No. 122388

IN THE
SUPREME COURT OF ILLINOIS

| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Appellate Court |
| | ) | of Illinois, Third District, |
| Plaintiff-Appellant, | ) | No. 3-16-0025 |
| | ) | |
| | ) | There on Appeal from the Circuit |
| | ) | Court of the Twelfth Judicial |
| v. | ) | Circuit, Will County, Illinois, |
| | ) | Nos. 15-DT-1284, 15-TR-72055 |
| | ) | & 15-TR-72056 |
| | ) | |
| AHMET GOCMEN, | ) | The Honorable |
| | ) | Carmen Goodman, |
| Defendant-Appellee. | ) | Judge Presiding. |

**BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS**

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

LEAH M. BENDIK
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-5029
LBendik@atg.state.il.us

*Counsel for Plaintiff-Appellant*
*People of the State of Illinois*

ORAL ARGUMENT REQUESTED

E-FILED
12/21/2017 10:19 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

## POINTS AND AUTHORITIES

**Page(s)**

## NATURE OF THE CASE

Defendant, Ahmet Gocmen, was arrested and charged with driving under the influence of drugs or combination of drugs (DUI drugs) under 625 ILCS 5/11-501(a)(4) (2015), and his driver's license was summarily suspended. Defendant filed a petition to rescind the suspension, alleging that the officer did not have reasonable grounds for the arrest. The circuit court granted the petition, and the People appeal from the appellate court's judgment affirming the circuit court. No question is raised on the pleadings.

## ISSUE PRESENTED

Whether the lower courts erroneously held that defendant's summary suspension should be rescinded because drug-related evidence found in the vehicle and on defendant's person provided reasonable grounds for the officer to believe that defendant's physical symptoms reflected that he was under the influence of illicit drugs rather than just a diabetes-related medical problem, regardless of the officer's training or experience in identifying drug use.

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). On September 27, 2017, this Court allowed the People's petition for leave to appeal. *People v. Gocmen*, __ N.E.3d ____ (Table) (Ill. 2017).

## STATUTORY PROVISION AND COURT RULES INVOLVED

The Vehicle Code provides in relevant part:

> § 11-501. Driving while 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:

> . . .
> (4) under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving.

625 ILCS 5/11-501(a)(4) (2015).

The Vehicle Code also provides in relevant part:

> § 2-118.1. Opportunity for hearing; statutory summary alcohol or other drug related suspension or revocation pursuant to Section 11-501.1.
> . . .
> (b) . . . The scope of the hearing shall be limited to the issues of:
> . . .
> 2. Whether the officer had reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination of both;
> . . .
> Upon the conclusion of the judicial hearing, the circuit court shall sustain or rescind the statutory summary suspension or revocation and immediately notify the Secretary of State.

625 ILCS 5/2-118.1(b)(2) (2015).

Illinois Rule of Evidence (IRE) 701 provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

IRE 702 provides, in relevant part:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

## STATEMENT OF FACTS

Defendant was charged by uniform citation with DUI drugs (625 ILCS 5/11-501(a)(4) (2015)), C2, 52; improper lane usage (625 ILCS 5/11-709(a) (2015)), SC62, 95; and improper parking on a roadway (625 ILCS 5/11-1301

(2015)), C99, 132.[1] He was later charged with possession of drug paraphernalia and possession of a hypodermic syringe. C14-15; R3. Upon his arrest, defendant was provided a "warning to motorist," C3, and his license was summarily suspended due to his refusal or failure to undergo chemical testing. C5, 7. Defendant filed a petition to rescind summary suspension, C17, and the court held a hearing, R16-40.

At the hearing, defendant contested his suspension, claiming only that the police lacked reasonable grounds to arrest him, i.e., that the police lacked reasonable grounds to believe that he drove while under the influence of drugs. R17; *see also* 625 ILCS 5/2-118.1(b)(2) (2015). Defendant's sole witness was Officer Adam Beaty, who testified that he had been a police officer for approximately two years and that he had no prior law enforcement experience. R19-20. Beaty's DUI training related only to detection of alcohol use and blood alcohol content; he had received no training related to detection of drug use. R20-21. Beaty mentioned no prior experience around drug users. R19-21.

Officer Beaty testified that at 11:10 a.m. on September 14, 2015, he responded to a call regarding an unconscious person in a vehicle who may have had a seizure; paramedics were already present. R22; *see also* C2; IC7. Witnesses told Beaty that the driver "was passed out." C5. Beaty observed that the vehicle was partially on the roadway with its passenger-side wheels on the grass. R22; IC7. Beaty saw a person sitting in the driver's seat of the vehicle —

[1] "C_" refers to the common law record; "R_" refers to the report of proceedings; "IC_" refers to the impounded common law record; "SC_" refers to the supplemental common law record; and "A_" refers to the appendix to this brief. Only citations to "A_" are provided for documents in the appendix.

whom he identified in court as defendant — with his left hand on the steering wheel and his foot on the brake. R22-23. The car was running but the transmission was in park. R23. Defendant was in and out of consciousness and initially did not cooperate with verbal commands by paramedics to exit the vehicle. R24. At one point, defendant stated that he was okay to drive, but described their location as northbound on Route 59 when they actually were eastbound on Route 52. R22, 24; IC7. Beaty did not have defendant perform any field sobriety tests. R28. Paramedics eventually convinced defendant to exit his car and board an ambulance, which took him to the hospital.[2] R24; IC7.

Officer Beaty observed in "plain view" on the front passenger seat of the vehicle a Red Bull can that had been cut or torn in half. C5; R24-25. Beaty saw burn marks on the interior of the can, and a brown- or tannish-colored residue on the bottom of the can. R25. Beaty field tested the residue using a "NARK Cocaine ID Swipe" and obtained a positive result. R31-33. Specifically, while wearing sterile gloves, Beaty removed the swipe from its package and touched it to the residue; the swipe immediately turned from pink to blue, which Beaty described as indicating a "positive presence of opiates." *Id.* Beaty had passed a training course about the use of this swipe test; this was his first time applying the test in the field. R31. Beaty also saw an uncapped and used one-millimeter syringe on the front passenger seat. C5; R25. In defendant's wallet in the center

[2] The record contains no information about what treatment, if any, defendant received at the hospital or whether any hospital personnel identified the cause of the symptoms that Beaty and paramedics observed at the scene.

console, Beaty found a baggie containing an unidentified brown, granular substance that was sent for lab testing.[3] R26-27.

Paramedics at the scene informed Beaty that defendant had a fresh "track mark" on his arm. R29; *see also* IC7. Paramedics also told him that defendant was sweating, had pinpoint pupils, and had a heart rate of 144. R31; *see also* IC7 (noting that defendant had 144 heart rate, had "constricted" pupils with "sluggish" reaction, and was "diaphoretic"[4]). Paramedics told Beaty that they did not smell any odor of alcohol on defendant. R29. Beaty asked defendant whether he had any medical conditions, and defendant told him that he was a diabetic. R27; IC6. At the hospital, Beaty observed that defendant looked "tired and lethargic." R25. Beaty arrested defendant for DUI drugs at the hospital. *Id.* When asked to describe the factors that led Beaty to arrest defendant, Beaty cited the positive NARK swipe, the uncapped syringe, and the baggie containing the granular substance found in defendant's wallet. R26-27, 33.

After Beaty's testimony, defendant rested. R34. The State moved for a directed finding, noting that defendant did not satisfy his burden of showing an absence of reasonable grounds for arrest under the circumstances. R34-35. Defendant argued in response that Officer Beaty lacked training in DUI drugs and that defendant said he was a diabetic. R35-36. The court denied the motion for directed finding and stated that the burden shifted to the State. R36. The State presented no witnesses and rested. R37. In argument, the State noted that

[3] The record does not reflect the results of the tests, if they were in fact conducted.
[4] "Diaphoretic" is defined as "an agent inducing perspiration," and the related word "diaphoresis" is defined as "profuse perspiration artificially induced." Webster's Third New International Dictionary, Unabridged, p. 624 (1993).

the officer needed only reasonable grounds to arrest, not proof beyond a reasonable doubt, meaning that he could be wrong if reasonable. R37-38. The State also asserted that the circumstances reflected obvious intoxication by drugs that did not require expertise to identify. R37. Defendant insisted that the officer needed at least basic training to understand whether there was drug intoxication. A6.

The trial court granted the petition to rescind. A8-9. The court noted that case law is clear that, unlike alcohol intoxication, drug intoxication cannot be established solely through lay witness testimony. A6. The court reasoned that a diabetic may use syringes and have track marks. A7. Defendant did not admit to taking drugs, and the officer did not demonstrate that defendant exhibited the effects of drug use, especially given the officer's lack of training other than for use of the swipe test. A7-8. The trial court denied the State's motion to reconsider, reiterating that the officer had no relevant training, that defendant's statement that he was a diabetic explained the syringe and the track mark, and that defendant made no admission of drug use. C34-42; R50-53; A10-13.

The State appealed; defendant filed no appellate court brief. A1, A3. A majority of the Third District affirmed, rejecting the State's argument that the trial court erred in granting rescission on the basis that the officer lacked reasonable grounds to believe that defendant was driving under the influence of drugs. A1-5. The majority affirmed because (1) defendant told the officer that he was a diabetic, and (2) the officer had no basis to conclude that defendant's state was caused by drugs and not diabetes given the officer's lack of training about or experience with DUI drugs. A3-4.

## ARGUMENT

**In Finding Defendant's Arrest for DUI Drugs Improper, the Circuit Court Wrongly Discounted Four Indicia of Illicit Drug Use, Unduly Relied upon Defendant's Statement that He Was a Diabetic, and Erroneously Cited the Officer's Lack of Training or Experience in Recognizing the Effects of Drugs.**

*Standard of Review:* A two-part standard of review applies to a circuit court's findings at a rescission hearing. *People v. Wear*, 229 Ill. 2d 545, 561 (2008). A reviewing court upholds the circuit court's factual findings unless they are against the manifest weight of the evidence and reviews de novo the court's ultimate legal ruling about whether the petition to rescind should be granted. *Id.*

Motorists are prohibited from driving under the influence of alcohol or drugs in Illinois under section 11-501 of the Vehicle Code (625 ILCS 5/11-501). *People v. McClure*, 218 Ill. 2d 375, 379 (2006). Beyond criminal sanctions, motorists arrested for DUI are potentially subject to suspension of their driving privileges because any person who drives on an Illinois public highway is deemed to have given consent to chemical testing for alcohol or drugs. *Id.* (citing 625 ILCS 5/11-501.1(a)). The Secretary of State is authorized to summarily suspend the driver's license of any motorist arrested for DUI who either refuses to submit to chemical testing or submits to such testing that discloses an amount of alcohol or drugs in the body that exceeds statutorily established thresholds for such substances. *Id.* (citing 625 ILCS 5/11-501.1(d)).

A motorist can contest his or her summary suspension through a petition to rescind. *Id.* at 380 (citing 625 ILCS 5/2-118.1(b)). At the rescission hearing, a civil proceeding, the motorist bears the burden of proof by a preponderance of evidence. *Wear*, 229 Ill. 2d at 559-60; *People v. Ehley*, 381 Ill. App. 3d 937, 943

(4th Dist. 2008). If the motorist makes a prima facie case for rescission, the burden shifts to the State to present evidence justifying the summary suspension. *Wear*, 229 Ill. 2d at 560. A prima facie showing means that defendant has "the primary responsibility for establishing the factual and legal bases" for the petition. *People v. Brooks*, 2017 IL 121413, ¶ 22. A petition to rescind summary suspension must specify the basis for the challenge, and potential grounds are limited to those listed in section 2-118.1(b) of the Vehicle Code. *McClure*, 218 Ill. 2d at 380 (citing 625 ILCS 5/2-118.1(b)).

Here, defendant sought rescission under subsection (b)(2), which questions whether the officer lacked reasonable grounds to believe that the defendant was (1) driving (2) while under the influence of alcohol and/or drugs.[5] 625 ILCS 5/2-118.1(b)(2) (2015). R17. In evaluating whether an officer had reasonable grounds to believe that a defendant was under the influence of drugs (and/or alcohol) within the meaning of 625 ILCS 5/2-118.1(b)(2), this Court has equated the "reasonable grounds" standard with the probable cause standard from the Fourth Amendment context, under which there is probable cause to arrest "when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *Wear*, 229 Ill. 2d at 560, 563. Probable cause analysis demands a weighing of the totality of the circumstances. *Id.* at 564. "In dealing with probable cause, . . . we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* (internal quotation marks omitted)

[5] Defendant never contested that he was driving at the relevant time.

(quoting *People v. Love*, 199 Ill. 2d 269, 279 (2002) (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949))). The probable cause standard is a lower standard than proof beyond a reasonable doubt and does *not* require that the belief that the suspect has committed the offense is more likely true than false. *Id.* (citing *People v. Jones*, 215 Ill. 2d 261, 277 (2005) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality op.))).

The appellate majority, after discounting the significance of several indicia of illicit drug use found at the scene, concluded that Officer Beaty lacked reasonable grounds because (1) defendant told Beaty that he was a diabetic, and (2) Beaty had no basis to conclude that defendant's state was caused by drugs and not diabetes given his lack of training or experience in DUI drugs. A3-4. The majority cited *People v. Shelton*, 303 Ill. App. 3d 915, 925 (5th Dist. 1999), for the principle that one needs training and experience to understand the effects of drugs on people. A3-4.

The dissent noted that the applicable standard required reasonableness on the part of the officer, not perfection. A4. It disagreed with the majority's extension of *Shelton* to the circumstances here given that *Shelton* concerned the distinct question of whether a police officer (not qualified as an expert due to insufficient training or experience) can give opinion testimony at a criminal jury trial that defendant was under the influence of drugs. A5. The dissent concluded that, under the totality of the circumstances, the officer's conduct was reasonable. *Id.*

### A. A Reasonably Cautious Person Would Believe that Defendant Was Under the Influence of Drugs (Not Just Suffering from a Medical Problem Related to Diabetes) Based Solely on Four Indicia of Illicit Drug Use.

#### 1. The majority erroneously discounted four pieces of physical evidence of illicit drug use, in part due to its unreasonable decision to credit defendant's explanation that he was a diabetic.

Here, four pieces of evidence indicating that defendant had used illicit drugs were found in defendant's car or on his person. First, inside defendant's wallet in his vehicle's center console, Officer Beaty found a baggie containing an unidentified brown, granular substance. R26-27. Second, on the front passenger seat, Beaty saw a half of a beverage can that had burn marks on its interior and a brown or tannish residue on the bottom. C5; R24-25. In accordance with his training, Beaty field-tested the residue, which tested positive for an illicit substance. R31-33. Third, on the front passenger seat, Beaty saw an uncapped and used one-millimeter syringe. C5; R25. Fourth, paramedics told Beaty that defendant had a fresh "track mark" on his arm. R29; *see also* IC7. The majority wrongly discounted the first two pieces of evidence because of the unknown or miscommunicated identity of the illicit substances involved and the latter two because of defendant's "alternative explanation of diabetes."

