Fifth Circuit Court of Appeal
State of Louisiana

No. 26-KP-246

STATE OF LOUISIANA

versus

PHOENIX ZACK

IN RE PHOENIX ZACK
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LAUREN D. ROGERS, DIVISION "E", NUMBER 2024-DWI-920365

TRUE COPY
MORGAN NAQUIN
DEPUTY CLERK

June 15, 2026

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

Phoenix Zack seeks supervisory review of her January 29, 2026 bench-trial conviction for first-offense operating a vehicle while impaired. We deny the application for the following reasons.

Procedural history

The application shows that the St. Charles Parish District Attorney's Office charged the relator, Phoenix Zack, with one count of first offense driving while impaired on August 22, 2024, a violation of La. R.S. 14:98. The trial court found her guilty as charged on January 29, 2026. On March 26, 2026, the relator withdrew her *pro se* motion for a new trial, and the court sentenced her to a suspended six-month jail sentence, 24 months of probation, and miscellaneous

fines and fees. The court also deferred the relator's sentence under La. C.Cr.P. art. 894. This writ application followed.

ASSIGNMENTS OF ERROR

1. The trial court erred in finding the defendant guilty when the state failed to successfully meet their burden requiring a showing that the defendant was operating a vehicle and was under the influence of alcohol or drugs. Only submitting proof of operating a vehicle and the ingestion of drugs omits the critical element of proof of being under the influence while operating a vehicle.
2. The trial court erred in not giving consideration of all reasonable hypothesis of innocence before proof of guilt beyond a reasonable doubt was found when a single car accident occurred with other prospective reasons for that accident when there are no witnesses to establish that impaired driving caused the accident.

LAW AND ANALYSIS

La. R.S. 14:98 provides, in relevant part:

> A. (1) The crime of "operating a vehicle while impaired" is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when any of the following conditions exist:
> (c) The operator is impaired by any other drug, combination of drugs, or combination of alcohol and drugs.

In order to convict an accused of driving while intoxicated, the prosecution must prove that the defendant was operating a vehicle and was under the influence of alcohol or drugs. *State v. Cowden*, 04-707 (La. App. 5 Cir. 11/30/04), 889 So.2d 1075, 1082, *writ denied*, 04-3201 (La. 4/8/05), 899 So.2d 2. Under subsection (A)(1)(c), impairment may be by "any other drug" or combination of drugs; the statute does not require a particular concentration or *per se* level for non-alcohol drugs. Impairment is established by observable diminution, "however slight," in the ability to operate a vehicle as an ordinarily prudent and cautious person, proven through direct or circumstantial evidence. *State v. Burnham*, 16-468 (La. App. 5 Cir. 2/8/17), 213 So.3d 470, 475, *writ denied*, 17-664 (La. 4/6/18), 240 So.3d 184, citing *State v. Reeder*, 15-68 (La. App. 5 Cir. 8/25/15), 189 So.3d 401, 407.

In reviewing the sufficiency of the evidence, an appellate court must determine that the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Neal*, 00-674 (La. 6/29/01), 796 So.2d 649, 657, *cert. denied*, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002); *State v. Mickel*, 09-953 (La. App. 5 Cir. 5/11/10), 41 So.3d 532, 534, *writ denied*, 10-1357 (La.1/7/11), 52 So.3d 885.

When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 requires that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *State v. Favorite*, 11-1075 (La. App. 5 Cir. 5/31/12), 97 So.3d 1057, 1062. This is not a separate test to be applied when circumstantial evidence forms the basis of a conviction; all evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *Id*.

Circumstantial evidence is evidence of facts or circumstances from which one might infer or conclude, according to reason and common experience, the existence of other connected facts. *Favorite*, 97 So.3d at 1063. The reviewing court is not required to determine whether another hypothesis of innocence suggested by the defendant offers an exculpatory explanation of events. *Id*. Rather, the court must evaluate the evidence in a light most favorable to the prosecution and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *Id.*

The directive that the evidence should be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *State v. Caffrey*, 08-717 (La. App. 5 Cir. 5/12/09), 15 So.3d 198, 202, *writ denied*, 09-1305 (La. 2/5/10), 27 So.3d 297. This deference to the fact-finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id*. As a result, under the *Jackson* standard, a review of the record for sufficiency of the evidence does not require the reviewing court to determine whether the evidence at the trial established guilt beyond a reasonable doubt, but whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *State v. Jones*, 08-20 (La. App. 5 Cir. 4/15/08), 985 So.2d 234, 240.

In making this determination, a reviewing court will not re-evaluate the credibility of witnesses or re-weigh the evidence. *Caffrey*, 15 So.3d at 202. Indeed, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *See State v. Bailey*, 04-85 (La. App. 5 Cir. 5/26/04), 875 So.2d 949, 955, *writ denied*, 04-1605 (La.11/15/04), 887 So.2d 476, *cert. denied*, 546 U.S. 981, 126 S.Ct. 554, 163 L.Ed.2d 468 (2005). Thus, in the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *State v. Dixon*, 07-915 (La. App. 5 Cir. 3/11/08), 982 So.2d 146, 153, *writ denied sub nom. State ex rel. Dixon v. State*, 08-987 (La.1/30/09), 999 So.2d 745.

