

No. 126120

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court of
	)	Illinois, No. 3-17-0163.
Plaintiff-Appellee,)	
	)	There on appeal from the Circuit Court
-vs-	)	of the Fourteenth Judicial Circuit, Rock
	)	Island County, Illinois, No. 16-CF-229.
)	
RYAN JAMES DEROO,	)	Honorable
	)	Frank R. Fuhr,
Defendant-Appellant.)	Judge Presiding.
)	

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

This appeal arises from the appellate court's ruling, in a split decision, affirming defendant's convictions for the offenses of: one count of driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11-501(a)(2), (d)(2)(D)(2016), one count of aggravated driving with a blood alcohol concentration of 0.08 or greater (aggravated DUI) (*id.* § 11-501 (a)(1), (d)(2)(D)) and one count of aggravated driving while license revoked (aggravated DWLR) (*id.* § 6-303(d)). *People v. Deroo*, 2020 IL App (3d) 170163.¹ The appellate court affirmed the trial court's finding that the Defendant's blood draw was admissible hearsay as a business record pursuant to 625 ILCS 5/11-501.4 (a). The appellate court determined that the business records exceptions as set forth in 625 ILCS 5/11-501.4 (a) did not conflict with Illinois Rule of Evidence 803(6) in this instance.

No questions are raised on the pleadings.

¹The issue of defendant's conviction for aggravated driving while license revoked pursuant to 625 ILCS 5/6-303(d) is not raised before this Court.

ISSUE PRESENTED FOR REVIEW

Defendant contests the appellate court's finding which affirmed the admission of his emergency room blood test results at trial pursuant to the business records exception to the hearsay rule as set forth by 625 ILCS 5/11-501.4 of the Illinois Motor Vehicle Code. The following issue is raised before this court: Whether the appellate court incorrectly failed to hold that there was an irreconcilable conflict between 625 ILCS 5/11-501.4 of the Illinois Motor Vehicle Code and Illinois Rule of Evidence 803(6), and that, under separation of powers principles, the Illinois Rule of Evidence should have governed.

STATUTES AND RULES INVOLVED**A. (625 ILCS 5/11-501.4)**

Sec. 11-501.4. Admissibility of chemical tests of blood, other bodily substance, or urine conducted in the regular course of providing emergency treatment.

(a) Notwithstanding any other provision of law, the results of blood, other bodily substance, or urine tests performed for the purpose of determining then content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood, other bodily substance, or urine conducted upon person's receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012 , when each of the following criteria are met:

(1) the chemical tests performed upon an individual's blood, other bodily substance, or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;

(2) the chemical tests performed upon an individual's blood, other bodily substance, or urine were performed by the laboratory routinely used by the hospital; and

(3) results of the chemical tests performed upon an individual's blood, other bodily substance, or urine are admissible into evidence regardless of the time that the records were prepared.

B. 625 ILCS 5/11-501

Sec. 11-501 Driving Under the Influence of Alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof.

(a) A person shall not drive or be in actual physical control of any vehicle within this State while:

(1) the alcohol concentration in the person's blood, other bodily substance, or breath is .08 or more based on the definition of blood and breath units in Section 11-501.2;

(2) under the influence of alcohol.

C. Illinois Rules of Evidence 803(6)

(6) Records of regularly conducted activity.

A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases medical records. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for business.

STATEMENT OF FACTS

Defendant was charged with one count of driving under the influence of alcohol, one count of aggravated driving with a blood alcohol concentration of 0.08 or greater and one count of aggravated driving while license revoked. *People v. Deroo*, 2020 IL App. (3d) 170163, ¶ 1.

The evidence presented by the State at defendant's jury trial set forth that defendant was operating a motor vehicle in Rock Island County on March 13, 2016, at about 6 or 7 p.m. The evidence at trial was that defendant, while operating a motor vehicle, lost control of the vehicle, went off the road, flipped several times and crashed. An on coming motorist, Carrie Olson, saw the accident occur (R254-56). Paramedics arrived on the scene. Defendant suffered a facial fracture and cuts to his face (R372). He was taken to the emergency room at the hospital. A blood draw was done on the defendant in the emergency room as part of his medical treatment. The emergency room blood test results showed the alcohol level in defendant's blood was elevated and over the legal limit. *Id.*, ¶¶ 3-4.

The evidence presented at trial established that a Jennifer Wilkinson, a nurse, helped to treat defendant at the hospital's emergency room. She testified that defendant's blood was drawn as part of his emergency room treatment. Wilkinson did not remember whether she had drawn the blood or if a phlebotomist from the lab had come into the emergency room to do so. Wilkinson described and testified that she saw Defendant's ethanol result from the blood test come through a computer. *Id.* ¶¶ 13-14 (R376-89).

Dr. Douglas Gaither, testified that he treated the Defendant in the hospital emergency room after the crash (R.409-54). He was established as an expert in emergency medicine. In an offer of proof outside of the presence of the jury, Dr. Gaither testified that there was no chain of custody for the blood test result due to the need to get blood results rapidly so that treatment decisions could be made. At the offer of proof, Dr. Gaither testified that the blood

alcohol result was a complete and reliable result upon which he could, and did rely upon. *Id.*

¶ 15.

When Dr. Gaither came back to testify before the jury, Dr. Gaither opined that Defendant's blood was drawn as part of Defendant's emergency medical treatment pursuant to hospital protocol. According to Dr. Gaither, after Defendant's blood was drawn, Defendant's blood was tested by the lab at the hospital to determine blood alcohol serum level, that the lab was the same one the hospital always used and, to Dr. Gaither's knowledge, was certified to conduct blood analysis. The results of the blood analysis came back over the computer screen under Defendant's name. *Id.* ¶¶ 16-17.

The record will show that Defendant's emergency room blood draw was admitted into evidence and published to the jury.

The Defendant did testify in his behalf at trial (R480-99).

The jury found Defendant guilty on all counts. Defendant filed a motion for judgment notwithstanding the verdict or for new trial; which the trial court denied. Following a sentencing hearing, Defendant was sentenced to concurrent terms of nine years in prison for the offense of aggravated DUI and three years in prison for the offense of aggravated DWLR. *Id.* ¶22.

Defendant filed a Notice of Appeal on March 8, 2017. (C176).

On May 20, 2020, in a split decision, the majority affirmed the jury's conviction of Defendant as to all charges. *Id.*, ¶46. Justice Holdridge dissented in part to the decision. The dissenting Justice asserted that he would reverse the Defendant's conviction for driving under the influence of alcohol because the trial court erred in admitting the Petitioner's hospital blood tests into evidence. *Id.*, ¶ 49 (Holdridge, J., dissenting).

This Court granted defendant's Petition for Leave to Appeal on September 30, 2020.

ARGUMENT

THE THIRD DISTRICT APPELLATE COURT ERRED IN AFFIRMING THE CIRCUIT COURT’S ADMISSION INTO EVIDENCE OF DEFENDANT’S HOSPITAL BLOOD TEST RESULTS. DEFENDANT’S MEDICAL RECORDS SHOULD NOT HAVE BEEN ADMITTED AS A BUSINESS RECORD PURSUANT TO ILLINOIS RULE OF EVIDENCE 803(6).

STANDARD OF REVIEW

The issue in this appeal centers around whether an irreconcilable conflict exists between a rule promulgated by this Court and a legislature provision that covers the same subject. The resolution of a conflict between a Supreme Court Rule and a legislative statute is a question of law which this Court reviews *de novo*. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002).

ARGUMENT

This case proceeded to jury trial on December 5, 2016, and concluded on December 6, 2016. The jury convicted the Defendant of the offenses of aggravated driving under the influence of alcohol, aggravated driving under the influence of alcohol with a blood content greater than .08, and aggravated driving while license revoked. The State relied on the statutory exception that defendant’s emergency room hospital blood draw and subsequent results were admissible evidence as a business record exception to the hearsay rule, found at 625 ILCS 5/11-501.4 (a) (1)-(3).

The trial court incorrectly admitted defendant’s emergency hospital blood draw records based on the testimony of Registered Nurse Jennifer Wilkinson (R367-408) and Dr. Gaither (R408-424 and 429-454). Both the trial court and the appellate court incorrectly ruled defendant’s emergency room blood draw records were admissible hearsay as a business records exception

pursuant to 625 ILCS 5/11-501.4 (a)(1)-(3). In this instance, defendant challenges the admission of the hearsay records. This Court should reverse the appellate court's holding that defendant's medical records were properly admitted pursuant to 625 ILCS 5/11-501.4(a)(1)-(3). This Court should reverse the appellate court's ruling based upon Illinois Rule of Evidence 803(6). This Court should hold that the appellate court incorrectly admitted defendant's emergency room blood test results, and that Illinois Rule of Evidence 803(6) takes precedence over 625 ILCS 5/11-501.4(a)(1)-(3) under separation of powers principles.

A. The Appellate Court Incorrectly Held that 625 ILCS 5/11-501.4(a)(1)-(3) Rather Than Illinois Rule of Evidence 803(6) governed the Admissibility Issue.