The baggie containing a brown, granular substance found in defendant's wallet — even though the substance had not been identified at the time of arrest — supported the conclusion that defendant was under the influence of drugs. Defendant has never offered any innocent explanation for the item, and none is readily apparent. This Court has cited the presence of a packet containing what *might* be an illicit substance as grounds to make a drug-related arrest regardless

of the fact that the contents had not yet been identified. *People v. Davis*, 33 Ill. 2d 134, 137, 138 (1965); *see also People v. Dickinson*, 928 P.2d 1309, 1312-13 (Colo. 1996) (en banc) (finding officers had probable cause to arrest for drug-related crime upon seeing defendant in vehicle holding cash and "a small plastic bag containing a white powdery substance"); *cf. State v. Neth*, 196 P.3d 658, 663 & n.3 (Wash. 2008) (en banc) (nervousness and possession of cash and empty, unused baggies insufficient to establish probable cause because baggies can be used for lawful purposes; different result possible if baggies had appearance of having once contained illicit substance). Thus, the appellate majority erred in giving no weight to the baggie here on the basis that its contents had not yet been discerned. A3-4 ("the substance found in defendant's wallet carries no evidentiary weight as test results were not available at the time of the hearing"). Instead, the baggie was a factor supporting probable cause to conclude that defendant was under the influence of drugs.

The burnt beverage can with its tannish residue also pointed towards drug use. Again, defendant has never offered any innocent explanation for this item, and none is readily apparent. *See* A5 (Schmidt, J., dissenting) ("Most likely, the burn marks on the bottom of the can were not there because defendant preferred his Red Bull hot."). To the contrary, Illinois courts have recognized metal items with burn marks as tools of illicit drug use. *See, e.g., People v. Turner*, 373 Ill. App. 3d 121, 122 (2d Dist. 2007) (describing items, including "metal tins with burnt residue," as drug paraphernalia); *People v. Koesterer*, 44 Ill. App. 3d 468, 479 (1st Dist. 1976) (concluding that record contained "ample evidence" that defendant consumed drugs shortly before interrogation, including that police

officer found burnt spoon and syringes in motel room where defendant was arrested, along with track marks on her arm). And this interpretation of the burnt can is confirmed by the fact that the residue field-tested positive for an illicit substance. *See, e.g., People v. Morrison*, 178 Ill. App. 3d 76, 83 (4th Dist. 1988) (probable cause for search warrant existed given two controlled buys at residence produced white powdery substance that field-tested positive for cocaine).

The majority discounted the burnt can because Officer Beaty testified that the positive test result reflected the presence of "opioids," R31-33, while the name of the test ("NARK Cocaine ID swipe") indicated that it revealed the presence of cocaine, which is not an opioid. A3. From this discrepancy, the majority deduced that Beaty may have erred in performing the test or performed the wrong test. *Id*. Not so. To start, defendant has never argued that Beaty wrongly conducted the field test, and Beaty's testimony gives no reason to conclude that he did. R31-33. And it is illogical to regard a correctly administered field test that yielded a positive result for the presence of an illicit substance as the "wrong test." Beaty's apparent error in testifying in no way undermined the conclusion that he had probable cause to arrest defendant for DUI drugs because both cocaine and an opioid — either alone or in combination — are substances whose ingestion can form the basis of a DUI drug arrest under subsection (a)(4). *See* 625 ILCS 5/11-501(a)(4) & (6).[6] The majority identifies no authority for the premise that an

[6] "Drug," not defined in subsection (a)(4), is defined in subsection (a)(6) as including controlled substances listed in the Illinois Controlled Substances Act. 625 ILCS 5/11-501(a)(6). This Act lists cocaine, 720 ILCS 570/206(b)(4), and many opiates and opium derivatives, 720 ILCS 570/204(b), (c) & 206(b)(1), (c).

arrest under subsection (a)(4) is rendered improper if the officer believed that the suspect was under the influence of Drug A when the suspect instead was under the influence of Drug B, and research has uncovered only cases inconsistent with the premise. *See, e.g., People v. Ciborowski*, 2016 IL App (1st) 143352, ¶ 82 (noting officer had probable cause to arrest even though he did not "possess particularized knowledge of the specific chemical causing defendant's intoxication"). Further, as discussed in depth, *infra* Part B, the probable cause determination ultimately turns on whether the facts objectively support the arrest, not on the officer's subjective belief. 2 Wayne R. LaFave, Search and Seizure, § 3.2(b) (5th ed. 2012); *see also Wear*, 229 Ill. 2d at 563. The burnt can and the properly-administered, positive field test of its residue objectively support the conclusion that defendant was under the influence of drugs regardless of whether Beaty subjectively misunderstood which illicit drug the field test identified as present in the residue, or whether he merely misspoke. Thus, the burnt beverage can, with its residue of an illicit drug, is a factor supporting probable cause to arrest for DUI drugs. *See People v. McPeak*, 399 Ill. App. 3d 799, 803 (2d Dist. 2010) (presence of drug paraphernalia "may be" circumstantial evidence that defendant "recently consumed the substance at issue").

The "track mark" and syringe both further corroborated that defendant was under the influence of drugs. The "track mark" was described as "fresh," R29, and the syringe was uncapped and used, C5; R25, both suggesting a *recent* injection by the syringe. And in analogous circumstances, legal authority confirms that a factfinder can reasonably deduce whether an item is connected to

the ingestion of illegal drugs, even though the item has legitimate uses, in light of other items nearby. For example, the offense of possession of drug paraphernalia criminalizes knowing possession of an item of drug paraphernalia[7] with the intent to use it to ingest, inhale, or otherwise introduce cannabis or a controlled substance into the body, 720 ILCS 600/3.5(a), and proximity of cannabis or a controlled substance to the item or the presence of such drugs on the item can be considered in determining the requisite intent, 720 ILCS 600/3.5(b). Likewise, this Court has found that testimony about the condition of a defendant's arms and his possession of a needle, tie rag, and eye dropper were relevant to whether he knowingly possessed heroin. *People v. Harris*, 52 Ill. 2d 558, 560-61 (1972); *see also People v. Ash*, 346 Ill. App. 3d 809, 814-16 (4th Dist. 2004) (no abuse of discretion in admitting evidence that defendant possessed drug paraphernalia for smoking methamphetamine, relevant to proving knowing possession of methamphetamine).

These authorities confirm that the presence in close proximity of both a controlled substance and an item of potential drug paraphernalia, or the presence in close proximity of multiple indicia of illicit drug use, undermines any innocent explanation and corroborates guilt for an offense related to illicit drug use. *People v. Smith*, 95 Ill. 2d 412, 420 (1983) (finding hypodermic syringe and "one-hitter box" used to store cannabis provided probable cause to believe vehicle contained drugs); *People v. Bibbs*, 176 Ill. App. 3d 521, 524 (4th Dist. 1988)

[7] "Drug paraphernalia" is defined as including "all equipment, products and materials of any kind . . . which are intended to be used unlawfully in . . . injecting . . . or otherwise introducing into the human body" several types of drugs, including a controlled substance in violation of the Illinois Controlled Substances Act. 720 ILCS 600/2(d); *see also supra* note 6.

(presence of cannabis supported conclusion that white powder was also illicit drug). Thus, because here the uncapped and used syringe was found in close proximity to the burnt can (with its illicit drug residue) and the baggie, it is reasonable to regard the recently-used syringe and the corresponding fresh "track mark" as further indicia of recent, illicit drug use.

This conclusion is all the more reasonable because the syringe was *not* found in close proximity to other items linked to diabetes treatment, such as insulin. *See State v. Nimer*, 246 P.3d 1194, 1195, 1199 (Utah Ct. App. 2010) (officer had probable cause to arrest for heroin possession and had reasonable belief that defendant's syringes were not for legitimate use given that they were not accompanied by medicine or kit consistent with legitimate medical use and resembled needles used by another person to inject heroin nearby); *Commonwealth v. Landry*, 779 N.E.2d 638, 641-42 (Mass. 2002) (possessing hypodermic needle is not necessarily a crime; possessing one in setting inconsistent with legitimate use ordinarily establishes probable cause that possession was illegal, while possessing one with facially valid exchange program membership card would not justify arrest).

Moreover, while diabetics often have needle puncture marks, it is far less certain that they would have "track marks." A "track mark" refers to scarring caused by repeated injection into the same *vein*. *See, e.g., People v. Nere*, 2017 IL App (2d) 141143, ¶ 16 (forensic pathologist distinguishing, on one vein, track mark scarring from repeated use of same vein and, on different vein, fresh needle-puncture wounds), *PLA allowed* (No. 122566 Nov. 22, 2017). Diabetics inject insulin subcutaneously, not into a vein. *Cf.* 59 Ill. Admin. Code §§ 116.10,

116.50(b) (prohibiting non-licensed staff from administering medication by injection, with two exceptions, including "subcutaneous insulin administration by insulin pen"). In fact, the paramedic report, though also noting that defendant reported being a diabetic, IC6, stated that the "[c]rew" observed "marks on [defendant's] arms consistent with track marks from IV drug abuse," IC7.

Accordingly, the majority erred by discounting defendant's "track mark" and the syringe on the basis that these items "'are [al]so connected to a diabetic,'" A3; they are factors supporting probable cause to arrest for DUI drugs.

**2. The four indicia of illicit drug use, alone, provided probable cause to believe that defendant was under the influence of drugs regardless of defendant's statement that he was a diabetic and Officer Beaty's lack of training or experience in recognizing symptoms of drug use.**

In light of these four indicia of illicit drug use, a reasonably cautious person would believe that defendant had committed DUI drugs. A prudent person arriving at the scene would quickly deduce that something was amiss with defendant. At 11:10 a.m., defendant was in and out of consciousness while sitting in the driver's seat of his running vehicle, which was stopped partially on a roadway. C2; R22-24; IC7. He struggled to respond to verbal commands to exit his car, and he demonstrated confusion by misidentifying which roadway he was on. R22, 24; IC7. Paramedics described that defendant was sweating, had a heartrate of 144, and had pinpoint pupils. R31; IC7; *see also supra* note 4. Beaty observed that defendant appeared "tired and lethargic." R25. These circumstances gave Officer Beaty ample reason to suspect that defendant was suffering from a medical condition and/or was intoxicated.

More specifically, Beaty reasonably deduced that the probable source(s) of defendant's symptoms were drugs and/or a diabetes-related medical problem. R29 (defendant did not smell of alcohol); R27; IC6 (defendant mentioned that he was a diabetic). And based on the four indicia of illicit drug use — the baggie containing suspected drugs, the burnt can with illicit-drug residue, the uncapped and used syringe, and the fresh "track mark" — drug intoxication was probable (whether or not in combination with a diabetes-related medical problem), especially because some of the evidence indicated *recent* illicit drug use. *See People v. Kavanaugh*, 2016 IL App (3d) 150806, ¶ 31 (defendant's erratic driving, strong odor of burnt cannabis in her vehicle, and presence of cannabis and paraphernalia in vehicle provided probable cause to believe defendant driving under the influence of cannabis); *cf. Commonwealth v. Grimes*, 648 A.2d 538, 542-43 (Pa. Super. Ct. 1994) (while investigating suspected DUI, police observed in vehicle white powder, flattened beverage can, and spoon, providing probable cause "to believe that these items were evidence of a crime so as to justify a search and seizure").

The majority justified the rescission in part on Officer Beaty's lack of training and experience in identifying drug use. A3-4. In particular, the majority cited *Shelton* for the principle that training and experience are necessary to understand the effects of drugs on people. A3 (citing *Shelton*, 303 Ill. App. 3d at 925). However, the majority erred in relying on *Shelton* because probable cause existed here independent of any interpretation of defendant's symptoms.

It requires no special expertise to know that a medical problem and/or an intoxicating substance is likely involved when a person is in and out of

consciousness, struggling to respond to verbal commands, sweating and lethargic, confused about his location, and has a high heart rate and pinpoint pupils, at 11:10 a.m, R22, 24-25, 27, 31; IC6-7. And regardless of Beaty's lack of training in interpreting these physical symptoms, he could reasonably conclude that drug intoxication was probable due to four indicia of illicit drug use —some reflecting *recent* use — found in defendant's car and on his person. *See* R25-27 (Beaty testified that he arrested defendant for DUI drugs due to positive field test on burnt can's residue, uncapped syringe, and baggie); *see also People v. Jackson*, 331 Ill. App. 3d 158, 164-65 (4th Dist. 2002) (given presence of several factors indicative of drug use, question of whether probable cause existed to believe vehicle contained further contraband "becomes a commonsense decision and not a decision hinged on specialized training or knowledge").

In other words, the several pieces of physical evidence that pointed to illicit drug use (some reflecting *recent* use) provided probable cause to arrest defendant for DUI drugs. Defendant's statement that he was a diabetic did not vitiate probable cause because whether or not his diabetes (if true) also played a role in his physical symptoms, the evidence of illicit drug use made it reasonable to conclude that defendant was under the influence of drugs. In fact, that evidence meant that Beaty's analysis of defendant's physical symptoms was beside the point, so the *Shelton* principle that only experts can identify the effects of illicit drug use was irrelevant here. Thus, reversal of the lower courts' judgments is appropriate under the totality of the circumstances, because either defendant's alleged diabetes plus Officer Beaty's inexperience did not constitute a prima facie case for rescission in light of the physical evidence of illicit drug use,

or the evidence of drug use countered the prima facie case so that defendant did not satisfy his ultimate burden of proving that the arrest was unjustified. *See Wear*, 229 Ill. 2d at 560.

### B. Alternatively, a Reasonably Cautious Person Would Believe that Defendant Was Under the Influence of Drugs Based on Four Indicia of Illicit Drug Use Plus Defendant's Physical Symptoms.

In the alternative, if this Court concludes either that the probable cause determination cannot be completely divorced from interpreting defendant's physical symptoms or that the four indicia of illicit drug use alone were insufficient to provide probable cause to believe that defendant had committed DUI drugs, then this Court should decline to extend *Shelton* to the probable cause context or disapprove it entirely. And, with *Shelton* inapplicable, defendant's physical symptoms — even to the eye of a non-expert — supported, along with the four indicia of illicit drug use, a reasonable belief that defendant was under the influence of drugs when arrested.

#### 1. A police officer need not have the training or experience to qualify as an expert witness to have probable cause to believe a person is under the influence of drugs.

Citing *Shelton*, the majority deemed Officer Beaty an unreliable evaluator of whether there was probable cause to conclude that defendant was under the influence of drugs due to his lack of training and experience in recognizing drug use. A3-4. The majority acknowledged that *Shelton* found error in a police officer's *opinion testimony at a criminal jury trial* that the defendant was under the influence of drugs because the officer lacked the training and experience *to qualify as an expert witness*, but decided that *Shelton* was "equally applicable in

the probable cause context." A3. But *Shelton* should not be extended to probable cause hearings in light of characteristics of the probable cause inquiry, precedent about arrests for both drug-related and analogous crimes, and policy considerations.

First, the nature of the probable cause inquiry cannot be reconciled with the majority's extension of *Shelton*. To be sure, an officer's training and experience can help her determine whether there is probable cause to arrest. *See, e.g., Smith*, 95 Ill. 2d at 419-20; *see also United States v. Ortiz*, 422 U.S. 891, 891-92, 897 (1975) (in deciding which cars to conduct "routine immigration search" at traffic checkpoint near border, for which there must be probable cause, officers are "entitled to draw reasonable inferences from [the] facts in light of their knowledge of the area and their prior experience with aliens and smugglers"); LaFave, *supra*, § 3.2(c). Yet the training and experience of a particular officer cannot be determinative in a subsequent hearing challenging probable cause, because the probable cause test is objective, not subjective. *See, e.g., Beck v. Ohio*, 379 U.S. 89, 97 (1964) (subjective good faith of arresting officer does not establish probable cause); *Wear*, 229 Ill. 2d at 563 (probable cause exists "when the facts known to the officer at the time of the arrest are sufficient to lead a *reasonably cautious person* to believe that the arrestee has committed a crime") (emphasis added); *see also Horton v. California*, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."); LaFave, *supra*, § 3.2(b).

