added). Here, of course, defendant is just documenting the fact that it was the State that, in its own words, “opened the door.” This is just the lead tip of the iceberg.

To the extent that the State believes that defense counsel’s argument invited its evidence and argument about the officers’ opinion, that is incorrect as a matter of law. Arguments by counsel are not evidence, and thus they do not “open the door.” *State v. Donovan*, 1997 ME 181, ¶ 8, 698 A.2d 1045. Anyway, factually, simply observing how a proper investigation is meant to ensure that a defendant “gets a fair shake” is no welcome-mat for subjective, legal-opinion testimony and argument. *But see* Red Br. 8.

While an officer may testify about indicia that could be associated with intoxication – *e.g.*, slurred speech, the omnipresent “odor of intoxicants,” or braking hard in the middle of the road without apparent reason – she may not draw the jury’s ultimate conclusions for them.

C. The State’s errors affected substantial rights.

The substantial-right standard is not a sufficiency-of-the-evidence test. *But see* Red Br. 15 (“Finally, there was sufficient evidence in the record to support the jury’s ultimate determination and its return of a guilty verdict.”). Yes, jurors *could* have found defendant’s blood contained more than the legal limit of alcohol. But, given the low-confidence testing, there is considerable doubt that jurors *would* do so. The standard is merely whether there is a

reasonable probability that the outcome was affected. *Greer v. United States*, 593 U.S. 503, 507-08 (2021).

As for the admonitions that the lawyers' arguments are not evidence, those are no salve. They don't address the problem. The problem is improper *evidence* which was then *referenced* in closing. The court's instructions said nothing about that.

Two witnesses testified. One sat at the prosecution's table. They were both police officers. Their opinions that defendant was impaired must have been impactful as they were improper.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's conviction.

Respectfully submitted,

June 26, 2026

/s/ Rory A. McNamara

Rory A. McNamara, #5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
207-475-7810

ATTORNEY FOR DARRELL SPROUL

CERTIFICATES OF FILING & SERVICE

I have filed this brief and appendix, and served opposing counsel, as listed on the service list, in compliance with M.R. App. P. 1D(c) & 1E.

/s/ Rory A. McNamara