Evidence presented at trial[1]

[1] Our analysis is confined to the testimony and exhibits summarized in the application; notably, any body-camera footage referenced at trial is not part of the writ record and is not considered here.

The State's first witness at trial was Commander of Traffic for the St. Charles Parish Sheriff's Office, Sergeant Thomas Mayville. He testified that on July 18, 2023, he investigated an automobile accident. When he arrived on the scene, he observed an overturned vehicle in a ditch and the driver of the vehicle, the relator, in the back of an EM Unit. Sergeant Mayville testified that he did not conduct any sobriety tests on the relator. He concluded, based upon his measurements, that the total length of the accident was 230 feet. He saw no evidence that the relator applied her brakes before the crash, based on the absence of tire marks on the roadway.

St. John Sheriff's Office Deputy Bobby McNulty testified that another court had certified him as a Drug Recognition Expert ("DRE"). On July 18, 2023, he was a part of the St. Charles Parish traffic division and responded to the scene of an overturned vehicle driven by the relator. Deputy McNulty testified that he first spoke to the relator while she was in the back of an ambulance. During his interaction with the relator, he first noted that she had constricted pupils but concluded that she did not have horizontal gaze nystagmus ("HGN"), which is indicative of alcohol use. He observed that the relator had "thick" and "slurred" speech which was slow at times. She also appeared to go "on the nod," which Deputy McNulty described as the relator drooping her head down and closing her eyes. He also explained that being "on the nod" is something that a user cannot control "when they're under a narcotic analgesic or they're coming down, on the downside effect, of other categories of drugs." The relator told Deputy McNulty that she had ingested 400 mg of gabapentin that morning. The relator also told Deputy McNulty that she had taken Adderall, an amphetamine, but she asserted she had done so within prescribed limits.

Based on his observations, Deputy McNulty applied for a search warrant for the relator's blood. Out of concern for the relator's health and safety after the

crash, he elected not to perform the full standardized field sobriety testing.[2] On the application for the warrant, however, Deputy McNulty indicated that he saw the indication of drug usage, which he explained in his testimony:

> So when performing the HGN, there was no HGN. Initially, when I saw the constricted pupils, that is an automatic indicator of narcotic analgesic, which HGN is also an indicator of narcotic analgesic. So immediately I started looking to the downside effect of CNS stimulant. When somebody is on a CNS stimulant, whether it be Adderall, whether it be methamphetamines, amphetamines, something of that nature, it's an upper. So when that person comes down off of that, whether it's a four-to-eight-hour, the six-to-12-hour range, depending on what they're taking, when they come down from that, they break homeostasis, and they go to a downside effect where it starts to bring their whole body down. Basically, you want to go to sleep, and that's what I was observing, so I was looking toward lines of downside effect of CNS stimulant.

Based on his physical observations, Deputy McNulty concluded that the relator was impaired. He emphasized again her slow, thick speech, droopy eyelids, and being "on the nod." Pursuant to a search warrant authored by Deputy McNulty and signed by Judge Marcel, a hospital nurse drew the relator's blood and returned the samples to Deputy McNulty for testing. The State introduced his request for scientific analysis of the sample as Exhibit 4. Deputy McNulty said that he was not focused on or aware of what medical personnel were doing for the relator during his investigation while on the accident scene. Although the relator was in an ambulance and medical personnel may have been providing treatment, the record contains no evidence that any treatment or administered medication caused the observed signs prior to or contemporaneous with the observations, nor any

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[2] The decision not to perform full standardized field tests due to health-and-safety concerns does not preclude a finding of impairment where other competent evidence—observations and toxicology—support the conviction; Louisiana law does not require field-sobriety or breath/blood alcohol testing to prove impairment. Some behavioral manifestations, independent of any scientific tests, are sufficient to support a charge of driving while intoxicated. *State v. Harper*, 40,321 (La. App. 2 Cir. 12/14/05), 916 So.2d 1252, 1255.

evidence delineating injuries that would account for "on the nod," constricted pupils, or slurred/slow speech.

Mary-Kate Parker testified in her capacity as a toxicology supervisor at the Louisiana State Police Crime Lab, and the defendant stipulated to her expertise in blood analysis. Ms. Parker wrote the scientific analysis report on the relator's blood sample in this case. The results of the testing showed amphetamine, methamphetamine,[3] morphine free, morphine total, delta 9-tetrahydrocannabinol, 11 - nor - delta9-THC-9 carboxylic acid, and lidocaine.

At the conclusion of trial, the court found the relator guilty of driving under the influence, first offense, after concluding the State met its burden of proof in this case. Specifically, the trial court referenced the nature of the accident without an explanation, the investigating officer's observations, and the presence of methamphetamine and THC in the relator's toxicology report.