In the end, the propriety of the arrest centers not on the belief — informed by experience — of the arresting officer, but on whether the facts known to the officer reasonably justified the conclusion that a crime probably occurred. Probable cause cannot depend solely on the number of years a person has been a police officer; even an experienced officer must explain a justification for an arrest so that a reasonable prudent person can understand it. *Commonwealth v. Thompson*, 985 A.2d 928, 935 (Pa. 2009); LaFave, *supra*, § 3.2(c). Conversely, an arresting officer's *in*experience should not render him categorically unable to discern that a suspect probably committed a drug-related offense. As the appellate court has put it,

> It is widely accepted an officer's factual knowledge based on law-enforcement experience is *relevant* in a determination of whether the officer had probable cause to perform a search. However, our research reveals no authority which states the absence of an officer's testimony regarding his law enforcement experience is *fatal* to his determination of probable cause.

*Jackson*, 331 Ill. App. 3d at 164 (emphasis in original and citation omitted).

Yet in extending *Shelton* to the probable cause context, the majority concluded just that, stating that Beaty could not "form a reliable opinion" on whether defendant was under the influence of drugs rather than just suffering from a diabetes-related medical problem because of his lack of training and experience. A4. By branding Beaty unreliable due to his inexperience, the majority wrongly moved the focus from the objective, known facts at the scene to Beaty's subjective experience. *See Wear*, 229 Ill. 2d at 563 (probable cause exists when known facts "are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.").

Not only is the majority's analysis incompatible with the objective nature of the probable cause test, it cannot be squared with the fact that the probable cause standard does not demand perfection. "The law requires only that insofar as police officers are allowed the luxury of making mistakes in arresting a suspect, 'the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability.'" *People v. Moody*, 94 Ill. 2d 1, 8 (1983) (quoting *Brinegar*, 338 U.S. at 176); *see also Smith v. Ball State Univ.*, 295 F.3d 763, 766, 769-70 (7th Cir. 2002) (officers had probable cause to arrest driver for DUI because he was unresponsive and incoherent and drove onto sidewalk, even though driver was actually in diabetic shock). To invalidate an arrest because the arresting officer did not have the training or experience to qualify as an expert witness, in effect, imports a higher reasonable-doubt-like standard into the arrest phase that is incompatible with the long-established probable cause standard. *See, e.g., Moody*, 94 Ill. 2d at 7 (probable cause standard does not require arresting officers to possess sufficient evidence to convict).

Given these characteristics of the probable cause inquiry, it is unsurprising that courts have found probable cause to believe drug-related offenses had occurred without requiring, or in some cases even discussing, whether the officer or tipster making the key observations could qualify as an expert in recognizing drug use or, analogously, in identifying drugs themselves. For example, the Fourth District has concluded that an officer need not have sufficient training and experience to qualify as an expert in drug recognition to form probable cause that the suspect has committed a drug-related crime. *People v. Symmonds*, 18

Ill. App. 3d 587, 598 (4th Dist. 1974) ("While in order to testify that a substance is a narcotic at a trial, a witness should testify to his qualifications, i.e., that he had been trained to recognize the substance, that he has had so many number of years as a policeman having extensive experience with it, etc., this does not appear to be necessary when the issue is merely the validity of the search or seizure."); *see also State v. Rothenberger*, 885 N.W.2d 23, 34 (Neb. 2016) (holding that neither officer certification as drug recognition expert (DRE) nor completion of full DRE protocol is prerequisite to probable cause to arrest for DUI drugs); *State v. Reis*, 842 N.W.2d 845, 848-49, 852 (N.D. 2014) (without discussing experience of two officers, finding they had probable cause to search vehicle for controlled substances given reports of erratic driving; observation that suspect had glossy eyes, slow mannerisms, slurred speech; and discovery of several loose pills on floorboards, one of which officer verified was controlled substance by "call[ing] the commander's desk" and describing pill); *State v. Cope*, 819 P.2d 1280, 1283 (Mont. 1991), *overruled on other grounds by State v. Herman*, 188 P.3d 978, 981 & n.1 (Mont. 2008) (finding probable cause for search warrant when officer personally observed marijuana plants on two occasions despite warrant application not alleging officer had any training or experience in identifying marijuana); *State v. Paszek*, 184 N.W.2d 836, 838-39, 841-42 (Wis. 1971) (finding probable cause to arrest based on tip by person to whom defendant offered to sell marijuana, who described substance as looking like marijuana that she had seen previously; noting tipster's inability to qualify as expert not determinative because scientific accuracy not required to establish probable cause). These holdings directly contradict the majority's conclusion that Officer

Beaty's lack of training and experience prevented him from reliably concluding that defendant probably was under the influence of drugs.

And although the majority attempted to limit its holding to the particular facts of this case, A4, there is no reasoned basis upon which a court could decline to apply the rationale to a much wider array of offenses that may require specialized evidence or expert testimony at trial. *See, e.g., Bodzin v. City of Dallas*, 768 F.2d 722, 724-25 (5th Cir. 1985) (officer need not ascertain property line from official sources to form probable cause to arrest for criminal trespass); *United States v. Salinas-Calderon*, 728 F.2d 1298, 1301-02 (10th Cir. 1984) (officer had probable cause to arrest even though he did not know with certainty that there had been violation of immigration laws, in part due to language barrier); *United States v. Truitt*, 521 F.2d 1174, 1175, 1177-78 (6th Cir. 1975) (officer had probable cause to seize sawed-off shotgun before determining whether it was properly registered). The error in the majority's extension of *Shelton* to the probable cause context is especially dangerous because its rationale would routinely undercut arrests for a multitude of specialized or complex criminal offenses, in the face of this contrary precedent.

Moreover, even if extension of *Shelton* were confined to probable cause determinations in only the drug — or even DUI drug — context, the majority's decision to find the inexperienced and untrained officer incapable of concluding that a suspect is probably under the influence of drugs (at least when a suspect offers an alternate explanation) has two adverse practical consequences on law enforcement that are better avoided. First, the majority's analysis would force police departments to require an extensive level of training and experience for its

officers patrolling for traffic and DUI violations. But such a policy is problematic because departments may lack the resources to provide such extensive drug training for all officers; departments have good reason to assign more experienced officers to investigate more serious crimes; and inexperienced officers would have no way to gain the requisite experience without making many potentially invalid arrests in the interim. *See Shelton*, 303 Ill. App. 3d at 917, 926-27 (officer with six years' experience, some training in detecting drug users and some experience around drug users not qualified to render expert opinion about whether suspect was under the influence of drugs). Relatedly, courts are ill-suited to ascertain precisely how much such training is sufficient. Second, the majority's analysis encourages any impaired driver to claim that his condition is the result of diabetes or some other medical condition because doing so would guarantee that his or her arrest would be invalidated if the arresting officer happens to be inexperienced or untrained. By requiring such a high level of training and experience of police in this context, the majority's rationale threatens the enforcement of DUI drugs and, potentially, other drug-related offenses.

**2. Regardless, this Court should hold that a witness need not be qualified as an expert to opine on whether a person was under the influence of drugs.**

In any event, this Court should disapprove *Shelton* as unpersuasive because it is a lone appellate court decision that provides no authority for its holding that only an expert may opine whether a person is under the influence of drugs. Rather, drug intoxication, similar to alcohol intoxication and mental

incapacity, is a subject that is not beyond the experience of the average juror that need not be limited to expert testimony.

A lay witness can provide opinion testimony if such opinion is "(a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." *People v. Thompson*, 2016 IL 118667, ¶ 39 (citing Ill. R. Evid. 701). A witness can testify as an expert "if that person's experience and qualifications afford him or her knowledge that is not common to laypersons, and where such testimony will aid the fact finder in reaching its conclusion." *People v. Mertz*, 218 Ill. 2d 1, 72 (2005); *see also* Ill. R. Evid. 702. Thus, an opinion about whether a person is under the influence of drugs should be limited to expert testimony only if it is a subject beyond the experience of the average juror. *See People v. Cloutier*, 156 Ill. 2d 483, 501 (1993).

Here, the majority cited nothing more than the twenty-five-year-old *Shelton* case as authority for its conclusion that recognizing drug intoxication is beyond the knowledge of the average juror. A3-4. But this Court has never addressed whether lay opinion testimony on drug intoxication is permissible, and it is not bound by appellate court precedent. *See, e.g., In re Marriage of Sappington*, 106 Ill. 2d 456, 463-64 (1985). Moreover, *Shelton* is the only appellate decision to explicitly so hold, and its holding rests upon a shaky legal foundation.

*Shelton* based its holding on a single case, *People v. Jacquith*, 129 Ill. App. 3d 107 (1st Dist. 1984). 303 Ill. App. 3d at 925-26. Jacquith was convicted of

DUI while under the combined influence of alcohol and drugs. *Jacquith*, 129 Ill. App. 3d at 108. The appellate court noted the lack of Illinois precedent about "the degree of evidence" required to "prov[e] intoxication by drugs while driving" and cited Texas and California cases that have "weighed the experience of the officers to determine whether they were competent to testify" about whether the defendant was under the influence of drugs when arrested. *Id.* at 114-15. Ultimately, the court reversed because the evidence of guilt — solely consisting of the testimony of the two police officers who had little to no experience or training in recognizing drug use — was insufficient. *Id.* at 115.

*Shelton* cited only *Jacquith* for two key principles, including that (1) the effects of drugs are not commonly known so that training and experience are necessary to understand them; and (2) a police officer needs training and experience in how to detect drug users to be qualified to give opinion testimony on whether the defendant was under the influence of drugs. 303 Ill. App. 3d at 925. But just because lay opinion may be insufficient to prove that defendant was under the influence of drugs beyond a reasonable doubt, it does not follow that expertise is needed to recognize and to be qualified to offer opinion testimony on drug intoxication. *Cf. People v. Banks*, 17 Ill. App. 3d 746, 754 (1st Dist. 1974) (after noting that lay witnesses may provide opinion testimony on person's mental condition, it was trial court's task to determine whether that testimony was sufficient to demonstrate person was sane).

Indeed, because *Jacquith* addressed a sufficiency-of-the-evidence claim rather than a claim challenging the admissibility of drug intoxication opinion testimony by a lay witness, any language therein is, at most, nonbinding obiter

dicta with respect to this latter issue. *See People v. Williams*, 204 Ill. 2d 191, 206-07 (2003) (defining "obiter dicta" as "comments in a judicial opinion that are unnecessary to the disposition of the case" that might be binding only if from a court of last resort on an issue for which that court has issued no contrary decision). *Jacquith* is, at most, appropriately cited for the uncontroversial premise that a police officer's testimony about drug intoxication is entitled to more weight — and may alone be sufficient to prove DUI drugs beyond a reasonable doubt — if he has more extensive training or experience in detecting drug use. Apart from misplaced reliance on *Jacquith*, *Shelton* provided *no* authority for its holding that lay opinion testimony about drug intoxication was inadmissible. In fact, *Shelton* overlooked precedent to the contrary. *People v. Davis*, 6 Ill. App. 3d 622, 632 (4th Dist. 1972) (lay opinion testimony on drug intoxication admissible "[w]ith proper foundation").

The appellate majority below only cited *Shelton*'s dicta and rejected out-of-hand the State's argument that drug use is pervasive enough that the average person has common knowledge about drug use and its effects as "[an] exaggerat[ion]" and "def[ying] logic and border[ing] on insulting." A4. But the majority's rebuke is inconsistent with data on drug intoxication in the United States or the similar pervasiveness of other subjects — alcohol intoxication and mental illness — on which this Court has long permitted lay opinion testimony.

In this context, drug use can involve ingestion of either illicit drugs or prescription drugs, and a defendant can be convicted of DUI drugs despite having a legal prescription for the substance ingested if the drug rendered the defendant incapable of driving safely. *See, e.g., Ciborowski*, 2016 IL App (1st) 143352, ¶ 79

(multiple prescription drugs, including Ambien); *People v. Workman*, 312 Ill. App.3d 305, 307 (2d Dist. 2000) (prescription lorazepam); *Shelton*, 303 Ill. App. 3d at 922 (prescription "Tylenol 3 with codeine"); *see also* 625 ILCS 5/11-501(b) (that defendant is legally entitled to use drug not a defense against charge for violating this section). And according to the National Center for Health Statistics (NCHS), in 2013-2014, a large percentage of adults had taken at least one prescription drug in the last month: 36.5% of persons aged 18-44, 69.6% of persons aged 45-64, and 90.8% of persons 65 and older. *See* A18. As for unauthorized drug ingestion, in 2015, 10.1% of people aged twelve and over had used an illicit drug in the past month, while 2.4% had misused a prescription psychotherapeutic drug.[8] A19.

In comparison, in 2015, 51.7% of persons aged 12 and over had used alcohol in the past month, while 24.9% of that population had used alcohol in the past month in a way characterized as binge use, meaning five drinks for men and four drinks for women "within a couple of hours." A19 & A20 n.4. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) defines binge drinking with the same parameters, Erin Price, Comment, *The Model Penal Code's New Approach to Rape and Intoxication*, 48 U. Pac. L. Rev. 423, 438 & n.164 (2017) (citing NIAAA, *Drinking Levels Defined*, *available at*: http://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking), and also defines such binge drinking as "a pattern of drinking that brings blood

[8] The report defines "illicit drug" as including marijuana, cocaine (including crack), heroin, hallucinogens, inhalants, methamphetamine, or the misuse of prescription pain relievers, tranquilizers, stimulants, and sedatives; it defines "misuse of prescription psychotherapeutic drugs" as use of such drugs in any way not directed by a doctor. *See* A19 &A20 n.1.

alcohol concentration" levels to .08, *see Drinking Levels Defined*, *supra*, the legal limit for alcohol concentration in a bodily substance for drivers in Illinois, 625 ILCS 5/11-501(a)(1). Providing a second point of comparison, according to the Center for Behavioral Health Statistics and Quality (CBHSQ), also in 2015, 17.9% of persons aged eighteen and older had a mental illness in the past year. *See* A23-24.[9]

This data, although not precisely correlated to the conduct covered by the DUI statute, reflects the relative incidence of drug intoxication on one hand and alcohol intoxication and mental illness on the other hand. Similar percentages of adults have ingested at least one prescription or illicit drug as compared to those who have ingested any alcohol in the last month. And more importantly, similar percentages of adults have either engaged in binge drinking (*i.e.*, ingested approximately enough alcohol to surpass the proscribed .08 statutory threshold) or suffered from a mental illness as compared to the amount that can be roughly estimated to have ingested a drug in a manner that would satisfy the DUI statute (*i.e.*, ingested any amount of a controlled substance, intoxicating compound or methamphetamine as listed in specified statutes; ingested a qualifying amount of cannabis; or ingested any drug (including a legally prescribed drug), perhaps along with alcohol, that rendered them incapable of driving safely). *See* 625 ILCS 5/11-501(a).

[9] Mental illness is defined as having any mental, behavioral, or emotional disorder in the past year that satisfied the criteria of the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition (DSM-IV), excluding developmental and substance use disorders. *See* A23 & n.4, A24; *see also In re Det. of New*, 2014 IL 116306, ¶ 37 (relying on DSM-5 when concluding certain diagnosis sufficiently novel to be subject to *Frye*).