The appellate court incorrectly held that 625 ILCS 5/11-501.4 (a)(1)-(3) controls the admission of hospital medical records as a business record exception to the hearsay rule in a criminal case involving the charged offense of driving under the influence of alcohol. Specifically, defendant requests this court to direct its attention to Illinois Rule of Evidence 803(6). This Supreme Court rule specifically states, in part, that medical records are not admissible as a business records exception to the hearsay rule in a criminal case. Defendant asserts that proper interpretation of Illinois Rule of Evidence 803(6) by the appellate court should have excluded defendant's emergency room blood draw at trial.

1. The Separation of Powers Clause Mandates that Illinois Rule of Evidence 803(6) and Not 625 ILCS 5/11-501.4 Should Control the Admission of Hearsay Medical Records in a Criminal Case.

Defendant brings forth this challenge to the appellate court's ruling based upon the separation of powers doctrine clause of the Illinois Constitution. The Illinois Constitution provides that the "legislative, executive and judicial branches are separate" and that "no branch shall properly exercise powers properly belonging to another." Ill. Const. 1970, art. VI, § 16.

Proper interpretation of Illinois Rule of Evidence 803(6)(eff. April 26, 2012) should have barred the trial court's decision to admit defendant's hospital blood test results. In affirming the trial court's admission of defendant's hospital blood test results, the appellate court first had to determine whether Rule 803(6) conflicted with section 11-501.4 of the Vehicle Code (625 ILCS 5/11-501.4 (West 2016)) as to the admissibility of medical records in a criminal case. Again, as previously set forth, the conflict between a Supreme Court rule and a legislative statute is a question of law which is to be reviewed *de novo*. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002).

Historically, the Illinois Supreme Court has ruled that it determines what power the Illinois Constitution grants to the three branches of government. The separation of powers doctrine between the judiciary and legislature has been discussed and ruled upon by the Supreme Court in multiple opinions over the years. In *People v. Cox*, 82 Ill. 2d 268 (1980), the Supreme Court ruled upon the validity of a statutory provision which established a rebuttable presumption that sentences imposed for criminal convictions were proper, but authorized reviewing courts to modify the sentence and enter any sentence the trial judge could have entered. The Supreme Court ruled that this provision was in direct conflict with cases that interpreted an applicable supreme court rule that provided review for sentencing decisions and reduction of sentences under an abuse of discretion standard. *Cox*, 82 Ill. 2d at 274-275.

In *People v. Joseph*, 113 Ill. 2d 36 (1986), the Supreme Court invalidated a statutory requirement that post-conviction proceedings be conducted by a judge who was not involved in the original trial proceedings. The Court in *Joseph* concluded that the provision was inconsistent with Supreme Court Rule 21(b), which provided that the chief judge of each circuit may enter general orders providing for the assignment of judges. *Joseph*, 113 Ill. 2d at 47-48.

In *Kunkel v. Walton*, 179 Ill. 2d 519 (1997), the Supreme Court held unconstitutional the discovery provisions set forth in section 2-1003(a) of the Code of Civil Procedure. The issue in *Kunkel* was whether the discovery mechanisms created in section 2-1003(a) required a plaintiff to waive the physician-patient privilege and consent to the entire release of that individual's entire medical history. The Court in *Kunkel* ruled that section 2-1003(a) directly conflicted with Supreme Court Rule 201, the rule governing discovery; therefore, section 2-1003(a) violated the separation of powers provision of the Illinois Constitution. *Kunkel*, 179 Ill. 2d at 536-37.

Finally, defendant, in support of its argument, asks the Court to consider its opinion in *People v. Peterson*, 2017 IL 120331. The issue of the separation of powers doctrine in reference to a conflict between a court rule and a legislative enactment was one of the significant issues this Court ruled upon in *Peterson*. In summarizing relevant parts of *Peterson* in the cause before this Court, the conflict in that case was between section 115-10.6 of the Code of Criminal Procedure (725 ILCS 5/115-10.6 (2008)) and Illinois Rule of Evidence 804(b)(5) (Ill. R. Evid. 804(b)(5) (eff. Jan. 1, 2011)). The conflict in *Peterson* which this Court ruled upon was whether, under separation of powers principals, the common law doctrine of forfeiture by wrongdoing adopted by this court (Ill. R. Evid. 804(b)(5)) governed the admission of hearsay statements rather than the hearsay rule analysis as adopted by the legislature (725 ILCS 5/115-10.6 (West 2008)); *Peterson*, 2017 IL 120331, ¶ 15. This court, in *Peterson*, further opined that "this court has the primary constitutional authority over court procedure. Accordingly, where an irreconcilable conflict exists between a legislative enactment and a rule of this court on a matter within this court's authority, the rule will prevail." *Peterson*, 2017 IL 120331, ¶ 31. As previously stated, defendant asserts that Illinois Rule of Evidence 803(6) (Ill. R. Evid. 803(6)) irreconcilably conflicts with section 11-501.4 of the Vehicle Code (625 ILCS 11/501.4 (2016)). The conflict

is in reference to the admission of defendant's emergency room medical records as a business records exception to the hearsay rule in his criminal case. Illinois Rule of Evidence 803(6) states verbatim as follows:

(6) Records of regularly conducted activity.

A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and if it was the regular practice of that business activity to make memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902 (11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, but not including in criminal cases medical records. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for business.

(Ill. R. Evid. 803(6)(eff. April 26, 2012)).

Illinois Rule of Evidence 803(6) clearly, and without ambiguity, states that the business records exception to the hearsay rule is not applicable to medical records in criminal cases. Illinois Rule of Evidence makes no distinction that medical records maybe admitted as a business records exception in one type of criminal case but not in another. Certainly, Illinois Rule of Evidence 803(6), on its face disqualifies medical records from being admitted as a business records exception to the hearsay rule in a criminal case.

In contrast, section 11-501.4 of the Vehicle Code (625 ILCS 11-501.4 (2016)) applies exclusively to medical records for cases involving an individual who is charged with the offense

of driving under the influence of either alcohol, drugs or a combination thereof. Section 11-501.4 of the Vehicle Code reads verbatim as follows:

Sec. 11-501.4. Admissibility of chemical tests of blood, other bodily substance, or urine conducted in the regular course of providing emergency treatment.

(a) Notwithstanding any other provision of law, the results of blood, other bodily substance, or urine tests performed for the purpose of determining then content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood, other bodily substance, or urine conducted upon person's receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012 , when each of the following criteria are met:

- (1) the chemical tests performed upon an individual's blood, other bodily substance, or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;
- (2) the chemical tests performed upon an individual's blood, other bodily substance, or urine were performed by the laboratory routinely used by the hospital; and
- (3) results of the chemical tests performed upon an individual's blood, other bodily substance, or urine are admissible into evidence regardless of the time that the records were prepared.

(625 ILCS 11-501.4 (2016)).

It is clear and unambiguous when reading Illinois Rule of Evidence 803(6) in conjunction with section 11-501.4 of the Vehicle Code, the language is conflicting as to how the admission of medical records as a business records exception in cases involving the offense of driving under the influence (625 ILCS 5/11-501) differs as compared to other criminal cases. Section 11-501.4(a) of the Vehicle Code attempts to carve out an exception to Illinois Rule 803(6) when the statute in relevant part states: “are admissible in evidence as a business record exception to the hearsay rule **only** (emphasis added) in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012, when each of the following criteria are met.”

Justice Holdridge, in his dissent, made extensive comment with analysis as to how the majority erred when affirming that defendant’s emergency room medical records were admissible hearsay evidence as set forth in 625 ILCS 5/11-501.4. Justice Holdridge’s dissent was based on a separation of powers theory. Using *Peterson* as a guideline, Justice Holdridge concluded that he would have reversed defendant’s conviction for aggravated driving under the influence because defendant’s emergency room medical records should not have been admitted pursuant to Illinois Rule of Evidence 803(6). *Deroo*, 2020 IL App (3d) 170163, ¶¶ 48-57.

In his dissenting opinion to the majority decision, Justice Holdridge opined that “we construe supreme rules in the same manner that we construe statutes.” *Deroo*, 2020 IL App. (3d) 170163, ¶ 52 (Holdridge, J., dissenting) (citing *Robidoux*, 201 Ill. 2d at 332); *In Re Estate of Burd*, 354 Ill. App. 3d 434, 437 (2004). Furthermore, the dissenting Justice states, “We will interpret a rule such that no part of it is rendered meaningless or superfluous, and we will not depart from the rule’s plain language by reading into the rule exceptions, limitations or conditions that conflict with the drafters’ express intent. *People v. Deroo*, 2020 IL App (3d)

170163, ¶ 52 (Holdridge, J., dissenting) (citing *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 17)). Also, Justice Holdridge states, “If the language of a supreme court rule is clear and unambiguous, we must apply the language used without resort to any further aids of construction.” *Deroo*, 2020 IL App (3d) 170163, ¶ 52 (Holdridge, J., dissenting)(citing *In Re Estate of Rennick*, 181 Ill. 2d 395, 404-05 (1998)).