The first issue is whether the State established that the relator was driving the vehicle which crashed and overturned on July 18, 2023. It does not appear that the relator disputed this fact at trial. The relator's identity as the driver was established through the testimony of Sergeant Thomas Mayville and Deputy McNulty.

The next issue is whether a rational trier of fact could have found the evidence was sufficient under the *Jackson* standard that the relator was intoxicated. Intoxication is defined as the impairment, however slight, to the ability of a person to operate an automobile. *State v. Delanueville*, 11-379 (La. App. 5 Cir. 2/14/12), 90 So.3d 15, 20, *writ denied*, 12-630 (La. 9/21/12), 98 So.3d 325. This impairment need not be complete but only to the degree that the influence causes a person to operate his car in a manner different from that in which it would be operated by an

[3] The source of methamphetamine was not proven to be from a prescription; regardless, impairment under La. R.S. 14:98(A)(1)(c) turns on the fact of impairment by a drug, whether lawfully or unlawfully possessed or consumed.

ordinarily cautious and prudent person. *Id.* Intoxication, with its attendant behavioral manifestations, is an observable condition about which a witness may testify. *State v. Vidal*, 04-1139 (La. App. 5 Cir. 3/29/05), 901 So.2d 484, 487-88. It is not necessary that a DWI conviction be based upon a breath or blood alcohol test; the arresting officer's observations may be sufficient to establish the defendant's guilt. *Id*. at 488.

At trial, Sergeant Thomas Mayville testified that the evidence at the scene of the relator's single car accident demonstrated that the car drifted off the road without the relator applying her brakes. She then continued to drive until her car flipped over and stopped in a ditch. A 230-foot trajectory with no braking or avoidance input prior to a rollover supports that the vehicle was operated in a manner different from that of an ordinarily cautious and prudent driver; this is circumstantial evidence of impairment "however slight." Next, Deputy McNulty testified at trial that he personally witnessed and identified physical indicators that the relator was intoxicated, including her slow, thick speech, droopy eyelids, and being "on the nod." These are observable manifestations a witness may testify about and which can independently support impairment without chemical-test quantitation. He also found the relator's explanation that she had taken gabapentin earlier that morning to be inconsistent with the indications of intoxication he saw at that time. Deputy McNulty associated the signs with narcotic-analgesic-type effects and stimulant "downside" effects. The relator also admitted to Deputy McNulty that she took Adderall, a controlled dangerous substance.

Finally, through the testimony of Mary-Kate Parker, the State introduced her report of the findings from the analysis of the relator's blood test into evidence. The toxicology report showed methamphetamine and THC metabolites in the relator's blood sample. While the report reflects presence rather than quantified concentrations, Louisiana law permits the trier of fact to find impairment based on

behavioral manifestations and other competent evidence; a DWI conviction need not rest on quantitative toxicological proof where credible observations establish impairment. The toxicology here corroborates the categories of drugs associated with Deputy McNulty's described impairment profile. In addition, the toxicology reflected amphetamine and morphine (free and total), which the trial court could permissibly consider in evaluating whether the observed behavior was drug-induced under La. R.S. 14:98(A)(1)(c). The stimulant (amphetamine/methamphetamine) and cannabinoid findings corroborate Deputy McNulty's stimulant/downside analysis; the morphine results align with narcotic-analgesic-type signs, matching the observed "on the nod."

The relator contends that alternative causes besides intoxication could have caused the accident, but she did not present any evidence or testimony at trial to support this claim. Under *Jackson,* as informed by La. R.S. 15:438, the court evaluates whether any alternative is sufficiently reasonable that a rational juror could not find guilt beyond a reasonable doubt. On this record—crash dynamics, Deputy McNulty's observations, admissions, and corroborating toxicology—a rational fact-finder could reject the speculative alternatives and find impairment.

Similarly, the relator argues that Deputy McNulty's observations could be attributed to injuries she sustained in the crash. Although the interaction occurred in an ambulance and medical care may have been ongoing, the record contains no evidence specifying injuries or administered medications that would account for the observed constellation of signs at the relevant time. Deputy McNulty's observations predated or were independent of any identified medical pharmacology in the record. The trier of fact was entitled to reject speculative, unsupported alternative explanations. The record before us contains no evidence of what relator's actual injuries were. Finally, while the relator asserts that the toxicology

report itself fails to show intoxication, this is not required where the officer's observations are sufficient to establish guilt. *Vidal,* 901 So.2d 484 at 488.

CONCLUSION

After reviewing the entire record in the light most favorable to the prosecution and giving due weight to the trial court's credibility decisions, we find that the evidence—including the crash details, Deputy McNulty's testimony, the relator's own statements, and the supporting toxicology results—shows that the relator operated a vehicle while impaired by "any other drug" under La. R.S. 14:98(A)(1)(c) beyond a reasonable doubt. The relator's alternative explanations do not have support in the evidence and the trial court properly rejected them. For these reasons, we deny the writ.

Gretna, Louisiana, this 15th day of June, 2026.

JJM
FHW
SUS

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/15/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-KP-246

E-NOTIFIED
29th Judicial District Court (Clerk)
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Atoundra P. Lawson (Relator)

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