The similarity in pervasiveness between drug intoxication on the one hand and alcohol intoxication and mental illness on the other reflects that the average juror has had comparable opportunities to gain experience with or observe all three, warranting similar treatment of the three topics in the lay opinion testimony context. And this Court has long permitted lay opinion testimony on mental-health-related issues, *People v. Williams*, 38 Ill. 2d 115, 123 (1967) (layperson may generally give opinion testimony about person's sanity when based on his or her personal observations of that person) (citing *People v. Patlak*, 363 Ill. 40, 44 (1936) (generally, non-experts may give opinion on the mental condition or capacity of person based on observations)); *Butler v. O'Brien*, 8 Ill. 2d 203, 210 (1956) (permitting lay testimony to prove lack of testamentary capacity), and alcohol intoxication, s*ee, e.g, City of Aurora v. Hillman*, 90 Ill. 61, 66-67 (1878) (sanity and alcohol intoxication are facts to which witness can testify based on observation); *see also People v. Robinson*, 368 Ill. App. 3d 963, 964, 978 (1st Dist. 2006) (in DUI alcohol case, noting that "a significant number of Illinois cases hold[ ] that lay opinion testimony regarding sobriety is admissible").

Thus, this Court should hold that lay opinion testimony on whether a person is under the influence of drugs is permissible. The sole authority the majority cited for its contrary conclusion was a single ill-founded appellate court decision, *Shelton*. The comparable prevalence of drug intoxication and two subjects for which lay opinion testimony is allowed — alcohol intoxication and mental incapacity — justifies disapproving *Shelton* and recognizing that drug

intoxication is a subject that is not beyond the experience of the average juror. *See Cloutier*, 156 Ill. 2d at 501.[10]

Moreover, such a narrow ruling need not disturb *Jacquith*'s holding that testimony by untrained and inexperienced officers alone is insufficient to prove beyond a reasonable doubt that a defendant is under the influence of drugs. Relatedly, such lay opinion testimony would appropriately be subject to cross-examination about the witness's lack of or limited experience in detecting drug use, *see People v. Mister*, 2016 IL App (4th) 130180-B, ¶ 78, and some trials

[10] Nationally, the jurisdictions that have addressed the question are split on the issue, with the majority permitting lay opinion testimony, in some cases noting that some foundation of experience must first be laid. *Jackson v. State*, 440 So. 2d 1181, 1183-84 (Ala. Crim. App. 1983) (lay opinion testimony admissible); *People v. Williams*, 751 P.2d 395, 415-16 (Cal. 1988) (in bank) (lay opinion testimony admissible, with foundation); *People v. Souva*, 141 P.3d 845, 850 (Colo. App. 2005) (same); *Harris v. District of Columbia*, 601 A.2d 21, 23-24 (D.C. 1991) (lay opinion testimony admissible); *Williams v. State*, 710 So. 2d 24, 25, 28-29 (Fla. Dist. Ct. App. 1998) (same); *Matthews v. State*, 511 A.2d 548, 553 (Md. Ct. Spec. App. 1986) (lay opinion testimony admissible, with foundation); *State v. Lesac*, 437 N.W.2d 517, 518, 519 (Neb. 1991) (lay opinion testimony admissible), *abrogation on other grounds recognized by State v. Estes*, 472 N.W.2d 214, 215-16 (Neb. 1991); *State v. Patterson*, 552 S.E.2d 246, 256 (N.C. App. Ct. 2001) (same) (citing *State v. Lindley*, 210 S.E.2d 207, 209-10 (N.C. 1974) (same)); *State v. Brett*, 892 P.2d 29, 42 (Wash. 1995) (en banc) (lay opinion testimony admissible, with foundation); *see also State v. Johnson*, 196 N.W.2d 717, 719-20 (Wis. 1972) (layperson with experience ingesting LSD can give opinion testimony to identify substance as LSD); *but see State v. Nobach*, 46 P.3d 618, 621-23 (Mont. 2002) (requiring qualification as expert to give opinion testimony on whether person under influence of drugs); *Commonwealth v. Gause*, 164 A.3d 532, 539 (Pa. Super. Ct. 2017) (same); *Smithhart v. State*, 503 S.W.2d 283, 285 (Tex. Crim. App. 1973) (same); *State v. Rifkin*, 438 A.2d 1122, 1124-25 (Vt. 1981) (same); *see also Commonwealth v. Gerhardt*, 81 N.E.3d 751, 754, 760-61 (Mass. 2017) (officer must qualify as expert to give opinion on whether driver under influence of marijuana because effects vary greatly among people and effects not commonly known); *State v. Bealor*, 902 A.2d 226, 233-34 (N.J. 2006) (State failed to provide any proof that level of general awareness of symptoms of marijuana intoxication has increased to justify overturning old precedent that topic not properly addressed by lay opinion testimony) (citing *State v. Smith*, 276 A.2d 369, 374-75 (N.J. 1971)).

might involve particular circumstances warranting expert testimony, *see, e.g., People v. Vanzandt*, 287 Ill. App. 3d 836, 845 (5th Dist. 1997) (noting officer not qualified to give expert testimony on "the complex physiological effects that alcohol produces in diabetics" at DUI trial).

### 3. The four indicia of drug use, plus defendant's unusual physical symptoms, provided probable cause to believe that defendant was under the influence of drugs.

If this Court determines that analysis of defendant's physical symptoms is necessary, it should conclude that those symptoms, among the totality of the circumstances, would lead a reasonably cautious person to believe that defendant was under the influence of drugs when arrested. *See Wear*, 229 Ill. 2d at 563. Defendant exhibited multiple unusual physical symptoms at 11:00 in the morning: he was in and out of consciousness, struggling to respond to verbal commands, sweating and lethargic, confused about his location, with a high heart rate and pinpoint pupils. R22, 24-25, 27, 31; IC6-7. These physical symptoms pointed toward possible drug intoxication. *See, e.g., Ciborowski*, 2016 IL App (1st) 143352, ¶¶ 1, 80 (probable cause to arrest for DUI drugs supported by signs defendant was under the influence of drugs, including lethargic movements, "difficulty keeping his eyes open and a sleepy appearance," dilated pupils, and giving conflicting answers to officer about where he lived and how accident had occurred); *Ochana v. Flores*, 347 F.3d 266, 270-71 (7th Cir. 2003) (officers had probable cause to search vehicle for evidence of drugs or other intoxicating substances because they had reason to believe that suspect was unlawfully impaired: he passed out for several minutes in driver's seat of vehicle in

intersection and was initially unresponsive to cars honking or officers shaking and talking to him).

The several indicia of recent illicit drug use coupled with these physical symptoms provided probable cause to believe that defendant was under the influence of drugs at the time of arrest. *See, e.g., Commonwealth v. March*, 154 A.3d 803, 810-11 (Pa. Super. Ct. 2017) (probable cause to arrest for DUI after vehicle accident given that defendant was unresponsive and pale, and police found in vehicle a hypodermic needle and bags containing powder that field-tested positive for heroin). This Court should reverse the lower courts' judgments.

* * * * *

In sum, the majority found that there was no probable cause to conclude that defendant was under the influence of drugs due to defendant's statement that he was a diabetic and reliance on an expansion of *Shelton*, namely that only those with sufficient training and experience to qualify as expert trial witnesses can recognize the effects of drug use. This Court should reverse. The majority wrongly discounted four indicia of illicit drug use, which created probable cause to conclude that defendant was under the influence of drugs apart from interpreting the cause of his symptoms. Alternatively, the four indicia of drug use *plus* defendant's physical symptoms provided probable cause, and consideration of these symptoms is appropriate — even by a non-expert police officer —because *Shelton* does not apply here. That case should not be extended to probable cause determinations in light of the nature of the probable cause inquiry, precedent about arrests for both drug-related and analogous crimes, and policy

considerations. Regardless, *Shelton* should be disapproved (and lay opinion testimony on drug intoxication should be permitted) because drug use is within the experience of the average juror and comparable to two other subjects for which lay opinion testimony is already permitted: alcohol intoxication and mental illness. On de novo review, this Court should reverse the appellate court's judgment granting defendant's petition to rescind. *See Wear*, 229 Ill. 2d at 561.

## CONCLUSION

For these reasons, the People of the State of Illinois respectfully ask this Court to reverse the Third District's judgment affirming the circuit court's order granting defendant's petition to rescind summary suspension.

December 21, 2017

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

LEAH M. BENDIK
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-5029
LBendik@atg.state.il.us

*Counsel for Plaintiff-Appellant*
*People of the State of Illinois*

**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 containing the Rule 341(d) cover, the Rule 341(h)(1) 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(a) is 35 pages.

/s/ Leah M. Bendik
LEAH M. BENDIK
Assistant Attorney General

## TABLE OF CONTENTS TO THE APPENDIX



---

[11] This Court may take judicial notice of this report because it is a public document. *See Cordrey v. Prisoner Review Bd.*, 2014 IL 117155, ¶ 12 n.3 (taking judicial notice of Illinois Department of Corrections records because they are "public documents"); *People v. Matkovick*, 101 Ill. 2d 268, 270-71 (1984) (denying motion to strike from brief reports from United States Department of Justice Drug Enforcement Agency about "[l]ook-[a]like [d]rugs" even though not in record on appeal because they were public records of which judicial notice could be taken); *see also* A17 (submitting report to Congress and President and noting complete report is available online) (citing Section 308 of the Public Health Service Act, *codified at* 42 U.S.C. § 242m(a)(1)(D), (a)(2).

[12] This Court may take judicial notice of this report, which notes on its first page that, "All material appearing in this report is in the public domain." *See* A22; *see also supra* note 10; 42 U.S.C. § 290aa-4(b) (requiring annual data collection by CBHSQ on mental illness and substance abuse).

2017 IL App (3d) 160025
Appellate Court of Illinois,
Third District.

The PEOPLE of the State of Illinois, Plaintiff–Appellant,
v.
Ahmet GOCMEN, Defendant–Appellee.

Appeal No. 3-16-0025
|
Opinion filed March 29, 2017
|
Modified Upon Denial of Rehearing May 15, 2017

**Synopsis**

**Background:** Motorist filed petition to rescind the summary suspension of his driver's license that had occurred after he was charged with driving under the influence (DUI) of drugs and improper lane usage. The 12th Judicial Circuit Court, Will County, Nos. 15–DT–1284, 15–TR–72055, and 15–TR–72056, Carmen Goodman, J., granted petition. State appealed.

**[Holding:]** The Appellate Court, McDade, J., held that police officer lacked probable cause to arrest motorist for DUI of drugs, and thus motorist was entitled to have the summary suspension rescinded.

Affirmed.

Schmidt, J., filed dissenting opinion.

Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, Circuit Nos. 15–DT–1284, 15–TR–72055, and 15–TR–72056, Honorable Carmen Goodman, Judge, Presiding.

**Attorneys and Law Firms**

James Glasgow, State's Attorney, of Joliet (Mark A. Austill, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

No brief filed for appellee.

***568 OPINION**

JUSTICE McDADE delivered the judgment of the court, with opinion.

****425** ¶ 1 The trial court granted the petition to rescind statutory summary suspension filed by defendant, Ahmet Gocmen. The State appealed, arguing that the trial court erred in granting the petition. We affirm.

¶ 2 FACTS

¶ 3 Defendant was charged with driving under the influence of drugs or combination of drugs (625 ILCS 5/11–501(a)(4) (West 2014)) and improper lane usage (625 ILCS 5/11–709 (West 2014)). His driver's license was summarily suspended. Defendant filed a petition to rescind statutory summary suspension, which alleged the officer did not have reasonable grounds to believe defendant had been in control of the vehicle while under the influence of alcohol or drugs.

¶ 4 A hearing was held on defendant's petition. The sole witness was Officer Adam Beaty who testified that he had been a police officer for the Village of Shorewood for two years. He had never received any driving under the influence (DUI) drug training, though he had received DUI alcohol training. On September 14, 2015, at 11:10 a.m., he responded to a call for an unconscious person in a vehicle who was possibly having a seizure. When he arrived on the scene, Beaty noticed a Ford Explorer with its passenger side tires on the grass and part of the vehicle still on the road. Paramedics were already present, attending to defendant.

¶ 5 While on the scene, Beaty observed a Red Bull can on the passenger's side of defendant's vehicle. The can "had been either cut or tore in half, with burn marks on the * * * interior [of] the can." On the inside, bottom of the can, Beaty noticed "a brown, tanish residue." Beaty performed a "NARK Cocaine ID Swipe" to test for drugs in the can. He was trained to perform the NARK test, but had never performed a NARK test on any evidence prior to this time. He took the test out of the package and touched it to the bottom of the can. The test then turned blue. He

had been taught during his training that the blue color indicated the presence of opiates. Beaty also found a used one millimeter syringe in the vehicle. A brown, granular substance was also found in a small baggy in defendant's wallet, for which test results were not available at the time of the hearing. Beaty was asked whether he made "any observations of [defendant] before he left the scene." Beaty stated, "Other than what paramedics told me, no." Defendant never performed any field sobriety tests.

¶ 6 Beaty talked to the paramedics about defendant. He asked if there was any indication of intoxication or alcohol. The paramedics indicated that there was not. The paramedics did tell Beaty that there was a fresh track mark on defendant's arm where a needle would have been used. The paramedics also told Beaty that defendant was sweating, had pinpoint pupils, and had a heart rate of 144 beats per minute. Defendant was also in and out of consciousness.

¶ 7 Beaty met defendant at the hospital. He did not make any observations of defendant at the hospital other than that he was tired and lethargic. Defendant indicated to Beaty that he was diabetic. Beaty arrested defendant for DUI of drugs. He based the arrest on the NARK swipe, the syringe, and the baggy with the granular substance in defendant's wallet.

¶ 8 At the end of Beaty's testimony, the defense rested. The State then moved for a directed finding. The court denied the motion and stated, "The burden now shifts to ***569 **426** the State." The State did not provide any evidence.

¶ 9 In granting defendant's petition to rescind, the court stated:

> "One of the things, unlike alcohol—and the case law's [*sic*] very clear on this—to show intoxicating or drugs, it can't be based purely on lay testimony.
>
> Here, the witness must be qualified still as an expert and, and must establish the effects of the drugs, which I, I just did not hear. I heard about how he could test for the presence of, of drugs. And here we have that it turned blue in color.
>
> In addition, we still have the other factors that we must look at. And we must look at what the officer observed. Officer said that he talked to the paramedics, but, however, by the time he arrived on scene, the paramedics were still there, the petitioner was still in the vehicle and seemed to be nonresponsive.
>
> But the one thing, there was some conversation between the [defendant] and the officer because the officer was able to gauge that the [defendant] indicated that he was diabetic.
>
> Syringes and such are so connected to a diabetic, depending on the nature of your diabetes. Track marks probably would be found if you have to take insulin shots every single day.
>
> So, the officer did not base his arrest on what he observed outside of he found a syringe and the can. * * *
>
> * * *
>
> The dispatch even was a possible seizure. Even the paramedics, according to the officer's testimony, indicated they didn't even smell any alcohol.
>
> Even if we found that the officer had some experience, where he testified he had no experience and training other than how to test for possible presence of a drug, did this particular individual take that particular drug, was that in their system, and not related to him being a diabetic, and did that have, having an accident? Clearly there was some issues with driving.
>
> But an officer must also show the [effects] of, of the drugs on this individual that he found, and none of that was done."

## ¶ 10 ANALYSIS

**[1]** ¶ 11 On appeal, the State argues that the trial court erred in granting defendant's petition to rescind his statutory summary suspension. Specifically, the State calls our attention to the following facts: (1) the physical symptoms defendant was presenting, (2) the substance in defendant's wallet, (3) the syringe, (4) the track mark, and (5) the Red Bull can which tested positive for opiates. While we acknowledge these facts, they are insufficient to establish probable cause to arrest for DUI of drugs as the record confirms Beaty had no training or experience

that would enable him to distinguish between a diabetic reaction and a drug reaction.