It is defendant’s position and argument to this Court that Illinois Rule of Evidence 803(6) directly prohibits the use of the business records exception in a criminal case. The language in Illinois Rule of Evidence 803(6) is clear and not ambiguous. The statutory language in 625 ILCS 5-11-501.4, which allows the admission of medical records as a business record exception to the hearsay rule, directly conflicts with Supreme Court Rule of Evidence 803(6). It is defendant’s position that Illinois Rule of Evidence 803(6) unconditionally disqualifies use of medical records as a business records exception to hearsay in a criminal case. Illinois Rule 803(6) provides no exceptions to the rule as drafted. As stated in *Peterson*, when a rule and statute conflict, the Supreme Court Rule shall prevail. *Peterson*, 2017 IL 120331.

2. The Majority’s Reliance on the First District Appellate Court’s Decision in the Opinion of *People v. Hutchison*, 2013 IL App. (1st) 102332 was Incorrect as a Matter of Law. *Hutchison* was Wrongly decided.

Following the first district appellate court’s decision in *People v Hutchison*, 2013 IL App. (1st) 102332, the majority held that defendant’s blood test results were properly admitted pursuant to 625 ILCS 5/11-501.4 of the Vehicle Code. In dissent, Justice Holdridge declared that *Hutchinson* was wrongly decided and that he would decline to follow *Hutchinson*. *Deroo*, 2020 IL App. (3d) 170163, ¶¶ 55 , 57 (Holdridge, J., dissenting). Defendant agrees with the dissent’s view that the Third District majority erroneously relied on *Hutchinson* when the court held that defendant’s blood test results were properly admitted pursuant to 625 ILCS 5/11-501.4 of the Vehicle Code.

a) **The Majority Erroneously Applied the Abuse of Discretion Standard in *Hutchison* When it Ruled Defendant's Blood Results Were Properly Admitted**

The majority in *Deroo* ruled in part that “A determination of the admissibility of evidence is in the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Deroo*, 2020 IL App. (3d) 170163, ¶41 (citing *People v. Pikes*, 2013 IL 115171 ¶12; *People v. Illgen*, 145 Ill. 2d 353, 364 (1991)). The majority goes on to further state, “Under the abuse of discretion standard, the appellate court owes some deference to the trial court’s ability to evaluate the evidence’s impact on the jury.” *Id.* (citing *People v. Donoho*, 204 Ill. 2d. 159, 186 (2003)).

As previously stated in this brief, it is well settled in this state that when a Supreme Court Rule and a legislative statute conflict, the Supreme Court rule will prevail. *Peterson*, 2017 IL 120331, ¶ 31. In this instance, the majority, in affirming the trial court’s admission of defendant’s blood test result, using the abuse of discretion standard and adopting the First District’s holding in *Hutchison*, ruled that the decision to admit defendant’s blood results was evidentiary in nature. The majority therefore rejected the separation of powers argument and ruled that it was not an abuse of discretion to admit defendant’s blood test results as a hearsay exception under 625 ILCS 5/11-501.4. By so ruling, the majority disregards Illinois Rule of Evidence 803(6) which generally prohibits the use of the business records exception to admit medical records in criminal cases. *Deroo*, 2020 IL App. (3d) 170163, ¶ 43.

As previously set forth in this brief, when a supreme court rule and a statute conflict, the rule will prevail. *Peterson*, 2017 IL 120331, ¶ 31. Defendant argues that Illinois Rule of Evidence 803(6), which states that the business records exception to admit medical records does not apply in criminal cases, should take precedence over the business record hearsay exception in a legislative statute, namely 625 ILCS 5/11-501.4.

Significantly, the majority, in its opinion, concedes that Illinois Rule of Evidence 803(6) prohibits the use of the business records exception to admit medical records. *Deroo*, 2020 IL App. (3d) 170163, ¶ 43. Despite acknowledging the plain meaning of Illinois Rule of Evidence 803(6), the majority chose to agree with the approach of the First District in *Hutchison*. *Deroo*, 2020 IL App. (3d) 170163, ¶ 43. The First District Appellate Court in *Hutchison* supports its position by stating that the “statutory provision allowing the introduction of medical records in DUI cases promulgated in section 11-501.4 survives the enactment of the Illinois Rules of Evidence and is not affected or modified thereby.” *Hutchison*, 2013 Ill. App (1st) 102332 ¶ 24. The First District Appellate Court in *Hutchison* relied solely on committee comments when determining that section 11-501.4 guides admission of blood tests results in lieu of following Illinois Rule of Evidence 803(6). *Id.*

As previously stated in this brief, Illinois Rule of Evidence 803(6) prohibits the admission of medical records in criminal cases. The plain terms of the rule make no exceptions. As Justice Holdridge stated in his dissent, “the *Hutchison* court erred by considering the non binding committee comments in interpreting Rule 803(6) (*Estate of Rennick*, 181 Ill. 2d at 404-05) and by using them to read an exception or limitation into the rule that conflicts with the rule’s plain terms (*Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 22). Contrary to the *Hutchison* court’s assumption, the rule’s committee comments cannot eliminate the conflict between section 11-504.1 and Rule 803(6). *Deroo*, 2020 IL App. (3d) 170163, ¶¶ 55 (Holdridge, J., dissenting)

Based on *Hutchison* being wrongly decided by the First District Appellate Court and the majority’s misinterpretation of *Peterson*, defendant asks this Court to reverse defendant’s conviction for aggravated driving under the influence and remand this cause for further proceedings.

CONCLUSION

For the foregoing reasons, defendant respectfully requests that defendant's conviction for aggravated driving under the influence be reversed and that this cause be remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 17 pages.

/s/Terry D. Slaw
TERRY D. SLAW
Of Counsel

APPENDIX TO THE BRIEF**RYAN DEROO No. 126120**

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IN THE CIRCUIT COURT OF ROCK ISLAND COUNTY, ILLINOIS
FOURTEENTH JUDICIAL CIRCUIT
CRIMINAL DIVISION

Date of Sentence: 03-08-2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	NO.	16-CF-00229
	)		AGGRAVATED DRIVING
	)	CT 1	UNDER THE INFLUENCE
	)		(Class - 1 Felony)
	)	CT 3	AGGRAVATED DRIVING WHILE
	)		REVOKED
	)		(Class - 4 Felony)

vs. RYAN JAMES DEROO, DOB: 03-05-1984,)	FILED in the CIRCUIT COURT of ROCK ISLAND COUNTY CRIMINAL DIVISION MAR 22 2017 <i>Jamie E. [Signature]</i> Defendant Clerk of the Circuit Court	
--	---	--	--

JUDGMENT - SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant **Ryan James DeRoo, DOB: 03-05-1984** has been adjudged guilty of the offenses enumerated below,

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term listed below for each offense.

CNT OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
1AGGRAVATED DRIVING UNDER THE INFLUENCE	03-13-2016	625 ILCS 0005/11- 501(a)(2) and (d)(2)(D)	1 Felony	9 Years	2 YEARS
3AGGRAVATED DRIVING WHILE REVOKED	03-13-2016	625 ILCS 0005/6-303(d)	4 Felony	3 Years	1 YEAR

That the sentence imposed in Count III shall run concurrent with the sentence imposed in Count I.

THE COURT FINDS that the defendant is entitled to receive credit for time actually served in custody of Rock Island County Sheriff's Department from **March 23, 2016 to date of delivery to the Illinois Department of Corrections.**

IT IS FURTHER ORDERED that the Clerk of the Court deliver a copy of this order to the Sheriff.

IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver the defendant to the Department of Corrections which shall confine said defendant until expiration of the defendant's sentence or until the defendant is otherwise released by operation of law.

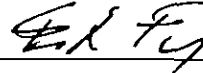
1. IT IS FURTHER ORDERED that specimens of the defendant's blood, saliva, or other tissue, as directed by the Illinois State Police, shall be collected within 45 days at a place and time designated by the Illinois State Police for genetic marker analysis pursuant to 730 ILCS 5/5-4-3(b). The defendant shall pay an analysis fee of \$250.00.

2. IT IS FURTHER ORDERED that the defendant is ordered to pay the costs of prosecution herein. These fees, costs, and restitution (if applicable) are reduced to judgement against the defendant and are declared a lien upon the defendant's property.
3. IT IS FURTHER ORDERED that the defendant shall pay a fine in the amount of \$5,000.00 pursuant to 730 ILCS 5/5-9-1 plus surcharge to be determined by the Clerk.

IT IS FURTHER ORDERED

This order is effective immediately.

ORDERED: 3.20.17



HONORABLE FRANK FUHR

AAR/adp



**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY, ILLINOIS
GENERAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

VS.

RYAN DEROO,

Defendant.