¶ 12 At the outset, we note that defendant has not filed an appellee's brief. In spite of the lack of an appellee's brief, we will decide the present case on its merits because the record is simple and the issues are such that this court can easily decide them without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.2d 128, 133, 345 N.E.2d 493 (1976).

**[2]** **[3]** ¶ 13 The issue at this statutory summary suspension hearing was whether the officer had reasonable grounds to believe that the person was driving while under the influence of drugs. We use the probable cause analysis derived from the fourth amendment to answer this question. *Id.* "Probable cause to arrest exists when ***570** ****427** the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime." *Id.* at 563, 323 Ill.Dec. 359, 893 N.E.2d 631. Such a determination must be based on the totality of the circumstances. *Id.* at 564, 323 Ill.Dec. 359, 893 N.E.2d 631. When reviewing a trial court's decision on a petition to rescind, we apply a two-tier standard of review: the trial court's factual findings are reviewed under a manifest weight of the evidence standard, while the ultimate ruling whether rescission is warranted is reviewed *de novo*. *Id.* at 561–62, 323 Ill.Dec. 359, 893 N.E.2d 631.

¶ 14 Initially, we note that the State points to defendant's physical symptoms: that defendant was sweating, had pinpoint pupils, and had a heart rate of 144 beats per minute. However, Beaty admitted that he never observed defendant and only knew these symptoms by speaking to the paramedics. As Beaty never observed these symptoms and did not have any training or experience in DUI of drugs, his opinion as to the cause of said symptoms is tenuous at best. Moreover, Beaty further based his arrest on the residue found at the bottom of the Red Bull can. Though Beaty conducted a "NARK Cocaine ID Swipe" of the residue, which he said tested positive for opiates, we find it curious that a "Cocaine ID" test would be used to test for opiates when cocaine is not an opiate. See *People v. Vernor*, 66 Ill.App.3d 152, 154–55, 22 Ill.Dec. 891, 383 N.E.2d 699 (1978) (finding that opiates are narcotic drugs while cocaine is not). Therefore, it is unclear whether Beaty even administered the correct type of test, and if so, whether he administered it correctly.

¶ 15 Even accepting defendant's physical symptoms and the fact that the Red Bull can tested positive for opiates, we agree with the trial court that Beaty lacked probable cause to believe that defendant was *under the influence* of such drugs. We emphasize that defendant told Beaty that he was a diabetic. We also emphasize that Beaty admitted that he had no training in DUI of drugs. Viewing these two facts in conjunction with one another, we agree with the trial court's conclusion that Beaty would not have known the difference between a diabetic reaction and a reaction to drugs. The dissent states that "the trial court was in no position to judge defendant's credibility." *Infra* ¶ 25. However, the court *did not* make any credibility finding. Instead, the court reviewed the evidence in totality and determined (1) that defendant may have been a diabetic and (2) since the officer did not have any drug training or experience, he had no basis to conclude that defendant's state was based on drugs and not diabetes.

**[4]** ¶ 16 Though a layperson can testify regarding intoxication from alcohol, "the effects of drugs are not commonly known, and training and experience are necessary to understand their effects on people." *People v. Shelton*, 303 Ill.App.3d 915, 925, 237 Ill.Dec. 12, 708 N.E.2d 815 (1999). The dissent takes issue with our use of *Shelton*, as it "dealt with a police officer's ability to give his opinion at a criminal jury trial that defendant was under the influence of drugs" and did not concern the issue of whether or not the officer had probable cause at a statutory summary suspension hearing. *Infra* ¶ 24. Though the dissent is correct, we believe the principle is equally applicable in the probable cause context. In determining the reliability of an officer's probable cause determination, our supreme court has held that the "officer's experience and training in the detection of controlled substances" must be taken into account. *People v. Stout*, 106 Ill.2d 77, 87, 87 Ill.Dec. 521, 477 N.E.2d 498 (1985). Though the supreme court has declined "to ***571** ****428** define the exact number of training hours or employment years necessary to render an officer's belief reliable," (*id.*) we agree with the dissent that "[o]ne need not be a 20–year police veteran or drug expert." *Infra* ¶ 28. However, the record in the instant case is simply devoid of *any* evidence of training or experience. While we acknowledge the track mark on defendant's arm and the syringe found in his car, the trial court correctly held that both "are so connected to a diabetic." Finally, the substance found in defendant's wallet carries no evidentiary weight as test results were

not available at the time of the hearing. Accordingly, we uphold the rescission of defendant's statutory summary suspension.

¶ 17 In coming to this conclusion, we reject the State's reliance on *People v. Arrendondo*, 2012 IL App (3d) 110223, 359 Ill.Dec. 620, 967 N.E.2d 350, for the proposition that "an officer need not be an expert in order to have reasonable grounds to believe that a defendant was driving a vehicle while under the influence of a drug." In *Arrendondo*, the defendant was arrested for DUI of cannabis. *Id.* ¶ 18. While we agree that an officer need not necessarily have "advanced training" or be certified as an expert, some training and experience in DUI of drugs is necessary. See *Shelton*, 303 Ill.App.3d at 925–26, 237 Ill.Dec. 12, 708 N.E.2d 815. Unlike the instant case where Beaty stated he had no training or experience, the officer's testimony in *Arrendondo* met this standard. Specifically, the officer testified that he had training in the identification of cannabis and had "learned that glossy, bloodshot eyes were a possible indicator that a person had been smoking cannabis." *Arrendondo*, 2012 IL App (3d) 110223 ¶ 4, 359 Ill.Dec. 620, 967 N.E.2d 350. He further had encountered cannabis many times in his career. *Id.* Also, unlike the instant case, the defendant in *Arrendondo* admitted to having smoked cannabis on the evening he was arrested. *Id.* ¶ 11. Simply put, the State misreads *Arrendondo*.

¶ 18 Further, we reject the State's argument that we should depart from cases like *Shelton*, which require training and experience in order to testify regarding the effects of drugs. Specifically, the State argues "the unfortunate explosion in illicit drug use throughout all sectors of our society has made the effects of drugs on people common knowledge." The State exaggerates the pervasiveness of drug use. It defies logic and borders on insulting to say that the average person in Illinois is so familiar with illicit drug use that he or she is able to recognize its effects.

¶ 19 In a petition for rehearing, the State argues, "The opinion in this case opens a Pandora's Box whereby all a defendant has to do to avoid an arrest for DUI drugs is to claim that he or she is diabetic." This is not the case. Here, defendant presented the testimony of Beaty who stated that defendant told him he was diabetic and that he had no training or experience in DUI drugs. The court found that defendant had met its burden of establishing a *prima facie* case for rescission, as evidenced by its denial of the State's motion for directed finding. See *People v. Wear*, 229 Ill.2d 545, 559–60, 323 Ill.Dec. 359, 893 N.E.2d 631 (2008) (a hearing on a petition to rescind a statutory summary suspension is a civil proceeding in which the driver bears the burden of proof). The court then stated that the burden shifted to the State. The State did not provide any evidence to justify the suspension. See *id.* at 560, 323 Ill.Dec. 359, 893 N.E.2d 631 (once the driver establishes a *prima facie* case for rescission, the burden shifts to the State to present evidence justifying the suspension). The court found that the State did not meet its burden of proof. Our opinion applies only to the factual ***572 **429** situation, here, where Beaty did not have any training or experience in DUI drugs and defendant provided an alternative explanation of diabetes via the testimony of Beaty. Without any training or experience, as stated above (*supra* ¶¶ 15–16), Beaty would not have been able to form a reliable opinion on the cause of defendant's condition. This was enough to establish a *prima facie* case for rescission, which the State failed to rebut. Had Beaty had *any* experience or training or had the State provided some evidence to rebut the rescission, the outcome might have been different.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.

Presiding Justice Holdridge concurred in the judgment and opinion.

Justice Schmidt dissented, with opinion.

¶ 23 JUSTICE SCHMIDT, dissenting.

¶ 24 I respectfully dissent. The arresting officer only had to be reasonable, not absolutely correct. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (holding that the "ultimate touchstone of the Fourth Amendment is 'reasonableness' "); *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949) ("Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are)

sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." (quoting *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925))). Probable cause "means less than evidence which would justify condemnation * * *. It imports a seizure made under circumstances which warrant suspicion." (Internal quotation marks omitted.) *Brinegar*, 338 U.S. at 175 n.14, 69 S.Ct. 1302. The notion of probable cause recognizes that the officer may be wrong. (*Heien v. North Carolina*, 574 U.S. ——, ——, 135 S.Ct. 530, 536, 190 L.Ed.2d 475 (2014) ("To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' ") (quoting *Brinegar*, 338 U.S. at 176, 69 S.Ct. 1302)); *Brinegar*, 338 U.S. at 175, 69 S.Ct. 1302 ("In dealing with probable cause, * * * as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."). The majority's reliance upon *Shelton* is misplaced. That case dealt with a police officer's ability to give his opinion at a criminal jury trial that defendant was under the influence of drugs. *Shelton*, 303 Ill.App.3d at 926, 237 Ill.Dec. 12, 708 N.E.2d 815. The issue was whether defendant was under the influence of drugs, not whether the officer had probable cause to arrest. *Id.* at 926–27, 237 Ill.Dec. 12, 708 N.E.2d 815.

¶ 25 The majority recognizes that a hearing on a petition to rescind the statutory summary suspension is a civil proceeding in which the driver bears the burden of proof. *Supra* ¶ 13. I fail to understand how the driver established a *prima facie* case for rescission in this case. The majority "emphasize[s] that defendant told Beaty that he was a diabetic." *Supra* ¶ 15. The defendant did not testify at the suspension hearing. Therefore, the trial court was in no position to judge defendant's credibility. If the trial court believed anything, it could only believe that the officer truthfully testified ***573 **430** that defendant told him he was diabetic. The trial court's comments indicate that it believed defendant was diabetic. On what evidence?

¶ 26 Defendant went from the scene to the hospital, where he was ultimately arrested. It would seem to me that if he wanted to make a *prima facie* case supporting rescission of his suspension, he would have brought forth some evidence that he was, in fact, diabetic and that perhaps he was suffering from some diabetic-related illness at the time. It appears that both the trial court and the majority accept the notion that defendant's statement to the officer at the scene that he was diabetic established a *prima facie* case for rescission and proved that the fresh needle mark in defendant's arm was most likely from an insulin injection.

¶ 27 Upon arrival at the scene, the officer observed defendant sitting in the driver's seat of the vehicle with the passenger tires on the grass of the eastbound lanes of Route 52. A portion of the vehicle was in the roadway. Defendant was in the driver's seat, the engine was running, the vehicle was in park, defendant's foot was on the brake, and his left arm was on the steering wheel. The officer noted defendant was in and out of consciousness and did not cooperate with verbal commands by Troy paramedics to exit the vehicle. Defendant stated that he was okay to drive. He told the officer that he was northbound on Route 59 (he was, in fact, eastbound on Route 52).

¶ 28 In defendant's car, the officer observed a Red Bull can that had been cut in half and had burn marks on the underside of the can. Most likely, the burn marks on the bottom of the can were not there because defendant preferred his Red Bull hot. Beaty also found a baggie of what field tested as positive for drugs, as well as an uncapped syringe lying on the passenger seat. Paramedics advised the officer that defendant had not only a hole in his arm from a recent injection, but also track marks on his arm. One need not be a 20–year police veteran or drug expert to connect these dots. Track marks are a common sign of a drug abuser who injects his or her drug of choice repeatedly, ultimately causing collapse of veins and distinct marks in the affected area. Defendant is not the first drug user to tell police he is a diabetic upon being found with a hypodermic syringe.

¶ 29 The only "evidence" of defendant being a diabetic was defendant's self-serving statement to the officer at the scene. Also, diabetes and nonprescription drug abuse are not mutually exclusive. In light of the totality of the circumstances, the officer's conduct was totally reasonable. Again, defendant failed to make a *prima facie* case for rescission. I would reverse the trial court.

**All Citations**

2017 IL App (3d) 160025, 80 N.E.3d 567, 414 Ill.Dec. 424

doubt, merely reasonable belief.

THE COURT: Okay. Thank you. Mr. Zaremba?

MR. ZAREMBA: Judge, there needs to be some basic training and understanding. It's just not here.

It is a young officer. I am sure he meant well. But, again, when you're looking at the, the law of the case and why we're here today, there's not enough there.

Judge, I think the Court should, in fact, grant the petition to rescind.

THE COURT: Well, we have, here we're talking about probable cause in a DUI case involving drugs or intoxicating compound.

One of the things, unlike alcohol -- and the case law's very clear on this -- to show intoxicating or drugs, it can't be based purely on lay testimony.

Here, the witness must be qualified still as an expert and, and must establish the effects of the drugs, which I, I just did not hear. I heard about how he could test for the presence of, of drugs. And here we have that it turned blue in color.

In addition, we still have the other factors that we must look at. And we must look at what the officer observed.

Officer said that he talked to the paramedics, but, however, by the time he arrived on scene, the paramedics were still there, the petitioner was still in the vehicle and seemed to be nonresponsive.

But the one thing, there was some conversation between the petitioner and the officer because the officer was able to gauge that the petitioner indicated that he was diabetic.

Syringes and such are so connected to a diabetic, depending on the nature of your diabetes. Track marks probably would be found if you have to take insulin shots every single day.

So, the officer did not base his arrest on what he observed outside of he found a syringe and the can. And this would be an altogether different situation if the conversation in the -- because these are very difficult cases in terms of proof, rather it is probable cause or rather it was beyond a reasonable doubt at a trial.

If the petitioner -- or was asked any questions on if he took any drugs and he admitted that he took it, and he took it in a short proximity of time to driving and that was the reason why his car was in this -- it sounds like a one-car accident -- off, partially off the

road.

The dispatch even was a possible seizure. Even the paramedics, according to the officer's testimony, indicated they didn't even smell any alcohol.

Even if we found that the officer had some experience, where he testified he had no experience and training other than how to test for possible presence of a drug, did this particular individual take that particular drug, was that in their system, and not related to him being a diabetic, and did that have, having an accident? Clearly there was some issues with driving.

But an officer must also show the affects of, of the drug on this individual that he found, and none of that was done.

So the motion -- well, the petition to rescind, under these circumstances, is granted.

All right. We need to go back to -- this was in 303?

MR. LESZCYNSKI: 303.

MR. ZAREMBA: Judge, can we just set a pretrial date in, in here?

THE COURT: Sure.

MR. ZAREMBA: Okay. Thank you.

C0000032

12/04/15 11:01:16 WCCH

3-16-0025

# NOTICE TO THE SECRETARY OF STATE OF HEARING DISPOSITION

15DT1284

Circuit Court, Will County, [illegible] Municipal District

Case Number 15DC1167

| DUI TRAFFIC CITATION NO. (11-501A1) | DUI TRAFFIC CITATION NO. (11-501A2) |
|---|---|
| 11-401 Citation No. | DUI TRAFFIC CITATION NO. (OTHER) |

Name [illegible] (Last) (First) (Middle)

☐ CDL holder

| Driver's License Number | State |
|---|---|
| G 2 5 5 0 [illegible] 0 8 3 [illegible] 4 7 | IL |

565 River Edge Dr.
Street Address

Manteno IL
City & State

M [illegible]
Sex Date of Birth

Notice of Summary Suspension/Revocation Given On 09 / 14 / 2015
Month Day Year

[illegible] Will Co.
City and/or County of Arrest

Arrest Date 09 / 14 / 2015 / 1430 a.m. p.m.
Month Day Year Time

SPD
Place of Refusal or Location of Test(s)

Refusal or Test Date 09 / 14 / 15 / 1110 a.m. p.m.
Month Day Year Time

TO THE SECRETARY OF STATE, I the undersigned, do hereby certify that pursuant to statute on December 3, 2015
Month Day Year

a hearing was held before the Honorable Judge Goodman

in the Circuit Court of Will County.

Upon conclusion of the judicial hearing, the Circuit Court found in favor of the:

☐ State — SUMMARY SUSPENSION/REVOCATION OF DRIVING PRIVILEGES SUSTAINED

☒ Defendant — SUMMARY SUSPENSION/REVOCATION OF DRIVING PRIVILEGES RESCINDED due to:

1. ☐ No DUI or Leaving the Scene Arrest
2. ☐ No Warning Given
3. ☒ No Reasonable Grounds
4. ☐ No Refusal
5. ☐ BAC less than .08
6. ☐ No motor vehicle accident that caused Type A injury or death to another
7. ☐ Other _____

This is reported to you in accordance with the provisions of Section 2-118.1 of the Illinois Vehicle Code.

Pamela J McGuire /SP
Circuit Clerk

Printed by authority of the State of Illinois. October 2013 — DSD DC 35.26

12F SUBMITTED - 17R[illegible] - 625519 - 12/04/15 - CIRCUIT CLERK SEND TO SECRETARY OF STATE - C0000032

decision and reverse itself. So we ask that you deny their motion to reconsider and keep the suspension rescinded.

THE COURT: Thank you.

There is also a case, but it's a published case, where people who admit to using an illegal drug then those cases and similar to the case here coming out of the Third District in 2012, and let me -- well, you cited to it, and you do have a copy of it as part of your petition for your motion to reconsider.

In the case that was cited, in that particular case the officer was trained for identification of cannabis; smelled what appeared to be cannabis based on his training and experience. Smelled burnt cannabis. Then he had all of the other indicators, as well. Glossy, bloodshot eyes as an indicator that a person had been -- a possible indicator. More importantly, the -- so there was training. More importantly, the defendant in that particular case admitted to not only smoking marijuana or cannabis, that he was about to smoke it, and had smoked it in close proximity or time of being stopped.

In this particular case, this officer testified that he had no training for DUI, drugs. He indicated that he did see a Red Bull can, burn marks,

brownish, tanish syringe, and we have the petitioner indicating that he is a diabetic. So there is another -- and there is no admission whatsoever.

So it wasn't just based on the fact that this officer lacked training. It's based on the fact that there is an explanation for the syringe. He didn't smell of any alcohol. There were fresh marks on the arm, but that came in -- however, he indicated that he was a diabetic, and it's not unusual for diabetics to use a syringe.

Now, there was a positive presence because it was tested for the presence of opiates on the can; however, there was no admission whatsoever that it was used for any other purposes but for diabetes, and he was not trained.

He didn't have enough here for him to be, the way I found it, based on the standard, not beyond a reasonable doubt, but based on the standard that he was up under the influence of drugs for the arrest. Not just based on the lack of training, but the lack of training coupled with the fact that there was no admission whatsoever, unlike the case. And there are other cases, as well.

I know I had a case that dealt with, and I said that the stop, there wasn't enough for the stop

because the person just went across the railroad tracks and was stopped. So it couldn't have been speeding going just across the railroad tracks and stopped, and the video showed that. But the Court indicated that they admitted in that particular case to recently smoking cannabis. Here I don't have that. So the motion to reconsider is denied.

It goes back downstairs to now who is in Courtroom 303?

MS. FLOREN: Judge Mason.

THE COURT: Judge Mason for further pretrial.

( WHICH WERE ALL THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE ON THIS DATE.)

C0000044

STATE OF ILLINOIS )
)SS
COUNTY OF WILL )

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT**
**WILL COUNTY, ILLINOIS**

State
**Plaintiff**
**vs**
Ahmet Gocmen
**Defendant**

**CASE NO:** 15DT1284
15TR72055-56

**COURT ORDER**

This cause comes before the Court on the State's Motion to Reconsider. Arguments are heard and the motion is denied. All matters are ~~retained~~ sent back to Ctrm. 303.

FILED
16 JAN -7 PM 1:57
CLERK OF CIRCUIT COURT
WILL COUNTY, ILLINOIS

Attorney or Party, if not represented by Attorney
Name
ARDC # WCSAO
Firm Name
Attorney for
Address
City & Zip
Telephone

Dated: 1-7 2016
Entered:
Judge

**PAMELA J. MCGUIRE, CLERK OF THE CIRCUIT COURT OF WILL COUNTY**

White – Court Yellow – Plaintiff Pink – Defendant.



17 D Revised (06/06)

C0000044

STATE OF ILLINOIS )
) SS.
COUNTY OF WILL )

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS



| | | |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS,<br>Plaintiff-Appellant, | ) | |
| | ) | No. 15 DT 1284 |
| vs. | ) | 15 TR 72055 - 56 |
| AHMET GOCMEN,<br>Defendant-Appellee. | ) | The Honorable<br>Carmen Goodman,<br>Judge Presiding. |

## NOTICE OF APPEAL

An appeal is taken from the judgment order described below:

1. Court to which appeal is taken Illinois Appellate Court, Third District

2. Name of appellant and address to which notices shall be sent:

Name: James W. Glasgow, Will County State's Attorney
Address: 121 N. Chicago Street
Joliet, Illinois 60432

3. Name and address of appellant's attorney of appeal:

Name: State's Attorneys Appellate Prosecutor
Address: 628 Columbus Street
Ottawa, Illinois 61350

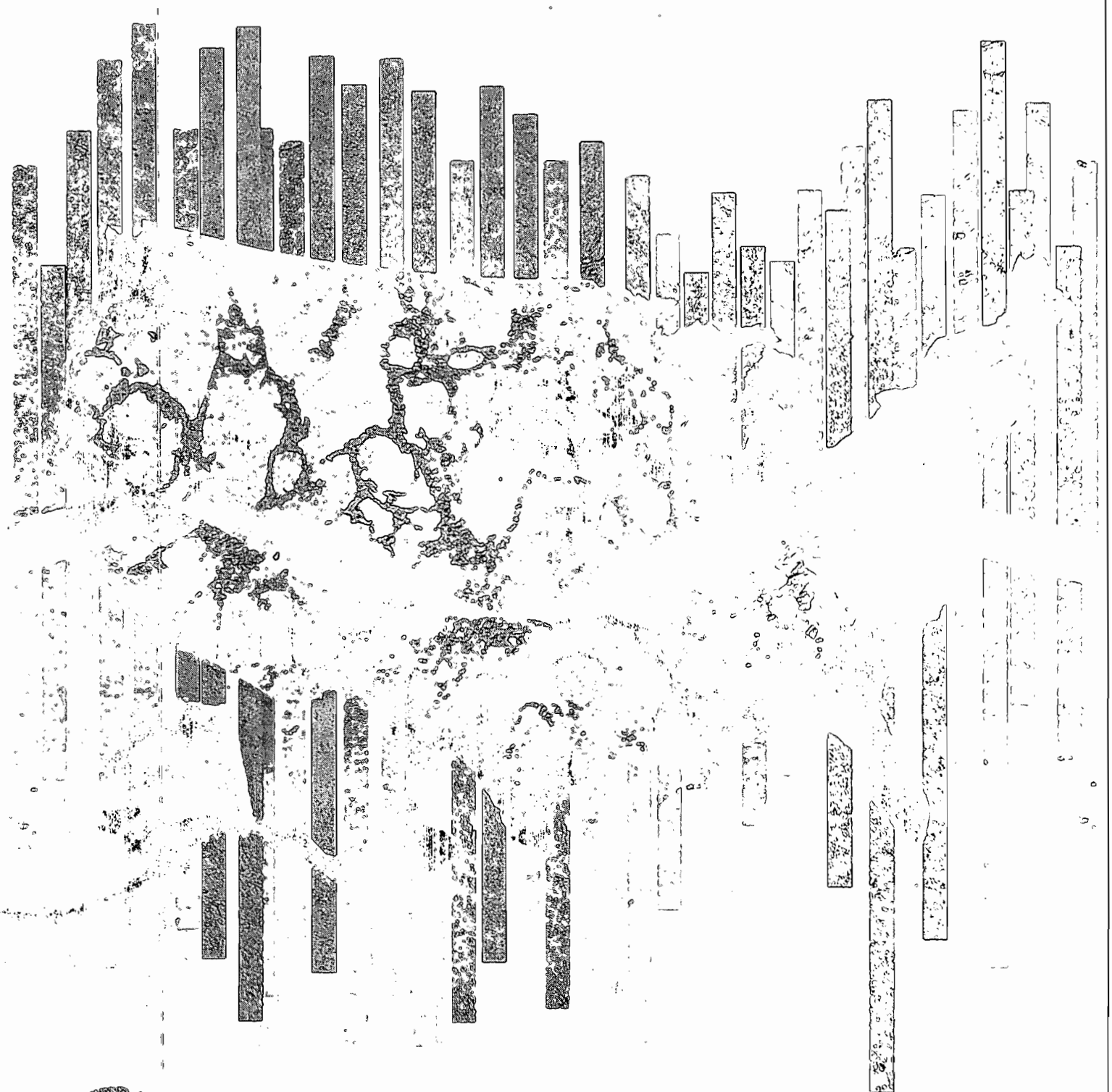
4. Dates of Judgment or Order: December 3, 2015 and January 7, 2016

5. Nature of Order appealed from: Order granting defendant's motion to rescind statutory summary suspension, and denying State's motion to reconsider

Colleen M. Griffin
Assistant State's Attorney, Will County
121 N. Chicago St.
Joliet, Illinois 60432

# Health, United States, 2016

## With Chartbook on Long-term Trends in Health



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics

# Preface

*Health, United States, 2016* is the 40th report on the health status of the nation and is submitted by the Secretary of the Department of Health and Human Services to the President and the Congress of the United States in compliance with Section 308 of the Public Health Service Act. This report was compiled by the Centers for Disease Control and Prevention's (CDC) National Center for Health Statistics (NCHS).

The *Health, United States* series presents an annual overview of national trends in health statistics. The report contains a Chartbook that assesses the nation's health by presenting trends and current information on selected measures of morbidity, mortality, health care utilization and access, health risk factors, prevention, health insurance, and personal health care expenditures. This year's Chartbook focuses on long-term trends in health. The report also contains 114 Trend Tables organized around four major subject areas: health status and determinants, health care utilization, health care resources, and health care expenditures. A companion report—*Health, United States*: In Brief—features information extracted from the full report. The complete report and related data products are available on the *Health, United States* website at: http://www.cdc.gov/nchs/hus.htm.

## The 2016 Edition

*Health, United States, 2016* contains a summary At a Glance table that displays recent data on selected indicators of health and their determinants, cross-referenced to tables in the report. This is followed by a Highlights section, which focuses on both long-term trends and current data on topics of public health interest and illustrates the breadth of material included in *Health, United States*. The other major sections are a Chartbook, detailed Trend Tables, two Appendixes, and an Index. The major sections of the 2016 report are described below.

### Chartbook

The 2016 Chartbook contains 27 figures on long-term trends in health. As *Health, United States* enters its 40th year of reporting on the health of the nation, this year's Chartbook focuses on trends in health and health care since 1975. Examining long-term trends in health informs the development and implementation of effective health policies and programs. The Chartbook has been grouped into five sections. The first section (Figures 1–5) presents an overview of the demographic and socioeconomic factors that have influenced the health of the nation over the last 40 years. The second section (Figures 6–14) focuses on health status and determinants: life expectancy, infant mortality, leading causes of death, birth rates, cigarette smoking, obesity, untreated dental caries, diabetes prevalence, and uncontrolled hypertension. The third section (Figures 15–19) presents trends in health care utilization: use of prescription drugs, health care and emergency department visits, overnight hospital stays, and cancer screening tests. The fourth section (Figures 20–22) focuses on changes in health care resources: hospitals, primary and specialist physicians, and nursing homes. The fifth section (Figures 23–27) describes trends in health care expenditures: personal health care expenditures, mental health and substance use expenditures, Medicare managed care enrollment by state, and health insurance coverage.

### Trend Tables

The Chartbook is followed by 114 detailed Trend Tables that highlight major trends in health statistics. Comparability across editions of *Health, United States* is fostered by including similar Trend Tables in each volume, and timeliness is maintained by improving the content of tables to reflect key topics in public health. An important criterion used in selecting these tables is the availability of comparable national data over a period of several years.

### Appendixes

Appendix I. Data Sources describes each data source used in *Health, United States, 2016* and provides references for further information about the sources. Data sources are listed alphabetically within two broad categories: Government Sources, and Private and Global Sources.

Appendix II. Definitions and Methods is an alphabetical listing of selected terms used in *Health, United States, 2016*. It also contains information on the statistical methodologies used in the report.

### Index

The Index to the Trend Tables and Chartbook figures is a useful tool for locating data by topic. Tables and figures are cross-referenced by such topics as child and adolescent health; older population aged 65 and over; women's health; men's health; state data; American Indian or Alaska Native, Asian, black or African American, Hispanic-origin, and white populations; education; injury; disability; and metropolitan and nonmetropolitan data. Many of the Index topics are also available as conveniently grouped data packages on the *Health, United States* website at: http://www.cdc.gov/nchs/hus.htm.

# Utilization
## Prescription Drugs

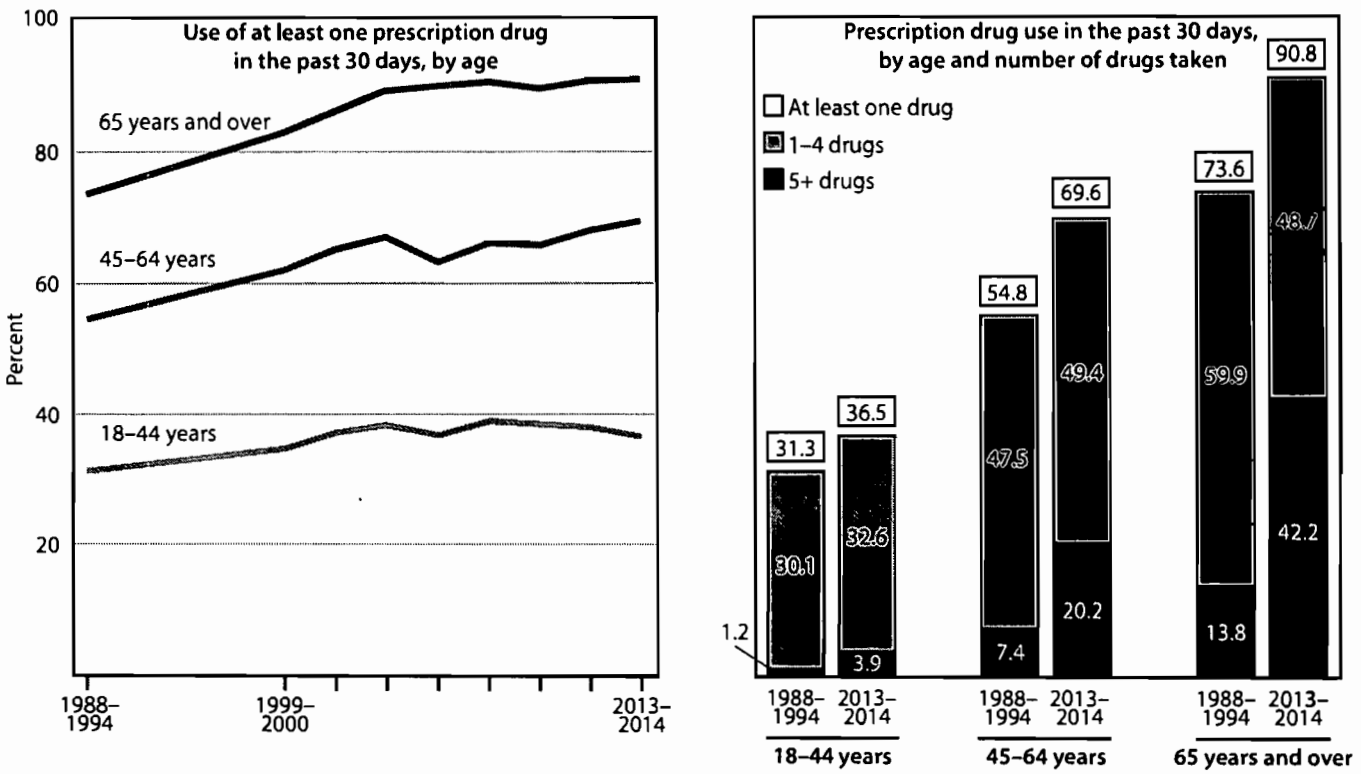
*In 2013–2014, 36.5% of adults aged 18–44, 69.6% of adults aged 45–64, and 90.8% of those aged 65 and over took a prescription drug in the past month—up from levels in 1988–1994.*

Prescription drug use over the past 40 years has been affected by many factors, including medical need, prescription drug development, increased direct-to-consumer advertising, and expansions in health insurance and prescription drug coverage (62–64). Even though Americans are now living longer lives, a greater fraction of older Americans are living with several chronic conditions that may require multiple medications. As prescription drug use increases, however, so do concerns about polypharmacy. Polypharmacy—which is commonly defined as taking five or more drugs—increases the risk of drug interactions, adverse drug events, nonadherence, and reduced functional capacity (65).