NO. 16 CF 229

NOTICE OF APPEAL

An appeal is taken from the Order of Judgment as described below:

1. Court to which appeal is taken:

Third Judicial District
1100 Columbus Street
Ottawa, Illinois 61350

2. Name of Appellant and address to which Notices shall be sent:

RYAN DEROO
Rock Island County Jail/Illinois Department of Corrections

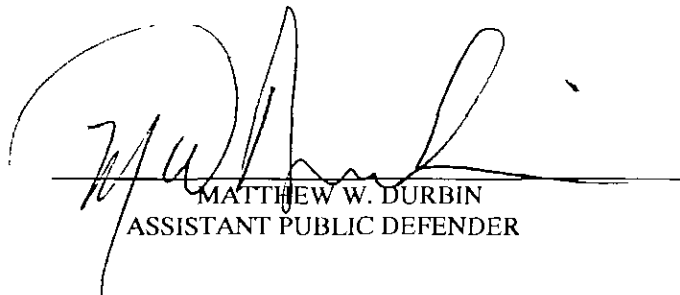
3. Name and address of Appellant's attorney on appeal:

Robert Agostinelli
Illinois Appellate Defender
1100 Columbus Street, Suite 308
Ottawa, Illinois 61350
(815) 434-5531

If Appellant is indigent and has no attorney, does he/she want one appointed: YES

4. ISSUES ON APPEAL:

- A. Conviction
- B. All Issues Preserved in the Record by Trial Counsel
- C. Sentence as excessive


MATTHEW W. DURBIN
ASSISTANT PUBLIC DEFENDER

FILED in the CIRCUIT COURT
of ROCK ISLAND COUNTY
CRIMINAL DIVISION
MAR - 8 2017
Jenny R. [Signature]
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF FOURTEENTH JUDICIAL CIRCUIT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
 Plaintiff,)
)
 -vs-) No. 16-CF-229
)
RYAN JAMES DEROO,)
 Defendant.)
)

AMENDED NOTICE OF APPEAL

- (1) Court to which appeal is taken:

Appellate Court of Illinois, Third Judicial District

- (2) Name of appellant and address to which notices shall be sent:

Name: Ryan James Deroo
Register No. R33478
Pinckneyville Correctional Center
P.O. Box 999
Pinckneyville, IL 62274

- (3) Name and address of appellant's attorney on appeal:

Name: Peter A. Carusona
Address: Office of the State Appellate Defender
Third Judicial District
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531

- (4) Date of judgment or order: March 8, 2017
- (5) Offense of which convicted: driving under the influence of alcohol and driving while license revoked
- (6) Sentence: nine (9) years and three (3) years in the Illinois Department of Corrections

/s/ Peter A. Carusona
PETER A. CARUSONA

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Electronic Record

2020 IL App (3d) 170163

Opinion filed May 20, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
ILLINOIS,	)	Rock Island County, Illinois.
)	
Plaintiff-Appellee,	)	Appeal No. 3-17-0163
	)	Circuit No. 16-CF-229
v.)	
	)	The Honorable
	)	Frank R. Fuhr,
RYAN JAMES DEROO,	)	Judge, presiding.
Defendant-Appellant.		

JUSTICE CARTER delivered the judgment of the court, with opinion.
Justice Schmidt concurred in the judgment and opinion.
Justice Holdridge concurred in part and dissented in part, with opinion.

OPINION

¶ 1 After a jury trial, defendant, Ryan James Deroo, was found guilty of one count of aggravated driving under the influence of alcohol (aggravated DUI) (625 ILCS 5/11-501(a)(2), (d)(2)(D) (West 2016)), one count of aggravated driving with a blood alcohol concentration of 0.08 or greater (aggravated DUI BAC) (id. § 11-501(a)(1), (d)(2)(D)), and one count of aggravated driving while license revoked (aggravated DWLR) (id. § 6-303(d)). Following a sentencing hearing, defendant was sentenced to concurrent terms of nine years in prison for aggravated DUI

and three years in prison for aggravated DWLR.¹ Defendant appeals his convictions, arguing that (1) the trial court erred in granting a directed finding for the State on defendant's motion to suppress evidence at the conclusion of defendant's case-in-chief, (2) defendant was not proven guilty of the offenses beyond a reasonable doubt, and (3) the trial court erred in admitting the blood test results at defendant's trial. We affirm the trial court's judgment.

¶ 2

I. BACKGROUND

¶ 3

On March 13, 2016, at about 6 or 7 p.m., defendant was allegedly operating a motor vehicle on Turkey Hollow Road in Rock Island County, Illinois. While going around a curve, defendant lost control of the vehicle, went off the road, hit a farm access road, flipped his vehicle over several times, and crashed. It was not foggy or rainy at the time, although it was dark. An oncoming motorist, Carrie Olson, saw the accident occur and reported that the driver of the vehicle appeared to be going too fast around the curve. Olson turned her vehicle to point her headlights at the crashed vehicle, and Olson's sister-in-law, who was with her at the time, called 911. The driver of the vehicle—a male subject—was lying over the front driver's side door and was hanging partially out the window. Olson maintained a constant view of the crashed vehicle until emergency personnel arrived but did not approach the vehicle. While they were waiting for the ambulance, Olson's sister-in-law went over to the crashed vehicle to see if the person hanging out of the window was still alive. The ambulance arrived, and one of the paramedics and some of the other first responders removed defendant from the driver's door area. That paramedic recognized defendant from a prior incident and knew defendant's grandmother, who was the owner of the vehicle. Neither the paramedic nor the witness to the accident (Olson) saw anyone else in

¹In sentencing defendant, the trial court found that the aggravated DUI charge and the aggravated DUI BAC charge merged and imposed a nine-year sentence on the merged charge. The written sentencing order, however, indicates that the nine-year sentence was imposed on the aggravated DUI charge. A sentence was also imposed on the aggravated DWLR charge as indicated above.

defendant's vehicle. Defendant was taken to the hospital for treatment. He suffered a facial fracture and cuts to his face.

¶ 4 In the emergency room at the hospital, defendant's blood was drawn for the purpose of medical treatment. The blood test results showed that defendant's blood alcohol level was elevated and was over the legal limit. The treating physician told an officer who had reported to the hospital about defendant's blood alcohol level. When that officer, Rock Island County Sheriff's Deputy Claire Woodthorp, asked defendant questions about the accident, defendant would look away and would either not answer the question or would state that he did not remember. When Woodthorp asked defendant if he knew why he was at the hospital, defendant stated that it was because he had totaled his car. Woodthorp asked defendant if he would consent to a police blood draw, but defendant laughed and refused. Woodthorp contacted her supervisor about getting a search warrant for defendant's blood, but her supervisor was told by the search warrant judge to just subpoena the hospital records. Four of the people who came into contact with defendant that night—the paramedic, the doctor, the nurse, and Deputy Woodthorp—were all of the opinion that defendant was under the influence of alcohol. Defendant was later transferred to another hospital for additional treatment.

¶ 5 The vehicle involved in the crash belonged to defendant's grandmother, Kathleen McChesney, who defendant was living with at the time of the accident. During the afternoon of the crash, McChesney saw defendant drinking what she believed was alcohol out in the garage with two or three of his friends. In addition, during the evening of that same day, McChesney saw defendant leave the residence in McChesney's vehicle. Defendant was seated in the driver's seat at the time and was the only person in the vehicle.

¶ 6 On March 22, 2016, a three-count information, which was later amended, was filed charging defendant with the three offenses listed above. During the pretrial proceedings, defendant filed a motion to suppress the hospital blood test results. A hearing was held on the motion to suppress in September 2016. The only witness to testify at the hearing was Deputy Woodthorp, who was called to testify by defendant. In addition to some of the information provided above, Woodthorp testified that she initially reported to the accident scene, but by the time she got there, defendant had already been removed from the vehicle and taken to the hospital. Woodthorp talked to Deputy Herbert, the first police officer to arrive at the accident scene, and was told that defendant had been driving the vehicle, that defendant was partially hanging out of the driver's side window of the vehicle when Herbert arrived, that defendant was the only person in the vehicle, that defendant was mumbling his words, that defendant's facial area smelled very strongly of alcohol, and that an oncoming motorist had seen the accident happen. After talking to that motorist about what she had observed, Woodthorp went to the hospital.

¶ 7 At the hospital, Woodthorp spoke to defendant in the emergency room for 15 or 20 minutes as medical personnel treated defendant. Woodthorp noticed that defendant's speech was very slow and slurred and that defendant's facial area smelled very strongly of alcohol. For the most part, defendant was uncooperative and either refused to answer or ignored Woodthorp's questions, except for telling Woodthorp that he was at the hospital because he had totaled his car and that Woodthorp should let defendant's grandmother know that defendant was in the hospital.

¶ 8 Woodthorp issued defendant a DUI citation and a warning to motorist form at the hospital, and defendant refused to submit to a police blood draw. Although Woodthorp only met with defendant for 15 or 20 minutes, she was at the hospital for about two hours and was seated at a desk in a hallway down from where defendant was located and was writing her police report.

Woodthorp never placed defendant under arrest, handcuffed defendant, or drew her weapon, and, according to Woodthorp, defendant was free to leave (other than whatever rules the hospital had about defendant leaving). Eventually, a doctor at the hospital told Woodthorp that defendant's blood alcohol results were over the legal limit. Woodthorp stated on the witness stand that she did not approach the doctor and ask the doctor for that information but also commented that the staff at the hospital would provide the police with blood alcohol results. Woodthorp stated further that defendant's blood was drawn for the purpose of medical treatment, that she did not direct or order the hospital staff to draw defendant's blood, that no one else from the sheriff's department directed or ordered the hospital staff to draw defendant's blood, and that she took no part in the hospital staff doing so.