Between 1988–1994 and 2013–2014, the use of at least one prescription drug in the past 30 days increased 5.2 percentage points for adults aged 18–44, 14.8 percentage points for adults aged 45–64, and 17.2 percentage points for adults aged 65 and over. For adults aged 45–64, use of at least one prescription drug during the past 30 days increased throughout the period, while for adults aged 18–44 and 65 and over, use initially increased before remaining stable in recent years. For adults aged 18–44, use of at least one prescription drug remained stable from 2007–2008 to 2013–2014, while for adults aged 65 and over, use of at least one prescription drug remained stable from 2003–2004 to 2013–2014.

Between 1988–1994 and 2013–2014, the percent of adults reporting the use of five or more prescription drugs in the past 30 days rose—by 2.7 percentage points for adults aged 18–44, 12.8 percentage points for adults aged 45–64, and 28.4 percentage points for adults aged 65 and over. In contrast, the percentage of adults reporting the use of one to four prescription drugs between these two periods remained stable for adults aged 18–44 and 45–64, while decreasing for adults aged 65 and over.

**Figure 15. Prescription drug use in the past 30 days among adults aged 18 and over, by age and number of drugs taken: United States, 1988–1994 through 2013–2014**




NOTES: Respondent-reported use of prescription drugs in the past 30 days. See Appendix II, Drug. See data table for Figure 15.

SOURCE: NCHS, National Health and Nutrition Examination Survey (NHANES).

*Excel and PowerPoint: http://www.cdc.gov/nchs/hus/contents2016.htm#fig15*

**Table 50 (page 1 of 2). Use of selected substances in the past month among persons aged 12 and over, by age, sex, race, and Hispanic origin: United States, selected years 2002–2015**

*Excel and PDF versions (with more data years and standard errors when available): http://www.cdc.gov/nchs/hus/contents2016.htm#050.*

[Data are based on household interviews of a sample of the civilian noninstitutionalized population aged 12 and over]

| Age, sex, race, and Hispanic origin | Any illicit drug[1] | | | Marijuana | | | Misuse of prescription psychotherapeutic drugs[2] | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 |
| | | | | | Percent of population | | | | |
| 12 years and over | --- | --- | 10.1 | 6.2 | 8.4 | 8.3 | --- | --- | 2.4 |
| Age | | | | | | | | | |
| 12–13 years | --- | --- | 2.6 | 1.4 | 1.1 | 0.8 | --- | --- | 0.9 |
| 14–15 years | --- | --- | 7.2 | 7.6 | 5.5 | 5.7 | --- | --- | 1.7 |
| 16–17 years | --- | --- | 16.3 | 15.7 | 15.0 | 14.2 | --- | --- | 3.3 |
| 18–25 years | --- | --- | 22.3 | 17.3 | 19.6 | 19.8 | --- | --- | 5.1 |
| 26–34 years | --- | --- | 15.4 | 7.7 | 12.7 | 12.9 | --- | --- | 3.7 |
| 35 years and over | --- | --- | 6.6 | 3.1 | 5.2 | 5.1 | --- | --- | 1.6 |
| Sex | | | | | | | | | |
| Male | --- | --- | 12.5 | 8.1 | 10.9 | 10.6 | --- | --- | 2.6 |
| Female | --- | --- | 7.9 | 4.4 | 6.0 | 6.2 | --- | --- | 2.2 |
| Age and sex | | | | | | | | | |
| 12–17 years | --- | --- | 8.8 | 8.2 | 7.4 | 7.0 | --- | --- | 2.0 |
| Male | --- | --- | 8.8 | 9.1 | 7.9 | 7.5 | --- | --- | 1.7 |
| Female | --- | --- | 8.8 | 7.2 | 6.8 | 6.5 | --- | --- | 2.3 |
| Hispanic origin and race[3] | | | | | | | | | |
| Not Hispanic or Latino: | | | | | | | | | |
| White only | --- | --- | 10.2 | 6.5 | 8.7 | 8.4 | --- | --- | 2.6 |
| Black or African American only | --- | --- | 12.5 | 7.4 | 10.3 | 10.7 | --- | --- | 1.8 |
| American Indian or Alaska Native only | --- | --- | 14.2 | 6.7 | 11.8 | 11.2 | --- | --- | 2.6 |
| Native Hawaiian or Other Pacific Islander only | --- | --- | 9.8 | 4.4 | 12.1 | 9.2 | --- | --- | 1.7 |
| Asian only | --- | --- | 4.0 | 1.8 | 2.8 | 3.0 | --- | --- | 0.7 |
| 2 or more races | --- | --- | 17.2 | 9.0 | 12.4 | 13.4 | --- | --- | 4.8 |
| Hispanic or Latino | --- | --- | 9.2 | 4.3 | 6.7 | 7.2 | --- | --- | 2.3 |

| Age, sex, race, and Hispanic origin | Alcohol use | | | Binge alcohol use[4] | | | Heavy alcohol use[5] | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 |
| | | | | | Percent of population | | | | |
| 12 years and over | 51.0 | 52.7 | 51.7 | --- | --- | 24.9 | --- | --- | 6.5 |
| Age | | | | | | | | | |
| 12–13 years | 4.3 | 2.1 | 1.3 | --- | --- | 0.7 | --- | --- | 0.0 |
| 14–15 years | 16.6 | 8.5 | 7.4 | --- | --- | 3.8 | --- | --- | 0.3 |
| 16–17 years | 32.6 | 23.3 | 19.7 | --- | --- | 12.6 | --- | --- | 2.3 |
| 18–25 years | 60.5 | 59.6 | 58.3 | --- | --- | 39.0 | --- | --- | 10.9 |
| 26–34 years | 61.4 | 66.0 | 65.0 | --- | --- | 38.3 | --- | --- | 9.7 |
| 35 years and over | 52.1 | 54.4 | 53.5 | --- | --- | 21.8 | --- | --- | 5.6 |
| Sex | | | | | | | | | |
| Male | 57.4 | 57.3 | 56.2 | 31.2 | 30.0 | 29.6 | 10.8 | 9.3 | 8.9 |
| Female | 44.9 | 48.4 | 47.4 | --- | --- | 20.5 | --- | --- | 4.2 |
| Age and sex | | | | | | | | | |
| 12–17 years | 17.6 | 11.5 | 9.6 | --- | --- | 5.8 | --- | --- | 0.9 |
| Male | 17.4 | 10.8 | 9.3 | 11.4 | 6.4 | 5.8 | 3.1 | 1.2 | 1.1 |
| Female | 17.9 | 12.3 | 9.9 | --- | --- | 5.8 | --- | --- | 0.7 |
| Hispanic origin and race[3] | | | | | | | | | |
| Not Hispanic or Latino: | | | | | | | | | |
| White only | 55.0 | 57.7 | 57.0 | --- | --- | 26.0 | --- | --- | 7.6 |
| Black or African American only | 39.9 | 44.2 | 43.8 | --- | --- | 23.4 | --- | --- | 4.8 |
| American Indian or Alaska Native only | 44.7 | 42.3 | 37.9 | --- | --- | 24.1 | --- | --- | 4.7 |
| Native Hawaiian or Other Pacific Islander only | * | 37.9 | 33.8 | --- | --- | 17.8 | --- | --- | 3.0 |
| Asian only | 37.1 | 38.7 | 39.7 | --- | --- | 14.0 | --- | --- | 2.2 |
| 2 or more races | 49.9 | 49.5 | 42.8 | --- | --- | 22.9 | --- | --- | 6.8 |
| Hispanic or Latino | 42.8 | 44.4 | 42.4 | --- | --- | 25.7 | --- | --- | 4.8 |

See footnotes at end of table.

## Table 50 (page 2 of 2). Use of selected substances in the past month among persons aged 12 and over, by age, sex, race, and Hispanic origin: United States, selected years 2002–2015

*Excel and PDF versions (with more data years and standard errors when available): http://www.cdc.gov/nchs/hus/contents2016.htm#050.*

[Data are based on household interviews of a sample of the civilian noninstitutionalized population aged 12 and over]

| Age, sex, race, and Hispanic origin | Any tobacco[6] | | | Cigarettes | | | Cigars | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 | 2002 | 2014 | 2015 |
| | Percent of population | | | | | | | | |
| 12 years and over | 30.4 | 25.2 | 23.9 | 26.0 | 20.8 | 19.4 | 5.4 | 4.5 | 4.7 |
| **Age** | | | | | | | | | |
| 12–13 years | 3.8 | 1.1 | 0.6 | 3.2 | 0.7 | 0.5 | 0.7 | 0.3 | 0.2 |
| 14–15 years | 13.4 | 5.1 | 4.6 | 11.2 | 3.4 | 3.1 | 3.8 | 1.5 | 1.2 |
| 16–17 years | 29.0 | 14.4 | 12.4 | 24.9 | 10.2 | 8.7 | 9.3 | 4.4 | 4.8 |
| 18–25 years | 45.3 | 35.0 | 33.0 | 40.8 | 28.4 | 26.7 | 11.0 | 9.7 | 8.9 |
| 26–34 years | 38.2 | 34.8 | 35.1 | 32.7 | 29.4 | 29.3 | 6.6 | 6.8 | 7.8 |
| 35 years and over | 27.9 | 23.7 | 22.1 | 23.4 | 19.7 | 17.9 | 4.1 | 3.3 | 3.5 |
| **Sex** | | | | | | | | | |
| Male | 37.0 | 31.1 | 29.6 | 28.7 | 23.2 | 21.8 | 9.4 | 7.5 | 7.6 |
| Female | 24.3 | 19.7 | 18.5 | 23.4 | 18.6 | 17.1 | 1.7 | 1.7 | 2.0 |
| **Age and sex** | | | | | | | | | |
| 12–17 years | 15.2 | 7.0 | 6.0 | 13.0 | 4.9 | 4.2 | 4.5 | 2.1 | 2.1 |
| Male | 16.0 | 8.2 | 7.0 | 12.3 | 5.1 | 4.6 | 6.2 | 2.7 | 2.6 |
| Female | 14.4 | 5.8 | 4.9 | 13.6 | 4.6 | 3.8 | 2.7 | 1.5 | 1.5 |
| **Hispanic origin and race[3]** | | | | | | | | | |
| Not Hispanic or Latino: | | | | | | | | | |
| White only | 32.0 | 27.6 | 25.9 | 26.9 | 22.3 | 20.7 | 5.5 | 4.6 | 4.5 |
| Black or African American only | 28.8 | 26.6 | 26.0 | 25.3 | 22.5 | 21.3 | 6.8 | 6.5 | 8.0 |
| American Indian or Alaska Native only | 44.3 | 37.8 | 37.0 | 37.1 | 32.5 | 29.5 | 5.2 | 4.2 | 6.4 |
| Native Hawaiian or Other Pacific Islander only | * | 30.6 | 19.2 | * | 25.4 | 16.3 | 4.1 | 3.2 | 4.2 |
| Asian only | 18.6 | 10.2 | 11.4 | 17.7 | 9.2 | 10.0 | 1.1 | 1.2 | 2.2 |
| 2 or more races | 38.1 | 29.5 | 31.9 | 35.0 | 24.4 | 26.8 | 5.5 | 6.5 | 5.9 |
| Hispanic or Latino | 25.2 | 18.8 | 17.7 | 23.0 | 16.7 | 15.3 | 5.0 | 3.7 | 3.7 |

* Estimates are considered unreliable. Data not shown if the relative standard error is greater than 17.5% of the log transformation of the proportion, the minimum effective sample size is less than 68, the minimum nominal sample size is less than 100, or the prevalence is close to 0% or 100%.

- - - Data not available.

[1] Any illicit drug includes marijuana, cocaine (including crack), heroin, hallucinogens (including LSD, PCP, peyote, mescaline, psilocybin mushrooms, "Ecstasy," ketamine, DMT/AMT/"Foxy," and Salvia divinorum), inhalants, methamphetamine, or the misuse of prescription pain relievers, tranquilizers, stimulants, and sedatives. See Appendix II, Illicit drug use.

[2] Misuse of prescription psychotherapeutic drugs is defined as use in any way not directed by a doctor, including use without a prescription of one's own; use in greater amounts, more often, or longer than told to take a drug; or use in any other way not directed by a doctor.

[3] Persons of Hispanic origin may be of any race. Data on race and Hispanic origin were collected using the 1997 *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*. Single-race categories shown include persons who reported only one racial group. The category 2 or more races includes persons who reported more than one racial group. See Appendix II, Hispanic origin; Race.