¶ 9 After Woodthorp's testimony was completed at the hearing on the motion to suppress, the defendant rested. The State moved for a directed finding. When the attorneys had finished making their arguments on the matter, the trial court granted the State's motion for a directed finding and denied defendant's motion to suppress. As part of its ruling, the trial court found that defendant was not under arrest when he was at the hospital, that Deputy Woodthorp had probable cause to arrest defendant if she wanted to do so, and that Illinois statute provided a procedure pursuant to which the State could obtain medical blood draws and evidence from treating physicians and nurses regarding the condition of patients involved in DUI prosecutions.

¶ 10 In December 2016, defendant's case proceeded to a jury trial. The trial took two days to complete. During its case-in-chief, the State called numerous witnesses to testify, including Carrie Olson, the oncoming motorist who saw the accident occur; Deputy Woodthorp; Bruce Retherford, the paramedic at the scene who recognized defendant; Jennifer Wilkinson, one of defendant's treating nurses at the hospital; Dr. Douglas Gaither, defendant's treating physician at the hospital;

and John Wetstein, an expert witness who converted defendant's blood serum alcohol result to its whole blood equivalent. Much of the evidence that was presented at the trial has already been set forth above.²

¶ 11 In addition to that evidence, the other evidence presented at the trial relevant to the issues raised in this appeal can be summarized as follows. Deputy Woodthorp identified defendant in court as the person that she had talked to at the hospital about the crash. Bruce Retherford, the paramedic who was at the scene of the crash, identified defendant in court as the person who was hanging out of the front driver's side window of the vehicle after the crash occurred. While treating defendant and transporting defendant to the hospital, the only substances that Retherford had placed into defendant's body were intravenous (IV) fluids that contained saline and would not have affected defendant's ethanol level.

¶ 12 Jennifer Wilkinson, one of the nurses who treated defendant in the emergency room, testified that defendant was rude, disrespectful, and uncooperative at times at the hospital. When Wilkinson asked defendant what had happened, defendant's response did not make sense. Defendant told Wilkinson that he had been driving a little sport utility vehicle, that his family was okay, and that he did not remember anything else. Wilkinson asked defendant if he had been drinking, and defendant responded that he had but that he did not know how much alcohol he had consumed. According to Wilkinson, defendant's blood was drawn in the emergency room as part of his emergency medical treatment, and Dr. Gaither ordered that defendant's blood be tested for alcohol. Wilkinson did not remember if she had drawn defendant's blood or if the phlebotomist from the lab had come into the emergency room and done so.

² Deputy Woodthorp's testimony at trial was very similar to her testimony at the hearing on the motion to suppress. At trial, however, Woodthorp did not testify about her conversation with Deputy Herbert at the scene. Rather, Woodthorp testified at trial that she was ordered by her superior to go to the hospital to meet with the driver of the vehicle, whose name was listed in her call notes as "Ryan De[r]oo."

¶ 13 During her testimony, Wilkinson described the procedure that was followed in drawing a trauma patient's blood in the hospital. According to Wilkinson, pursuant to hospital protocol, all trauma patients had blood drawn when they entered the emergency room, usually when they first came in. To prepare for a blood draw, the patient's skin would be cleaned with a nonalcoholic substance. When the blood was drawn, it would be placed into a blood tube, and the tube would be labeled at the patient's bedside with the patient's name, date of birth, and medical record number. The patient's name and date of birth would then be verified with the patient verbally, if the patient was able, and with the patient's armband. After the blood tube was labeled and verified, it would be taken to the main lab on the ground floor of the hospital, the lab that was routinely used by the hospital. Wilkinson would not take the blood tube to the lab personally. The results of the blood test would later appear on the hospital computer on the patient's medical record. The hospital used computer charting, so all of the patients' charts were on the computer. On the top of a patient's computer chart was the patient's name, date of birth, and medical record number. It was the regular practice of the hospital to make and keep a record of the results of any blood analysis that was done.

¶ 14 Wilkinson saw defendant's ethanol result from the blood test come through the computer in the instant case. Defendant's ethanol (another word for alcohol according to Wilkinson and Dr. Gaither) level was 247. To Wilkinson's knowledge, neither she nor anyone else had administered any medication to defendant before his blood was drawn, and neither she nor anyone else had given any treatment to defendant that would have affected his ethanol level.

¶ 15 Dr. Douglas Gaither, the doctor who treated defendant in the emergency room after the crash, testified about his education and experience and was qualified by the trial court as an expert in emergency medicine. Before Gaither's substantive testimony began, defense counsel asked that

an offer of proof be made outside the presence of the jury as to certain aspects of the blood test results. During that offer of proof, Gaither testified, among other things, that there was no chain of custody for the blood test results because of the need to get results rapidly so that treatment decisions could be made. Gaither confirmed, however, that the blood alcohol result was a complete and reliable result upon which he could, and did, rely. Gaither stated further in the offer of proof that he ordered that defendant's blood be tested for alcohol, and that the test was not ordered by any member of law enforcement. At the conclusion of the offer of proof, defense counsel renewed his motion to suppress based upon the lack of a chain of custody. The State argued that it did not have to establish a chain of custody under the circumstances of the present case and that a sufficient foundation had been presented pursuant to the statute for the blood test results to be admitted. After considering the offer of proof and the arguments of the attorneys, the trial court overruled defendant's objection to the admission of the blood test results. In so doing, the trial court indicated that, based upon the statute and the case law, the trial court believed that the chain of custody was irrelevant.

¶ 16 After the jury was brought back in, Gaither's substantive testimony was presented. In addition to some of the evidence that has been set forth previously, Gaither testified that, when he first made contact with defendant that evening in the emergency room, defendant had already had some IVs placed into him. The IVs contained saline, which would not have affected defendant's blood alcohol level. While Gaither was treating defendant, he noticed that defendant's speech was slurred, which based upon the examination and testing that had been done, Gaither opined was caused by defendant's alcohol consumption (Gaither was able to rule out other causes). Gaither asked defendant if he had been drinking, and defendant stated that he had. Defendant's blood was drawn as part of defendant's emergency medical treatment and pursuant to hospital protocol for

trauma patients, and Gaither ordered that defendant's blood be tested for alcohol. Gaither did not know who actually drew defendant's blood in the emergency room. As far as Gaither was aware, no member of law enforcement ordered the hospital to test defendant's blood for alcohol.

¶ 17 According to Gaither, after defendant's blood was drawn, it was tested by the lab at the hospital to determine the blood serum alcohol level. The lab was the same one that the hospital always used and, to Gaither's knowledge, was certified to conduct blood analysis. Gaither did not know who tested defendant's blood in the lab. The results of the blood test came back over the computer screen under defendant's name, and Gaither relied on those results in treating defendant. According to Gaither, it was the regular practice of the hospital to make and keep a record of the ethanol result in a patient's blood if a blood test was ordered by a physician. In this particular case, defendant's blood ethanol level was 247 milligrams per deciliter, which when converted to grams per deciliter was 0.247.

¶ 18 During his testimony, Gaither identified State's exhibit No. 1 as a fair and accurate copy of defendant's hospital lab results from the date of the accident. Gaither knew that the results were for the defendant because the top of the results listed defendant's name and date of birth. The results also listed Gaither's name as the doctor, the date, the specimen collection and type, and the results of the tests conducted. The results were prepared in the regular course of business at the hospital. On the State's motion, the blood test results were admitted into evidence over the previous objection of defendant and then published to the jury. The blood test results also provided a reference range for blood alcohol level. The range of 200 to 250 milligrams per deciliter (the range in this particular case) was indicative of a severe degree of alcohol poisoning. Many patients with a blood alcohol level in that range would not be awake, although they could be awoken easily. At the next range higher—greater than 250 milligrams per deciliter—most people would be in a coma.

Gaither's description of the applicable reference range was consistent with his observations of defendant in the present case.

¶ 19 John Wetstein, a toxicology training coordinator for the Illinois State Police Division of Forensic Services, testified for the State as an expert witness in forensic toxicology. Wetstein described for the jury the process of converting a blood serum alcohol concentration (the hospital blood test result) to a whole blood alcohol concentration and why such a process was required. By performing the necessary conversion in the present case, Wetstein determined that defendant's whole blood alcohol concentration was 0.209, which was more than twice the amount of the state statutory definition of DUI of 0.08 or greater.

¶ 20 After the State rested its case-in-chief, defendant made a motion for a directed verdict and also moved to have the trial court reconsider its ruling on the motion to suppress. Following some brief argument, the trial court denied both motions.

¶ 21 Defendant testified in his own behalf. During his testimony, defendant admitted that he was intoxicated at the time of the accident but claimed that he was not driving the vehicle at the time and that a person introduced to him as "T" was driving. According to defendant, he would not recognize "T" if he saw him again. Defendant also testified that he did not remember going to the hospital or talking to nurses or paramedics or to a police officer.

¶ 22 At the conclusion of the trial, the jury found defendant guilty of all three charges. Defendant filed a motion for judgment notwithstanding the verdict or for new trial, which the trial court denied. Following a sentencing hearing, defendant was sentenced to concurrent terms of nine

years in prison for the offense of aggravated DUI³ and three years in prison for the offense of aggravated DWLR. Defendant appealed.

¶ 23

II. ANALYSIS

¶ 24

A. Motion to Suppress Evidence

¶ 25

As his first point of contention on appeal, defendant argues, although somewhat implicitly, that the trial court erred in granting the State's motion for a directed finding at the hearing on defendant's motion to suppress at the conclusion of defendant's case-in-chief. Defendant asserts that the State's motion for a directed finding should not have been granted because the evidence defendant presented at the hearing was sufficient to establish a *prima facie* case for suppression. More specifically, defendant contends that the evidence he presented showed that (1) a search took place in that defendant's blood was drawn and (2) the search was illegal and in violation of the fourth amendment because it was done without a search warrant, exigent circumstances, or consent. Although defendant acknowledges that his blood was drawn by members of the hospital staff, who were private persons, he contends that at the time of the blood draw, the hospital staff members were acting as agents of the State as indicated by such facts as the presence of the police officer at the hospital for a long period of time and the disclosure of the blood test results by the hospital staff to the police officer despite confidentiality laws forbidding disclosure. For all of the reasons stated, defendant asks that we reverse the trial court's grant of the State's motion for a directed finding, that we vacate defendant's aggravated DUI and aggravated DUI BAC convictions, and that we remand this case for further hearing on defendant's motion to suppress.

³ As noted previously, the trial court found that the aggravated DUI and the aggravated DUI BAC charges merged and imposed the nine-year sentence on the merged charge. The sentencing order, however, indicates that the nine-year sentence was imposed on the aggravated DUI charge. A sentence was also imposed on the aggravated DWLR charge as indicated above.

¶ 26 The State argues that the trial court's ruling was proper and should be upheld. The State concedes that a search took place—the hospital blood draw—but asserts that defendant failed to establish a *prima facie* case for suppression, nevertheless, because defendant failed to establish that the hospital blood draw (the search) violated the fourth amendment. In support of that assertion, the State contends that defendant failed to show that the hospital staff members were acting as agents of the State at the time that they drew defendant's blood. In reply to some of defendant's more specific claims, the State asserts that the fact that the police officer was present at the hospital is not sufficient to establish that the hospital staff members were acting as agents of the State, that any discussion of a lack of exigent circumstances is irrelevant in the context of this case where defendant's blood was drawn by private persons, and that the applicable statute allowed the hospital staff members to disclose the hospital blood test results to the police without violating confidentiality laws. For all the reasons set forth, the State asks that we affirm the trial court's grant of the State's motion for directed finding on defendant's motion to suppress evidence.

¶ 27 A reviewing court applies a two-part standard of review to a trial court's ruling on a motion to suppress evidence. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Brooks*, 2017 IL 121413, ¶ 21; *People v. Gaytan*, 2015 IL 116223, ¶ 18. The trial court's findings of fact are given great deference and will not be reversed on appeal unless they are against the manifest weight of the evidence. *People v. Hackett*, 2012 IL 111781, ¶ 18; *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, as to the trial court's ultimate legal ruling of whether suppression is warranted, *de novo* review applies. *Hackett*, 2012 IL 111781, ¶ 18; *Sorenson*, 196 Ill. 2d at 431. The reviewing court is free to make its own assessment of the legal issues, based upon the findings of fact, and to draw its own conclusions. *Hackett*, 2012 IL 111781, ¶ 18.

¶ 28 A defendant who files a motion to suppress evidence bears the burden of proof at a hearing on the motion. 725 ILCS 5/114-12(b) (West 2016); *Brooks*, 2017 IL 121413, ¶ 22. The defendant must establish a *prima facie* case for suppression by showing that the evidence was obtained as a result of an illegal search or seizure. *Brooks*, 2017 IL 121413, ¶ 22. In other words, the defendant must establish the factual and legal bases for granting the motion to suppress. See *id.* Where the basis for a motion to suppress is an allegedly illegal search, the defendant must establish that there was a search and that the search was illegal. *Id.* If a defendant establishes a *prima facie* case, the burden then shifts to the State to present evidence to counter the defendant's *prima facie* case. *Id.* The ultimate burden of proof at the suppression hearing, however, remains on the defendant. *Id.*

¶ 29 The fourth amendment to the United States Constitution and article I, section 6, of the Illinois Constitution protect the right of the people to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6; *Gaytan*, 2015 IL 116223, ¶ 20. A blood draw is a search within the meaning of the fourth amendment. *Brooks*, 2017 IL 121413, ¶ 27. A search conducted without a search warrant is considered *per se* unreasonable under the fourth amendment unless it falls within one of the limited number of exceptions to the search warrant requirement. *Id.*

¶ 30 The constitutional protection against unreasonable searches and seizures, however, does not apply to searches or seizures conducted by private individuals. *Id.* ¶ 28. When a private individual performs a search independently of the police, the fourth amendment is not implicated because state action is not present. See *id.* To establish that a private search should be attributed to the government, as defendant asserts in the present case, the defendant must show that, in light of all the circumstances, the private individual who conducted the search was acting as an agent or instrumentality of the State when doing so. *Id.* ¶ 30.

¶ 31 After having reviewed the record in the present case, we find that defendant failed in his burden to establish that, when the hospital drew his blood, it was acting as an agent or instrumentality of the State. See *id.*, ¶¶ 22, 30. The evidence presented at the suppression hearing clearly established that defendant's blood was drawn by the hospital for the purpose of his medical treatment. Although Deputy Woodthorp was at the hospital, she did not ask members of the hospital staff to draw defendant's blood on her behalf. In addition, defendant did not call anyone from the hospital to testify at the hearing and there was no evidence presented that the individual who drew defendant's blood did so at the behest, or under the influence, of the police. Thus, contrary to defendant's assertion on appeal, there is no indication that the hospital was acting as an agent of the State at the time of the blood draw. That conclusion is further bolstered when we consider the evidence that was presented at defendant's jury trial where nurse Wilkinson testified that defendant's blood was drawn as part of defendant's emergency medical treatment and that Dr. Gaither had ordered the blood be tested for alcohol and where Dr. Gaither provided similar testimony about what had occurred. See *People v. Caballero*, 102 Ill. 2d 23, 33-36 (1984) (indicating that the reviewing court may consider the evidence presented at trial in affirming the denial of a motion to suppress). Because defendant failed to establish that the search that took place in this case was illegal, the trial court properly denied defendant's motion to suppress evidence. See *Brooks*, 2017 IL 121413, ¶¶ 30, 35.

¶ 32 B. Proof Beyond a Reasonable Doubt

¶ 33 As his next point of contention on appeal, defendant argues that he was not proven guilty beyond a reasonable doubt of the offenses in question. In support of that argument, defendant asserts first that the State failed to prove at trial all three of the charges against him because the State failed to establish that defendant was the person who was operating or in actual physical

control of the motor vehicle at the time of the accident. Defendant claims that the evidence was insufficient to prove the driving element of all three offenses because not a single State witness testified at trial that defendant was the person who was driving the vehicle at the time of the crash. Rather, defendant maintains, the only evidence the State presented to show that defendant was driving was the statement that defendant had made to Deputy Woodthorp at the hospital that he had totaled the car—a statement, which alone, according to defendant, was insufficient to establish beyond a reasonable doubt that defendant was the driver of the vehicle. In making that assertion, defendant points out that, contrary to any representation by the State, defendant was not found in the driver's seat of the vehicle after the accident occurred. Defendant asserts second in support of his argument on this issue that the State also failed to prove, for the purpose of the aggravated DUI BAC charge, that defendant's blood alcohol concentration (referred to at times hereinafter as BAC) was 0.08 or greater at the time of the accident. According to defendant, the State's proof as to the blood alcohol level was lacking because the State failed to present any evidence to establish the reliability and trustworthiness of the hospital blood test result as was necessary to adequately prove that defendant's BAC was 0.08 or greater. Most notably, defendant contends, comparing this case to the proof of drug content in criminal drug cases, that the State failed to present any evidence to show who drew defendant's blood, what the hospital's protocol was for drawing blood in the emergency room, how defendant's blood sample was delivered to the lab, what the lab's protocol was for testing a blood draw, who tested the blood in the lab, what the qualifications were of the person who tested the blood, what tests were performed on defendant's blood, whether any equipment used to test defendant's blood was working properly, the reliability of any testing procedures, and the chain of custody for the blood sample. For all the reasons set forth, defendant

asks that we reverse his conviction for aggravated DUI BAC outright or, alternatively, that we reverse all three of his convictions and remand this case for a new trial.⁴

¶ 34 The State argues that the evidence was sufficient to prove defendant guilty of all three offenses. As to the driving element, the State asserts that defendant's statement to Deputy Woodthorp about totaling the car was not the only evidence the State presented and that the testimony of the State's witnesses—Olson, Retherford, Woodthorp, and McChesney—was sufficient to prove that defendant was the driver of the vehicle at the time the crash occurred. With regard to the BAC element, the State asserts that it presented sufficient evidence for defendant's blood test results to be admitted under section 11-501.4 of the Illinois Vehicle Code (625 ILCS 5/11-501.4 (West 2016)) and that those results, as converted to a whole blood equivalent, adequately established that defendant's BAC was 0.08 or greater at the time of the accident. In making that assertion, the State contends that the chain of custody and reliability requirements cited by defendant do not apply to blood test results that are admissible under section 11-501.4. For that reason and for all the other reasons set forth, the State asks that we affirm defendant's convictions.

¶ 35 Pursuant to the Collins standard (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)), a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). In applying the Collins standard, the reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318,

⁴ We take no position on whether the relief that defendant requests on appeal as to the second issue would be the appropriate remedy for the errors that defendant claims allegedly occurred in the trial court.

326 (2005). The reviewing court will not retry the defendant. *People v. Austin M.*, 2012 IL 111194, ¶ 107. Determinations of witness credibility, the weight to be given testimony, and the reasonable inferences to be drawn from the evidence are responsibilities of the trier of fact, not the reviewing court. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). Thus, the *Collins* standard of review fully recognizes that it is the trier of fact's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. See *Jackson*, 232 Ill. 2d at 281. That same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting that standard is sufficient to sustain a criminal conviction. *Id.*; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). In applying the *Collins* standard, a reviewing court will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it leaves a reasonable doubt of the defendant's guilt. *Austin M.*, 2012 IL 111194, ¶ 107.

¶ 36 Upon reviewing the record in the present case, we find that the evidence was sufficient to prove defendant guilty of the alleged offenses. First, contrary to defendant's assertion on appeal, the evidence presented at defendant's trial, viewed in the light most favorable to the State, was sufficient to prove defendant was driving the vehicle at the time of the accident. The witness to the accident saw both the accident and the aftermath and stated that the driver of the vehicle was hanging out of the driver's side window after the accident occurred. The accident witness watched as the paramedics loaded the driver onto a gurney and stated that she saw no one else in the vehicle. One of the paramedics who responded to the accident removed defendant from the driver's door area of the vehicle and recognized defendant from a prior incident. That paramedic also saw no one else in the vehicle and identified defendant in court as the person he removed from the front

driver's side door area of the vehicle. In addition, when Deputy Woodthorp asked defendant if he knew why he was at the hospital, defendant stated that he had totaled his car. Woodthorp also identified defendant in court as the person she spoke to in the hospital about the crash. Finally, the vehicle that was involved in the accident belonged to defendant's grandmother, and she testified that on the day of the accident she saw defendant leave in the vehicle by himself. Taken together and in the light most favorable to the State, all of that evidence was sufficient to prove defendant had been driving the vehicle at the time of the accident. Although defendant testified at trial that he was not driving the vehicle at the time, it was for the jury to decide whether defendant's testimony in that regard was believable. See *Yimerson*, 127 Ill. 2d at 43.

¶ 37 Second, although defendant challenges the blood test result, claiming that the chain of custody and other foundational elements were lacking, such a challenge is a challenge to the admissibility of the evidence and not a challenge to the sufficiency of the evidence. See *People v. Woods*, 214 Ill. 2d 455, 471 (2005) (rejecting the notion that a defendant's challenge to the chain of custody was a question of the sufficiency of the evidence); *People v. Muhammad*, 398 Ill. App. 3d 1013, 1016-18 (2010) (same). Substantively, the blood test results that were admitted, along with the testimony regarding the conversion of that result to a whole blood level, clearly showed that defendant's BAC at the time of the accident was 0.08 or greater. We, therefore, reject defendant's assertion on this issue. In doing so, we must note that defendant was found guilty of the other aggravated DUI charge as well and that there was ample evidence presented, in addition to the blood test results, to establish that defendant was under the influence of alcohol at the time of the crash.

¶ 38 C. Admissibility of the Hospital Blood Test Results

¶ 39 As his third and final contention on appeal, defendant argues that the trial court erred in admitting defendant's hospital blood test results into evidence at defendant's trial. In support of that argument, defendant asserts first that the blood test results should not have been admitted because Illinois Rule of Evidence 803(6) (eff. Apr. 26, 2012), which defendant claims controls in this case, prohibits the use of the business records exception to admit medical records in criminal cases. In making that assertion, defendant acknowledges that section 11-501.4 of the Vehicle Code specifically allows for the admission of blood test results in a DUI prosecution if the proper foundational requirements have been satisfied. Defendant maintains, however, that a conflict exists between the statute (section 11-501.4) and the rule of evidence (Rule 803(6)) and that the rule of evidence controls, therefore, because it is a rule of the supreme court. See *People v. Peterson*, 2017 IL 120331, ¶¶ 31, 34 (indicating that when a statute conflicts with a rule of the supreme court, such as a rule of evidence, the supreme court rule controls). Second, and in the alternative, defendant asserts that the blood test results also should not have been admitted because the State failed to establish the proper foundational requirements for admission (as set forth in more detail in defendant's argument on the second issue in this case). For all the reasons stated, defendant asks that we reverse his convictions of aggravated DUI (count I) and aggravated DUI BAC (count II) and that we remand this case to the trial court for a new trial.

¶ 40 The State argues that the blood test results were properly admitted and that the trial court's ruling in that regard should be upheld. As to defendant's claim that Illinois Rule of Evidence 803(6) prohibits the admission of the blood test results as a business record, despite the admissibility provision contained in section 11-501.4 of the Vehicle Code, the State points to *People v. Hutchison*, 2013 IL App (1st) 102332, ¶¶ 18, 24, a case where the Appellate Court, First District, specifically ruled on that issue and found that the hospital blood test results were

admissible. The State asks that we follow the approach set forth in *Hutchison*, that we find that all of the requirements for admissibility of the blood test results under section 11-501.4 of the Vehicle Code were satisfied, that we find that the blood test results were properly admitted, and that we affirm defendant's convictions.

¶ 41 A determination of the admissibility of evidence is in the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12; *People v. Wigen*, 145 Ill. 2d 353, 364 (1991). Under the abuse of discretion standard, the appellate court owes some deference to the trial court's ability to evaluate the evidence's impact on the jury. *People v. Donoho*, 204 Ill. 2d 159, 186 (2003). The threshold for finding an abuse of discretion is a high one and will not be overcome unless it can be said that the trial court's ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court. See *In re Leona W.*, 228 Ill. 2d 439, 460 (2008); *Donoho*, 204 Ill. 2d at 182. Reasonable minds can disagree about whether certain evidence is admissible without requiring a reversal of a trial court's evidentiary ruling under the abuse of discretion standard. See *Donoho*, 204 Ill. 2d at 186.

¶ 42 As the parties' arguments indicate, defendant's blood test results in the present case were admitted under the business records exception to the hearsay rule pursuant to section 11-501.4 of the Vehicle Code. Section 11-501.4 provides:

“(a) Notwithstanding any other provision of law, the results of blood *** tests performed for the purpose of determining the content of alcohol *** of an individual's blood *** conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception

to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code *** when each of the following criteria are met:

(1) the chemical tests performed upon an individual's blood *** were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;

(2) the chemical tests performed upon an individual's blood *** were performed by the laboratory routinely used by the hospital; and

(3) results of chemical tests performed upon an individual's blood *** are admissible into evidence regardless of the time that the records were prepared.

(b) The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to chemical tests performed upon an individual's blood *** under the provisions of this Section in prosecutions as specified in subsection (a) of this Section. No person shall be liable for civil damages as a result of the evidentiary use of chemical testing of an individual's blood *** test results under this Section, or as a result of that person's testimony made available under this Section.” 625 ILCS 5/11-501.4 (West 2016).

¶ 43 Illinois Rule of Evidence 803(6) (eff. Apr. 26, 2012), upon which defendant relies, generally prohibits the use of the business records exception to admit “medical records in criminal cases.” Section 115-5(c) of the Code of Criminal Procedure of 1963 contains a similar prohibition. See 725 ILCS 5/115-5(c) (West 2016). However, as the appellate court recognized in *Hutchison*, although medical records cannot normally be admitted as business records in criminal cases, through section 11-501.4 of the Vehicle Code, the legislature determined that lab reports of

hospital blood tests conducted in the regular course of providing emergency medical treatment are admissible in DUI prosecutions under the business records exception to the hearsay rule. See *Hutchison*, 2013 IL App (1st) 102332, ¶ 18. In addition, as the appellate court pointed out in *Hutchison*, section 11-501.4 of the Vehicle Code sets forth the specific foundational requirements that must be satisfied for the blood alcohol test results to be admitted. See 625 ILCS 5/11-501.4 (West 2016); *Hutchison*, 2013 IL App (1st) 102332, ¶ 18.

¶ 44 Having considered this issue in the present case, we agree with the approach of the First District in *Hutchison*.⁵ We find, therefore, that section 11-501.4 of the Vehicle Code specifically allows the hospital blood test results to be admitted at defendant's trial, despite the more general prohibitions contained in Rule 803(6) of the Illinois Rules of Evidence and in section 115-5(c) of the Code of Criminal Procedure. See 625 ILCS 5/11-501.4 (West 2016); *Hutchison*, 2013 IL App (1st) 102332, ¶¶ 18, 24. Furthermore, contrary to defendant's assertion on appeal, we find that the testimony of Dr. Gaither and nurse Wilkinson was sufficient to establish the foundational requirements for the admission of the hospital blood test results. Thus, we conclude that the hospital blood test results were properly admitted into evidence at defendant's trial.

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 47 Affirmed.

¶ 48 JUSTICE HOLDRIDGE, concurring in part and dissenting in part.

⁵ On a separate point and as indicated in our discussion on the previous issue, our view of how the supreme court's decision in *Woods* would apply to the second issue in this case is somewhat different from the view of the appellate court in *Hutchison*. See *Hutchison*, 2013 IL App (1st) 102332, ¶ 18.

¶ 49 I concur in part and dissent in part. I agree that the trial court properly denied the defendant's motion to suppress evidence, and I join the majority's judgment and analysis as to that issue. I further agree that the evidence was sufficient to prove beyond a reasonable doubt that the defendant was driving the vehicle at the time of the accident. I therefore join the majority in affirming the defendant's conviction for aggravating driving while license revoked. However, I would reverse the defendant's DUI convictions because, in my view, the trial court erred in admitting the defendant's hospital blood test results into evidence.

¶ 50 Normally, a trial court's decision regarding the admission or exclusion of evidence rests within its sound discretion and will not be disturbed absent an abuse of that discretion. *Naleway v. Agnich*, 386 Ill. App. 3d 635, 647 (2008). However, where the issue on appeal is not whether the trial court properly exercised its discretion to exclude evidence but instead whether the trial court misinterpreted the law in excluding evidence, the question presented on appeal is one of law, and our review is *de novo*. *Id.*; see also *People v. Williams*, 188 Ill. 2d 365, 369 (1999) (ruling that "a trial court must exercise its discretion within the bounds of the law," and "[w]here the question presented is one of law, a reviewing court determines it independently of the trial court's judgment" (internal quotation marks omitted)); *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 154, (2007) (questions of law are reviewed *de novo*); see also *Najas Cortes v. Orion Securities, Inc.*, 362 Ill. App. 3d 1043, 1047 (2005) (a trial court abuses its discretion when it makes an error of law).

¶ 51 In this case, our review of the trial court's decision to admit the defendant's hospital blood test results depends upon the proper interpretation of Illinois Rule of Evidence 803(6) (eff. April 26, 2012). Specifically, we must determine whether Rule 803(6) conflicts with section 11-501.4 of the Vehicle Code (625 ILCS 5/11-501.4 (West 2016)) as to the admissibility of medical records in criminal cases and, if so, how that conflict should be resolved. These are legal questions, which

we review de novo. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002) (the construction of a supreme court rule presents a question of law, which is reviewed de novo); *Batson v. Township Village Associates, LP*, 2019 IL App (5th) 170403, ¶ 14; *Doe v. Coe*, 2017 IL App (2d) 160875, ¶ 10.

¶ 52 We construe supreme court rules in the same manner that we construe statutes. *Robidoux*, 201 Ill. 2d at 332; *In re Estate of Burd*, 354 Ill. App. 3d 434, 437 (2004). Our primary task is to ascertain and give effect to the drafters' intent, which is best indicated by the plain and ordinary meaning of the language used. *Robidoux*, 201 Ill. 2d at 332; *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 22. We will interpret a rule such that no part of it is rendered meaningless or superfluous, and we will not depart from the rule's plain language by reading into the rule exceptions, limitations, or conditions that conflict with the drafters' expressed intent. *Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 22; *Bohle v. OSF Healthcare System*, 2018 IL App (2d) 160975, ¶ 17. If the language of a supreme court rule is clear and unambiguous, we must apply the language used without resort to any further aids of construction. *In re Estate of Rennick*, 181 Ill. 2d 395, 404-05 (1998); see also *People v. Blair*, 2011 IL App (2d) 070862, ¶ 33 ("Where the language of a rule is clear and unambiguous, it will be given effect without resort to any other interpretive aids.").

¶ 53 If the language of a rule is ambiguous (i.e., susceptible to more than one reasonable interpretation), we may look to the rule's committee comments for guidance in interpreting and applying the rule. *Bohle*, 2018 IL App (2d) 160975, ¶ 17; *Batson*, 2019 IL App (5th) 170403, ¶ 14. However, the committee comments are not binding (*Robidoux*, 201 Ill. 2d at 332; *Hornburg v. Esparza*, 316 Ill. App. 3d 801, 806 (2000); *Estate of Burd*, 354 Ill. App. 3d at 437)), and they may be considered as persuasive authority only when the rule's meaning is not clear from the language of the rule itself (*People v. Ross*, 168 Ill. 2d 347, 352 (1995); *Hornburg*, 316 Ill. App. 3d

at 806). In other words, the committee comments may only be used to help resolve a preexisting ambiguity in the rule; they may not be used to create an ambiguity as to the interpretation or application of an otherwise unambiguous rule. *Estate of Rennick*, 181 Ill. 2d at 404-05 (unambiguous rule must be applied as written without resort to any further aids of construction); see also *People v. Allen*, 313 Ill. App. 3d 842, 846 (2000), rejected on other grounds by *People v. Garstecki*, 382 Ill. App. 3d 802 (2008) (“There is no rule of construction that allows the court to declare that the legislature did not mean what the plain language of the statute imports”).

¶ 54 Rule 803(6) creates an exception to the hearsay rule for certain business records “[e]xcept for medical records in criminal cases.” Ill. R. Evid. 803(6) (eff. Apr. 26, 2012). Thus, as the majority acknowledges, the plain language of Rule 803(6) prohibits the use of the business records exception to admit medical records in criminal cases. *Supra* ¶ 43. Section 11-501.4 of the Vehicle Code, by contrast, authorizes the admission of lab reports of hospital blood tests in certain criminal DUI prosecutions, subject to certain foundational requirements. By their plain terms, the statute and the rule are in direct conflict. The majority does not contend (and cannot reasonably contend) that either the statute or the rule is ambiguous. Nevertheless, following our appellate court’s decision in *People v. Hutchison*, 2013 IL App (1st) 102332, the majority holds that the defendant’s hospital blood test results were properly admitted under section 11-501.4 of the Vehicle Code.

¶ 55 In my view, *Hutchison* was wrongly decided. In ruling that a blood alcohol test conducted by a hospital lab was admissible in a criminal DUI prosecution (notwithstanding Rule 803(6)’s clear pronouncement to the contrary), *Hutchison* relied entirely upon one of the committee comments to the Illinois Rules of Evidence, which states that “[i]t is important to note that the Illinois Rules of Evidence are not intended to abrogate or supersede any current statutory rules of evidence. The Committee sought to avoid in all instances affecting the validity of any existing statutes promulgated by the Illinois legislature.” Ill. R. Evid., Committee Commentary (eff. Jan.

1, 2011). However, as noted above, Rule 803(6)'s blanket prohibition on the admission of medical records in criminal cases is unqualified and unambiguous. Accordingly, the *Hutchison* court erred by considering the nonbinding committee comments in interpreting Rule 803(6) (*Estate of Rennick*, 181 Ill. 2d at 404-05) and by using them to read an exception or limitation into the rule that conflicts with the rule's plain terms (*Ferris, Thompson & Zweig, Ltd.*, 2017 IL 121297, ¶ 22). Contrary to the *Hutchison* court's assumption, the rule's committee comments cannot eliminate the conflict between section 11-501.4 and Rule 803(6).

¶ 56 The Illinois Supreme Court has the primary constitutional authority over court procedure (*People v. Peterson*, 2017 IL 120331, ¶ 31), including the manner by which evidence may be introduced into the courts (*id.*; see also *People v. Bond*, 405 Ill. App. 3d 499, 508-09 (2010)). Thus, where a statute conflicts with rule of evidence promulgated by our supreme court, the supreme court rule prevails. *Peterson*, 2017 IL 120331, ¶ 31; *Bond*, 405 Ill. App. 3d at 509; see also Ill. R. Evid. 101 (eff. Jan. 1, 2011) ("A statutory rule of evidence is effective unless in conflict with a rule or a decision of the Illinois Supreme Court." (Emphasis added.)); see generally *People v. Walker*, 119 Ill. 2d 465, 475 (1988) ("where *** a legislative enactment directly and irreconcilably conflicts with a rule of this court on a matter within the court's authority, the rule will prevail").

¶ 57 Accordingly, I would decline to follow *Hutchison*, and I would hold that the hospital blood test results in this case were inadmissible pursuant to Rule 803(6). I would therefore reverse the defendant's convictions for aggravated DUI and aggravating driving with a blood alcohol concentration of 0.08 or greater and remand for further proceedings on those counts.

No. 3-17-0163

Cite as: People v. Deroo, 2020 IL App (3d) 170163

Decision Under Review: Appeal from the Circuit Court of Rock Island County, No. 16-CF-229; the Hon. Frank R. Fuhr, Judge, presiding.

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No. 126120

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of
	)	Illinois, No. 3-17-0163.
Plaintiff-Appellee,)	
	)	There on appeal from the Circuit Court
-vs-	)	of the Fourteenth Judicial Circuit, Rock
	)	Island County, Illinois, No. 16-CF-229.
)	
RYAN JAMES DEROO,	)	Honorable
)	Frank R. Fuhr,
Defendant-Appellant.)	Judge Presiding.
)	

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 8, 2020, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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