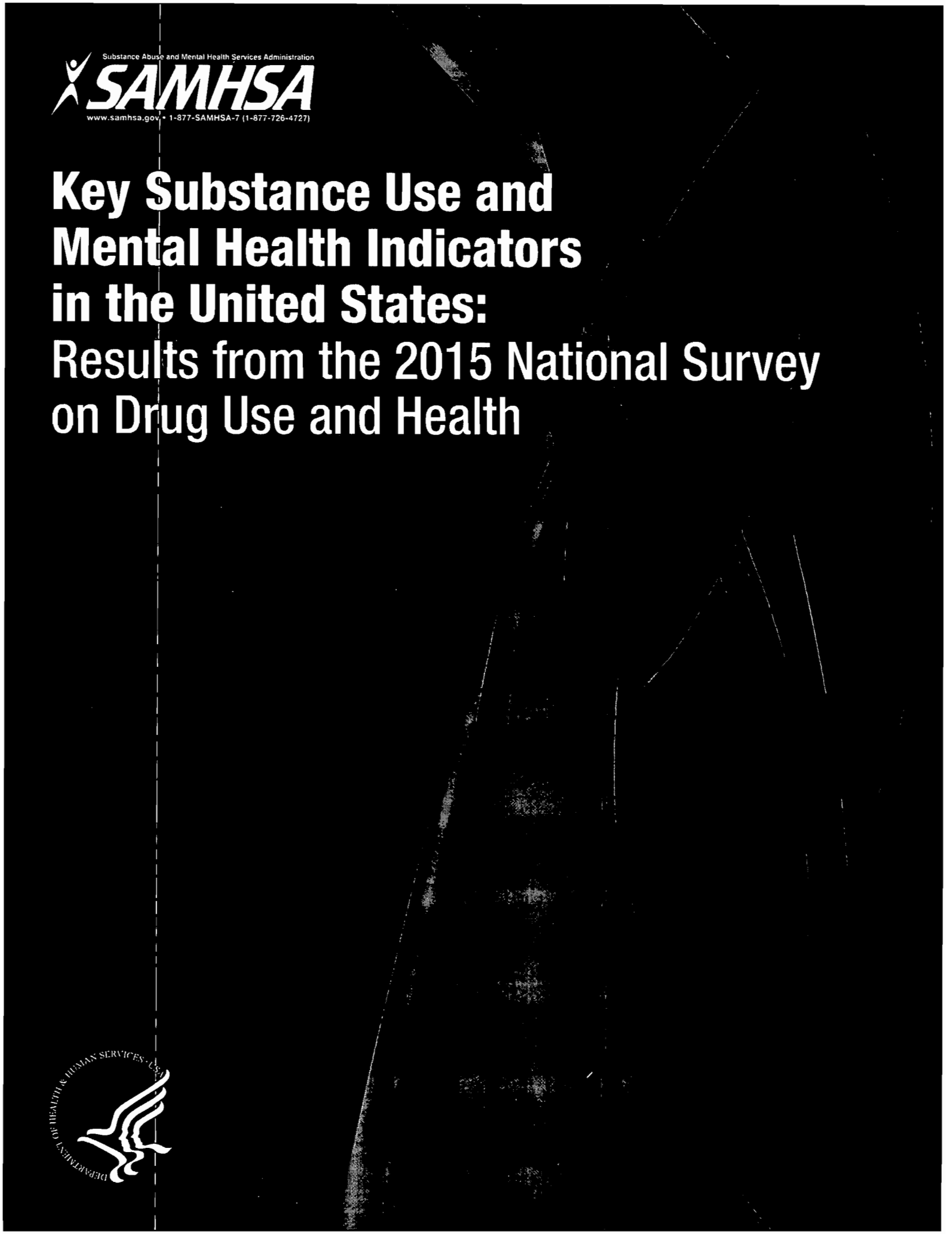
[4] Binge alcohol use for men is defined as drinking five or more drinks on the same occasion on at least 1 day in the past 30 days. Starting in 2015, binge alcohol use for women is defined as drinking four or more drinks on the same occasion on at least 1 day in the past 30 days. Occasion is defined as at the same time or within a couple of hours of each other. See Appendix II, Alcohol consumption; Binge drinking.

[5] Heavy alcohol use is defined as drinking five or more drinks on the same occasion on each of 5 or more days in the past 30 days. By definition, all heavy alcohol users are also binge alcohol users.

[6] Any tobacco product includes cigarettes, smokeless tobacco (such as snuff, dip, chewing tobacco, or "snus"), cigars, or pipe tobacco. See Appendix II, Cigarette smoking.

NOTES: The National Survey on Drug Use & Health (NSDUH), formerly called the National Household Survey on Drug Abuse (NHSDA), began a new baseline in 2002 and cannot be compared with previous years. The NSDUH questionnaire underwent a partial redesign in 2015, including changes to some questions. Consequently, for some categories, data for prior years are not comparable to 2015 estimates and are not shown in this table. Starting with 2011 data, 2010-census based control totals were used in the weighting process. Because of methodological differences among the National Survey on Drug Use & Health, the Monitoring the Future (MTF) Study, and the Youth Risk Behavior Survey (YRBS), rates of substance use measured by these surveys are not directly comparable. See Appendix I, Monitoring the Future (MTF) Study; National Survey on Drug Use & Health (NSDUH); Youth Risk Behavior Survey (YRBS). See Appendix II, Substance use. Data for additional years are available. See the Excel spreadsheet on the *Health, United States* website at: http://www.cdc.gov/nchs/hus.htm. Data have been revised and differ from previous editions of *Health, United States*.

SOURCE: Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use & Health. Available from: http://www.samhsa.gov/data/population-data-nsduh. See Appendix I, National Survey on Drug Use & Health (NSDUH).



Substance Abuse and Mental Health Services Administration

SAMHSA

www.samhsa.gov • 1-877-SAMHSA-7 (1-877-726-4727)

# Key Substance Use and Mental Health Indicators in the United States:

## Results from the 2015 National Survey on Drug Use and Health

# Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health


**SAMHSA Authors**

Jonaki Bose
Sarra L. Hedden
Rachel N. Lipari
Eunice Park-Lee

**RTI Authors**

Jeremy D. Porter
Michael R. Pemberton

**SAMHSA Project Officer**

Peter Tice

**RTI Project Director**

David Hunter

For questions about this report, please e-mail Peter.Tice@samhsa.hhs.gov.


---

This report was prepared for the Substance Abuse and Mental Health Services Administration (SAMHSA) by RTI International under Contract No. HHSS283201300001C with SAMHSA, U.S. Department of Health and Human Services (HHS).




**Recommended Citation**

Center for Behavioral Health Statistics and Quality. (2016). *Key substance use and mental health indicators in the United States: Results from the 2015 National Survey on Drug Use and Health* (HHS Publication No. SMA 16-4984, NSDUH Series H-51). Retrieved from http://www.samhsa.gov/data/

**Electronic Access and Printed Copies**

This publication may be downloaded or ordered at http://store.samhsa.gov. Or call SAMHSA at 1–877–SAMHSA–7 (1–877–726–4727) (English and Español).

**Originating Office**

Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 15-E09D, Rockville, MD 20857.

September 2016

Underage alcohol use (i.e., among people aged 12 to 20) and binge and heavy use among young adults aged 18 to 25 are a concern. In 2015, about 7.7 million people aged 12 to 20 reported drinking alcohol in the past month, including 5.1 million who reported binge alcohol use and 1.3 million who reported heavy alcohol use. Among all people aged 12 to 20 in 2015, 13.4 percent were binge drinkers, and 3.3 percent were heavy drinkers. About 2 out of 5 young adults aged 18 to 25 were current binge alcohol users, and 1 out of every 10 young adults were heavy alcohol users.

## Substance Use Disorders

In 2015, approximately 20.8 million people aged 12 or older had a substance use disorder (SUD) related to their use of alcohol or illicit drugs in the past year,[2] including 15.7 million people who had an alcohol use disorder and 7.7 million people who had an illicit drug use disorder. The percentage of people aged 12 or older with an alcohol use disorder (5.9 percent) in 2015 was lower than the percentages in 2002 to 2014. Due to revisions to the NSDUH illicit drug questions, estimates in 2015 for any illicit drug use disorder are not compared with estimates from previous years.

## Substance Use Treatment

In 2015, an estimated 21.7 million people aged 12 or older needed substance use treatment (i.e., treatment for problems related to the use of alcohol or illicit drugs), or about 1 in 12 people (8.1 percent). For NSDUH, people are defined as needing substance use treatment if they had an SUD in the past year or if they received substance use treatment at a specialty facility in the past year.[3]

In 2015, 10.8 percent of people aged 12 or older (2.3 million people) who needed substance use treatment received treatment at a specialty facility in the past year.

## Mental Health Issues among Adults

In 2015, an estimated 43.4 million adults aged 18 or older (17.9 percent) had any mental illness (AMI) in the past year. An estimated 9.8 million adults in the nation had a serious mental illness (SMI) in the past year, representing 4.0 percent of all U.S. adults in 2015.[4] The percentage of adults with AMI and the percentage of adults with SMI remained stable from 2008 to 2015. In 2015, 6.7 percent of adults aged 18 or older (16.1 million adults) had at least one major depressive episode (MDE) in the past year, and 4.3 percent (10.3 million adults) had an MDE with severe impairment in the past year.[5] The percentage of adults who had a past year MDE remained stable between 2005 and 2015.

## Mental Health Service Use among Adults

In 2015, an estimated 34.2 million adults (14.2 percent of adults) received mental health care during the past 12 months. Among the 43.4 million adults with AMI, 18.6 million (43.1 percent) received mental health services in the past year. About 6.4 million of the 9.8 million adults with past year SMI (65.3 percent) received mental health services in the past year. The percentage of adults with AMI who received mental health care in 2015 was similar to the percentages in most years from 2008 to 2014. Use of mental health services among adults with SMI remained relatively steady across years between 2008 and 2015.

---

[2] People who met the criteria for dependence or abuse for alcohol or illicit drugs in the past 12 months based on criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition (DSM-IV), were defined as having an SUD. See the following reference: American Psychiatric Association. (1994). *Diagnostic and statistical manual of mental disorders* (DSM-IV) (4th ed.). Washington, DC: Author.

[3] Specialty treatment refers to substance use treatment at a hospital (only as an inpatient), a drug or alcohol rehabilitation facility (as an inpatient or outpatient), or a mental health center.

[4] Adults with AMI were defined as having any mental, behavioral, or emotional disorder in the past year that met DSM-IV criteria (excluding developmental disorders and SUDs). Adults with AMI were defined as having SMI if they had any mental, behavioral, or emotional disorder that substantially interfered with or limited one or more major life activities. See footnote 2 for the reference for the DSM-IV criteria.

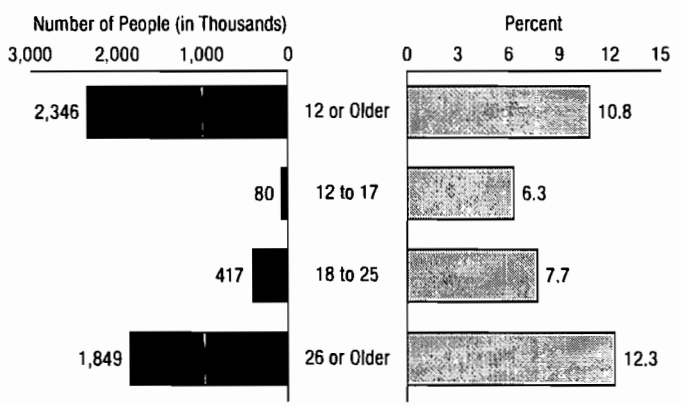
[5] Based on DSM-IV criteria, adults and youths were defined as having an MDE if they had a period of 2 weeks or longer in the past 12 months when they experienced a depressed mood or loss of interest or pleasure in daily activities, and they had at least some additional symptoms, such as problems with sleep, eating, energy, concentration, and self-worth. Some wordings to the questions for adolescents were designed to make them more developmentally appropriate for youths. Adults and youths were defined as having an MDE with severe impairment if their depression caused severe problems in carrying out life activities in four developmentally appropriate role domains. For adults, these domains were the ability to manage at home, manage well at work, have relationships with others, or have a social life. For youths, these domains were the ability to do chores at home, do well at work or school, get along with their family, or have a social life. See footnote 2 for the reference for the DSM-IV criteria.

In 2015, 10.8 percent of people aged 12 or older (2.3 million people) who needed substance use treatment received treatment at a specialty facility in the past year (Figure 38). Among people in specific age groups in 2015 who needed substance use treatment, 6.3 percent of adolescents aged 12 to 17, 7.7 percent of young adults aged 18 to 25, and 12.3 percent of adults aged 26 or older received substance use treatment at a specialty facility in the past year. These percentages represent 80,000 adolescents, 417,000 young adults, and 1.8 million adults aged 26 or older who needed substance use treatment and received treatment at a specialty facility in the past year.

## Mental Health Issues and Mental Health Service Use

Mental disorders are generally characterized by changes in mood, thought, or behavior. They can make carrying out daily activities difficult and can impair an individual's ability to work or function in school, interact with family, and fulfill other major life functions. As noted in this report's survey background section, unlike what is done in the substance use questions, NSDUH uses different age-adapted questions to collect mental health information for adults and adolescents. Therefore, this section presents mental health estimates separately for adults and adolescents.

**Figure 38. Received Specialty Substance Use Treatment in the Past Year among People Aged 12 or Older Who Needed Substance Use Treatment in the Past Year, by Age Group: 2015**

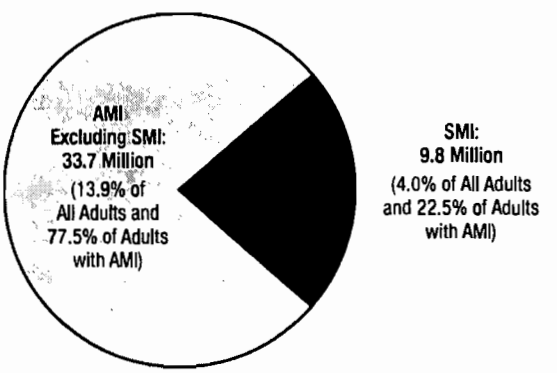



## Mental Illness among Adults

NSDUH provides estimates of any mental illness (AMI) and serious mental illness (SMI) for adults aged 18 or older.[36] An adult with AMI was defined as having any mental, behavioral, or emotional disorder in the past year that met DSM-IV criteria (excluding developmental disorders and SUDs).[30] Adults with AMI were defined as having SMI if they had any mental, behavioral, or emotional disorder that substantially interfered with or limited one or more major life activities. AMI and SMI are not mutually exclusive categories; adults with SMI are included in estimates of adults with AMI. Adults with AMI who do not meet the criteria for having SMI are categorized as having AMI excluding SMI. This section includes past year estimates of adults with AMI, SMI, and AMI excluding SMI.[37]

In 2015, an estimated 43.4 million adults aged 18 or older had AMI in the United States (Figure 39). This number represents 17.9 percent of all adults in the United States. An estimated 9.8 million adults in the nation had SMI in the past year, and 33.7 million adults had AMI excluding SMI in the past year. The number of adults with SMI represents 4.0 percent of all U.S. adults in 2015, and the number of adults with AMI excluding SMI represents 13.9 percent of all adults. Among adults with AMI in the past year, 22.5 percent had SMI and 77.5 percent did not have SMI.[38,39] In 2015, the percentages of adults with AMI, adults with SMI, and adults who had AMI excluding SMI were similar to the percentages from 2008 to 2014 (Figures 40, 41, and 42).

**Figure 39. Any Mental Illness (AMI), Serious Mental Illness (SMI), and AMI Excluding SMI in the Past Year among Adults Aged 18 or Older: 2015**



# INDEX TO THE RECORD ON APPEAL

## Common Law

(One Volume: CL for 15 DT 1284)

**Supplemental Common Law**
(One Volume: CL for 15 TR 72055 & 15 TR 72056)

**Reports of Proceedings**
(One Volume)

## PROOF OF FILING AND SERVICE

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 21, 2017, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois, 60601, in an envelope bearing sufficient first-class postage:

Elizabeth Powell Butler
Elizabeth@ebutlerlaw.com

Patrick Delfino, Director
Lawrence M. Bauer, Deputy Director
Mark A. Austill, Staff Attorney
State's Attorneys Appellate Prosecutor
3rddistrict@ilsaap.org

James W. Glasgow
Will County State's Attorney
Colleen Griffin
Assistant State's Attorney
cgriffin@willcountyillinois.com

Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen duplicate paper copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

/s/ Leah M. Bendik
LEAH M. BENDIK
Assistant Attorney General

E-FILED
12/21/2017 10:19 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK