No. 122388

IN THE
SUPREME COURT OF ILLINOIS

People of the State of Illinois, Plaintiff-Appellant, v. Ahmet Gocmen, Defendant-Appellee.	) Appeal from the Appellate Court) of Illinois, Third District,) No. 3-16-0025)) There on Appeal from the Circuit) Court of the Twelfth Judicial) Circuit, Will County, Illinois,) Nos. 15-DT-1284, 15-TR-72055,) 15-TR-72056)) The Honorable) Carmen Goodman,) Judge Presiding.

BRIEF AND APPENDIX OF DEFENDANT-APPELLEE

Elizabeth Butler
Attorney at Law
707 Skokie Blvd., Suite 600
Northbrook, IL 60062
(312) 371-5533
elizabeth@ebutlerlaw.com

Counsel for Defendant-Appellee, Ahmet Gocmen

E-FILED
4/19/2018 8:05 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

POINTS AND AUTHORITIES

STATEMENT OF FACTS

On September 14, 2015, Ahmet Defendant, Defendant, was issued a ticket for driving under the influence of drugs or combination of drugs, in violation of 625 ILCS 5/11-50(a)(4). C2 On October 8, 2015, the State's Attorney of Will County issued a subpoena to St. Joseph's Medical Center for all records pertaining to the treatment of Ahmet Defendant on September 16, 2015 through date of discharge. C10 The State also issued a subpoena for records to the Troy Fire Department for all records pertaining to the treatment of Defendant from September 16, 2016 to the date of discharge. C11

On October 13, 2015, Defendant's drug test came back negative. R2 Bond was reduced during that hearing. R4 On October 14, 2015, Defendant filed a petition to rescind statutory summary suspension, C17. On November 4, 2015, the State filed a motion for summary suspension hearing. C24 On December 3, 2015, Defendant's petition to rescind was heard. No video of the arrest was available. R17 Police Officer Adam Beaty was called by Defendant. Officer Beaty testified he was employed by the Village of Shorewood for the past two years. R19 He had no prior experience working in law enforcement. R20 Officer Beaty received training to become a police officer in January 2014 at SLEA, College of DuPage. R20 This training involved DUI alcohol detection and also blood-alcohol content in the hospital setting. R20 Officer Beaty testified he never received any DUI drug training

detection. R20 Officer Beaty also never received training regarding arresting someone for DUI drugs. R21 Officer Beaty had not received any additional training since leaving the police institute. R21

Q [Defendant's Counsel]: So what I am getting at is, have you had any type of training anywhere regarding drug use or drug cases, arrests, or anything of that nature?
A [Beaty]: Other than anything formal, no, other than it's to be sent to the hospital for, for a blood draw. And those results would give us what we're looking for. R22

Officer Beaty testified that on September 14, 2015 at 11:10 a.m., he responded to a call for an "unconscious subject in the vehicle, possibly having a seizure". R22 When he arrived, the paramedics were on the scene. The officer observed the car's passenger side tire on the grass of the eastbound lanes of Route 52. R22 Officer Beaty noticed Defendant in the driver's seat, the car was running while in park, his foot was on the brake and his hand on the steering wheel. R23 Officer Beaty did not know how long the paramedics had been on the scene. R23

Officer Beaty testified that he observed Defendant going in and out of consciousness and did not exit the vehicle as requested by the paramedics. Defendant stated he was ok to drive, believing he was heading northbound on Route 59. R24 The paramedics convinced Defendant to exit the car and he went into the back of the ambulance. R24 The paramedics took Defendant to the hospital. R24

Officer Beaty observed in plain view on the passenger's side a Red Bull can that was either cut or torn in half. The can had burn marks on the underside, or interior of the can. R25 On the bottom of the can was a brown, tannish residue. R25 R24

Officer Beaty observed a used, uncapped syringe on the passenger's seat. R26. Officer Beaty testified that in March 2014 he learned to conduct a test using the swipe. R31 He had not used the test prior to Defendant's arrest. R31 The test involves wearing latex gloves and taking the wipe out of the package. R32 Officer Beaty touched the bottom of the can with the wipe and it immediately turned blue. This color indicated a positive presence of opiates. R33

Officer Beaty found a small baggie containing a brown granular substance found in Defendant's wallet located in the center console. R27 This substance was sent for analysis. R27 At the time of the hearing, Officer Beaty did not know the identity of the substance. R27

Officer Beaty testified that he asked the paramedics, "if he, if he had any alcohol, if he had the smell of alcohol or anything. Paramedics told me no." R29 The paramedics told Officer Beaty that Defendant had a fresh track mark on his arm. R29 Officer Beaty further testified that the mark indicated a needle was used. R30 The paramedics informed him that Defendant was sweating, had pinpoint pupils, and a seated heart rate of 144 beats per minute. R31

Officer Beaty testified that his only observation of Defendant at the hospital was that he was "tired and lethargic". R25 Officer Beaty had no conversations with Defendant prior to the arrest about the items in the car and to whom they belonged. R27 Officer Beaty testified that when he asked Defendant about any medical conditions, the Defendant said he was diabetic. R27 Officer Beaty did not speak to anybody at St. Joseph Hospital about Defendant's condition. R33

Officer Beaty testified that he had no knowledge of what happened prior to arriving at the scene. R27 Officer Beaty did not see Defendant driving the car. R28 Officer Beaty did not perform any field sobriety tests, and did not perform any tests at the police station. R28

Officer Beaty arrested Defendant for DUI drugs or combination of drugs. R25 Officer Beaty acknowledged he had no training on that specific charge. R25 Officer Beaty testified that the factors in support of the arrest were the can and the uncapped syringe on the passenger's seat, which was in Defendant's immediate area of control and the wallet. R26 The State made a motion for directed finding, which was denied by the court. R34, 36 The State did not present any evidence. R37

Circuit Court Ruling

The circuit court noted that a showing of intoxication by drugs cannot be based only on lay testimony. R38 The witness must be qualified as an expert and establish the effects of the drugs – evidence not presented at the

hearing. The court's findings of facts were as follows: The officer could test for the presence of drugs and the test result turned blue. R38 The dispatch was of a possible seizure and the paramedics did not smell any alcohol. R40 When the officer talked to the paramedics, Defendant was in the vehicle and appeared unresponsive. R39 The officer was able to obtain from Defendant that he was a diabetic. The court noted that "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." R39 The court concluded that the officer based his arrest only on the syringe and can. R39

The court contrasted the evidence in this case with a scenario in which an officer asked the driver whether he took drugs and the driver admitted to doing so in short proximity of driving, which caused the accident. R40 The court opined there was an absence of evidence to establish whether Defendant took any drugs, and if the possible drug use was related to the accident not to being a diabetic. R40 The circuit court opined that the officer was required to show the effects of the drug on Defendant, which he failed to do. R40 The trial court granted Defendant's petition to rescind. R40, C30

ARGUMENT

I. Officer Beaty Lacked Probable Cause to Arrest Defendant

The trial court properly found Officer Beaty lacked probable cause to arrest Defendant. While evidence in support of probable cause is lower than that needed at a criminal trial, it is the criteria to determine whether law enforcement has carried out its legitimate interests without improperly impinging on a person's constitutional right against unreasonable searches and seizures. Illinois Courts routinely consider an officer's training and experience when determining whether the officer had probable cause to arrest a motorist for a traffic violation. In this case, the trial court properly considered Officer Beaty's lack of experience and training in the area of drug detection and driving while under the influence of drugs when the court granted Defendant's petition to rescind summary suspension.

Standard of Review

The standard of review for a ruling granting a petition to rescind summary suspension involves a two-part analysis. First, the reviewing court will uphold the circuit court's findings of fact unless the findings were against the manifest weight of the evidence. *People v. Wear*, 229 Ill.2d 545, 561 (2008) Second, the trial court's ultimate ruling on the petition is reviewed *de novo. Id.*

A. Fourth Amendment Guarantees Underlie a Probable Cause Determination

Central to the analysis of whether a police officer had probable cause to arrest an individual is the balance between the motorist's right to be free from unreasonable seizures and the state's legitimate interests. *Deleware v. Prouse*, 440 U.S. 648, 654 (1979) The fourth amendment of the United States Constitution guarantees, the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure." U.S. Const., amend. IV, which applies to state officials through the fourteenth amendment. *Elkins v. United States*, 364 U.S. 206, 213 (1960) The fourth amendment guarantees are also within article 1, section 6 of the Illinois Constitution. ILL Const. 1970, art. 1, §6

A warrantless arrest is presumptively unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967)

> An arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure on an after-the-event justification for the arrest or search, tool likely to be subtly influenced by the familiar shortcomings of hindsight judgment. *Beck v. Ohio*, 379 U.S. 89, 96 (1964)

Detaining motorists falls within the ambit of a seizure within the fourth amendment. *Brendlin v. California*, 551 U.S. 249, 255 (2007)

Exceptions to the warrant requirement include traffic stops. The fourth amendment, however, imposes a standard of reasonableness on this discretion. *Prouse*, 440 U.S. at 653-654 "Probable cause to arrest 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." *Wear,* 229 Ill.2d at 563. The term "a reasonably cautious person" speaks to the concerns of a warrantless arrest as it impinges on a person's Fourth Amendment rights. Probable cause to arrest is more than mere suspicion. *People v. Day*, 2016 IL App (3d) 150852 ¶22

B. Training and Experience Are Integral to a Court's Analysis of Whether the Officer had Probable Cause to Arrest a Motorist

The circuit court properly considered Officer Beaty's lack of training and experience when granting Defendant's petition to rescind. The State contends that a court should give little weight to an officer's training and experience because they result in a subjective opinion. According to the State, a trial court should consider only the issue in light of the facts known to the officer at the time of the arrest.

The U. S. Supreme Court rejected the State's argument in *United States v. Cortez*, 449 U.S. 411 (1981), where the Court noted that an officer's analysis in determining whether the make an arrest rests on the totality of the circumstances based on objective observations including patterns of particular types of lawbreakers. "From this data, a trained officer draws inferences and makes deductions that might well elude an untrained person." *Id. a*t 418

In *People v. Stout*, 106 Ill.2d 77 (1985), this Court held that skill and knowledge are essential to an officer's determination of whether probable

cause exists. "What constitutes probable cause for searches and seizures must be determined from the standpoint of the arresting officer, with his skill and knowledge, rather than from the standpoint of the average citizen under similar circumstances." *Id. a*t 86 The training and experience of an individual police officer, therefore, is determinative in showing that the officer's decisions were not based on hunches and prejudices.

The State cites to *People v. Jackson*, 331 Ill.App.3d 158 (4th Dist. 2002),772 N.E.2d 275 for the claim that the absence of an officer's testimony regarding his law enforcement training is not fatal to his determination of probable cause. In *Jackson*, the defendant argued that the officer had not established his basis of knowledge that the burnt cigarette found in the car was a marijuana cigarette. The court in *Jackson* stated, that if the burnt cigarette was the only basis for probable cause, then the officer's "training and law-enforcement experience would be *highly* relevant." *Id.* at 281 In *Jackson*, additional evidence that supported probable cause was the defendant giving the officer a false name, carrying large amounts of cash, admitted the white powder seized was cocaine, and admitting he had smoked cannabis.

The State fails to acknowledge that training and experience go hand in hand to ensure standardized, objective law enforcement, which is at the core of the reasonable standard within the fourth amendment. An officer's training in recognizing impaired driving ensures that reliable, standardized

tools are used throughout law enforcement. In 1975, the National Highway Transportation Safety Administration (NHTSA) sponsored research to develop standardized tests to assist law enforcement in evaluating suspected drivers impaired by alcohol. The research resulted in three field tests, the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test, whose accuracy was recognized within the scientific community and relied upon by the courts.

The standardized field sobriety tests (SFST) were developed by the NHTSA to "give law enforcement officer the knowledge and tools to identify an impaired driver, make effective roadside evaluation of the driver on initial contact, and evaluate a suspected impaired river using scientifically validated tests." U.S. Dept. of Transportation, National Highway Traffic Safety Administration, "Evaluation of the Effects of SFST Training on Impaired Driving Enforcement", May 2011, p. 1, A1 www.nhtsa.gov/sites/nhtsa.dot.gov/files/811455.pdf, Thus, an officer's knowledge and experience are essential in determining whether probable cause existed to arrest the motorist.

C. An Officer's Training and Experience Increases the Accuracy of Inferences and Deductions Made at the Time of Arrest

The State argues that 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." (State's brief, p. 21) The premise of the State's argument

that an officer's experience causes him or her to make arrests based on beliefs, not facts, is faulty. The NHTSA study "Evaluation of the Effects of SFST Training on Impaired Driving Enforcement", May 2011 found that increased training in standardized field sobriety tests led to more confidence in accurately identifying impaired drivers resulting in more arrests. *Id* at 4,

The purpose of law enforcement training in the area of driving while impaired is to ensure that police officers are versed in recognizing the signs of impairment when presented with a series of facts. In situations where there is only circumstantial evidence of a traffic violation, such as this case, the extent of the officer's training is most important. "Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Cortez*, 449 U.S. at 418 Only sufficient training will enable an officer to know what inferences and deductions are proper to make given a certain set of facts. This is a process of discernment, of knowing what facts are relevant, and even knowing when the officer has insufficient facts or knowledge to reach a conclusion of whether a violation has occurred.

The State argues that "probable cause cannot depend solely on the number of years a person has been a police officer…" (State's brief, p. 21) An officer's training and experience, however, is relied on by circuit courts to form the basis for their rulings on issues of probable cause. For example, in *People v. Smith*, 2012 IL App (2d) 120307, the officer testified to 4 ½ years in

law enforcement during which time he smelled the order of burnt cannabis 200 times and fresh cannabis more than 100 times. In *People v. Weaver*, 2013 IL App (3d) 130054, the officer testified to 4-year's experience in law enforcement with extensive training in narcotics detection and drug trafficking. In *People v. Kavanaugh*, 2016 IL App (3d) 150806, the arresting officer testified that he had completed a 40-hour course on drug impairment, with 1 – 2 days of that training being on cannabis. Overall half of the course was focused on drug detection. The officer also testified that based on his training and experience he was familiar with the differing smells of stale burnt cannabis and freshly burnt cannabis. Justice Holdridge, in his concurring opinion, described the officer as an "experienced veteran officer." *Id.*at ¶36

In contrast to the officer's in *Smith, Weaver*, and *Kavanaugh*, Officer Beaty received no training in drug detection and had no experience arresting drivers under the influence of drugs.

The State minimizes the significance of Officer Beaty's lack of training and knowledge by arguing that probable cause does not require perfection or sufficient evidence to convict. The State is correct in that a probable cause determination is a less exacting standard than proof at a criminal trial. At the heart of a challenge to any arrest, however, is whether the defendant's Fourth Amendment rights were infringed upon or whether the government official had a legitimate interest in carrying out the arrest. While perfection

is not required, suspicions of wrongdoing are not permissible. A police officer's training and experience reduce the risk of a Fourth Amendment violation.

The State also argues that no court should be required to determine what amount of training is sufficient. The facts of this case, however, do not invite this Court to make such a bright-line test. Officer Beaty's training in drug detection was limited to how to administer the NARK swipe test, which only required him to put on latex gloves, take the wipe out of the package and swipe the area of interest. R31-32 This training was merely administerial and required him to make no inferences or deductions. Additionally, Officer Beaty never received training in drug detection.

Training and knowledge are integral to the objective standards of conduct and interpretation of facts gathered by the officer when determining whether the motorist was driving while impaired. In the instant case, the circuit court correctly found Officer Beaty lacked the experience and training needed to establish probable cause existed that the Defendant was driving while under the influence of drugs.

II. State Fails to Show Drug Abuse is so Prevalent in IL that Expert Testimony is No Longer Necessary to Establish Probable Cause for Driving Under the Influence of Drugs

The State contends that drug use is so pervasive in Illinois that a lay person should be allowed to testify to recognizing the effects of driving while under the influence of drugs. The State's claim upends a long history of

Illinois caselaw requiring expert testimony on the issue of impairment by drugs. Moreover, the State's claim of the pervasiveness of drugs is not supported either by Officer Beaty's testimony or the statistics presented by the State.

Illinois courts have long required that an officer be qualified as an expert by the court before opining that the driver was under the influence of drugs. *People v. Jacquith*, 129 Ill.App.3d 107 (1st Dist. 1984) was the first Illinois case in which the appellate court determined that expert testimony was necessary to prove driving while under the influence of drugs. *People v. Bitterman*, 142 Ill.App.3d 1062, 1065 (1st Dist. 1986), reaffirmed the *Jacquith* opinion that an officer had to be qualified by the court as an expert to opine whether the defendant was under the influence of drugs when arrested. Similarly, *People v. Vanzandt*, 287 Ill.App.3d 836 (5th Dist. 1997) established that an officer must have knowledge of the physiological effects that alcohol produces in diabetics when the motorists informed the officer he was a diabetic.

In *People v. Shelton*, 303 Ill.App.3d 915(5th Dist. 1999), the appellate court reversed a conviction due, in part, to the arresting officer's lack of personal experience and training in drug detection. The appellate court found that the officer's experience in transporting people who were experiencing a drug overdose was an insufficient foundation to render an

opinion as to whether the defendant's behaviors were indicative of drug impairment.

The principle that expert testimony is needed to support a finding of driving while under the influence of drugs or a combination including drugs was reaffirmed in *People v. Workman*, 312 Ill.App.3d 305 (2nd Dist. 2000), and *People v. Foltz*, 403 Ill.App.3d 419 (5th Dist. 2010).

The State attacks the appellate court's reliance on *Shelton* on the grounds that it is the only decision that requires expert testimony to establish a person is under the influence of drugs. The *Shelton* decision is not an outlier but embedded in a long line of cases requiring expert testimony in the area of detecting impairment by drugs.

A. Officer Beaty's Lack of Training and Experience in Making Drug Arrests Undermines State's Argument

Officer Beaty's lack of experience in arresting motorists driving while under the influence of drugs undermines the State's claim of the pervasiveness of drugs. Officer Beaty had been employed as an officer by the Village of Shorewood for two years prior to arresting Defendant. R19 During his employment as a police officer, Officer Beaty had never administered the NARK swipe to test for drugs or observed another officer use the NARK swipe during an arrest or investigation. R31 Officer Beaty never testified to any type of scenario in which he gained familiarity with the signs of drug impairment. (Compare with *People v. Van Zandt*, 287 Ill.App.3d 836 (5th Dist. 1997) in which the arresting officer was allowed to testify to his

knowledge of a relative's diabetes.) Thus, Officer Beaty's complete lack of experience with individuals under the influence of drugs as a police officer, in his previous employment, or in other circumstances show that drugs are not so pervasive in Illinois that a lay person can recognize drug impairment in another.

B. Statistics Cited by State Do Not Show a Correlation Between the Rise in Prescription Drugs and Drug Abuse

The State cites to statistics within the 2016 publication by the U.S. Department of Health and Human Services, "Health, United States, 2016" (hereinafter referred to as "Health publication") to allege that the pervasiveness of drugs among the general population is such that the effects of drugs is common knowledge. The statistics as to the prevalence of prescription drug use, however, do not support the State's suggestion that the average person has knowledge of the abuse of drugs and its symptoms. First, the Health publication attributes the rise in prescription medication based on legitimate purposes: medical need, prescription drug development, increased direct-to-consumer marketing, and expansion in health insurance and prescription drug coverage. State's Appendix, A18,

Furthermore, the most commonly prescribed medication listed by the Health publication is not the type associated with drug abuse. The most commonly prescribed medication for the entire population, from 2011-2014, was high cholesterol drugs referred to in the study as antihyperlipidemic agents. A8 The Health publication breakdown of drug prescriptions per age

group reflects the common ailments among different age groups within our society. The most commonly prescribed drug class for person's under 18 years was bronchodilators for asthma. A8 For persons age 18-44, the most common prescription was antidepressants for depression and related disorders. A8 For persons 45-64 years, 25.6 percentage of that population was prescribed medication for high cholesterol. A9 For persons 65 years and over 50.3 percent of the population was prescribed high cholesterol medication. Def. A9 For persons 75 years and older, 48.2 per cent of that population was prescribed medication for high cholesterol. A10

Of the 15 classifications of drugs cited in the study, the most common drugs prescribed to all ages were related to high blood pressure. A8
The State fails to provide any evidence that prescription drugs for either high blood pressure or cholesterol is the type of drug commonly abused. The State refers to the drugs at issue in *Ciborowski*, 2016 IL App (1st) 143352 (Ambien and others); *Workman*, 312 Ill.App.3d 305 (2nd Dist. 2000) (Lorazepam); and *Shelton*, 303 Ill.App.3d 915 (5th Dist. 1999) (Tylenol 3 with codeine), to argue that the rise in prescription drugs is directly related to the rise in drug abuse and general knowledge of drug impairment. However, the drugs cited by the State: Ambien, Lorazepam, and Tylenol 3 with codeine, are not the most commonly prescribed drugs noted in the Health publication. While more people within this country may be prescribed medications, the rise in prescriptions is due to better medical information, more effective marketing,

and better insurance coverage. Additionally, the medications most commonly prescribed have not been shown by the State to be the type that is commonly abused.

The State implies that a correlation exists between the overall use of prescription medication and abuse of alcohol. There is no correlation between the use of prescription medication and alcohol misuse. The data presented by the State simply does not support the argument the State is seeking to make.

C. Lay Testimony on Mental Impairment is Limited in Application

The State's comparison in the numbers of drug abusers to those suffering from mental illness for the purpose of allowing lay testimony in drug abuse cases assumes that mental illness is visible to the average person. Behaviors that fall within the range of mental illness can be circumstantial or chronic; debilitating or effecting only one aspect of a person's life.

The State's argument also fails to acknowledge that the umbrella of mental illness encompasses many categories and subtypes identified in American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed. 2000) Many disorders within the DSM –IV are not necessary visible to the casual observer. The DSM-IV includes a diagnosis of reading disorder, 315.00, where reading achievement, as measured by standardized testing, is substantially below that expected based on age and age-appropriate education. Similarly, the category of sleep disorders, 307.42, and the seventeen subtypes are not apparent to the casual observer. Clearly,

a reading disorder and sleep-related disorder are mental illnesses that are not apparent to another based on observation and interaction with that person.

Even though caselaw allows for lay testimony on mental soundness, the cases cited by the State involve witnesses who have a relationship with the party and the lay opinion is secondary to expert testimony on mental illness. In *People v. Williams*, 38 Ill.2d 115 (1967) a case relied upon by the State, defendant was convicted of a double murder. At his competency hearing, two psychiatrists testified about their examinations of defendant. The appellate court found that the trial court erred in barring a lay witness to testify that defendant appeared insane around the time of the murders. In *Williams*, the lay person testimony, if it had been admitted, would not have been the only evidence to establish the issue of sanity at the competency hearing. The issue of defendant's sanity was established by two psychologists who had each conducted an evaluation on defendant.

If this Court extended the ruling in *Williams* to this case, Officer Beaty's lay opinion as to Defendant's condition would not have been sufficient to find probable cause because the *Williams* ruling relied on the testimony of two expert witnesses.

The opinion cited by the State in *People v. Patlak*, 363 Ill. 40 (1936) undermines the State's argument that lay opinion is sufficient to establish driving while under the influence of drugs. In *Patlak*, the defendant was

convicted of larceny involving a mortgage transaction. The testimony established that defendant had been hospitalized in the past for mental illness. Five "alienists", some being described as specialists in mental diseases, testified to defendant's mental condition. In addition to the expert testimony, four lay witnesses, who had business dealings with the defendant, testified. Two assistant state's attorneys testified to conversations each had with defendant and their conclusion that defendant was sane at the time of their encounter with him. In *Patlak*, the weight of the evidence as to defendant's sanity was the many expert witnesses trained in mental disease, not of the witnesses who had only a brief encounter with the defendant.

If this Court extended the ruling in *Patlak* to the instant case, Officer Beaty's testimony would have been given scant weight because he had never seen Defendant prior to the incident, and had only one conversation with him at the hospital.

The State's reliance on caselaw involving a decedent's testamentary capacity is not controlling because those cases often involve a clandestine changing of a will which is only known to the relatives after the decedent's death. The issue of testamentary capacity arises often after death and too late for an expert to be employed to render an opinion on the decedent's soundness of mind when the will was altered.

In *Butler v. O'Brien*, 8 Ill.2d 203 (1956) the issue was whether the lay witnesses could testify to the decedent's mental capacity. The reviewing

court found the testimony of the following to be sufficient: A lifelong friend of the decedent who had close contact with her for over 15 years; a friend who had known the decedent for the last 20 years and had visited the decedent every other day at a time relevant to these proceedings; decedent's nephew who had seen decedent 12 times during the last six months of her life; and a friend of decedent who had known her for 30 years, testified to visiting her frequently at the hospitals.

If this Court were to extend the common law ruling allowing lay testimony on testamentary capacity to issues of driving while under the influence of drugs, Officer Beaty's fleeting observation of Defendant would not be sufficient to allow the officer to testify as to Defendant's condition under the *Butler* decision.

Thus, even if this Court extended long line of caselaw allowing lay testimony on mental soundness to the area of drug impairment, Officer Beaty's minimal contact with Defendant would not be sufficient to support a probable cause determination that Defendant was driving under the influence of drugs.

III. Probable Cause to Arrest for Driving While Under the Influence of Drugs Requires Signs of Impairment by Drugs, Not Mere Proximity to Suspicious Items

The State disregards the element of impairment by drugs when arguing that probable cause exists to arrest a motorist based on unusual behavior and proximity to illicit drugs. A plain reading of the Vehicle Code

shows that the Illinois legislature intended that impairment be an element of the offense.

A. A Plain Reading of Statute Shows Legislature's Intent to Require a Showing of Impairment by Drugs

The Illinois legislature drafted Section 5/11-501 of the Illinois Vehicle Code to include the element of impairment within the offense of driving while under the influence of drugs. 625 ILCS 5/11-501.

Section 5/11-501 of the IL Vehicle Code states, in relevant part:

(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

The legislature's intent is derived from the plain reading of the statute. *Franzese v. Trinko*, 66 Ill.2d 136, 139 (1977) If legislative intent can be discerned from the plain language of the statute, then a court may not look to outside sources for interpretation as to the statute's meaning and application. *Id.* Section 5/11-501(a)(4) creates a traffic violation when the driver is impaired by drugs. There must be a connection between the driver's behavior and ingestion of drugs to the extent that it renders the driver incapable of safely driving.

Compare Section 5/11-501 of the Vehicle Code with the offense of possession of drug paraphernalia,720 ILCS 600/3.5

Section 600/3.5 states, in relevant part:

(a) A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing cannabis or a

controlled substance into the human body, … (b) *In determining intent under subsection (a), the trier of fact may take into consideration the proximity of the cannabis or controlled substances to drug paraphernalia or the presence of cannabis or a controlled substance on the drug paraphernalia*. (Emphasis Added) 720 ILCS 600/3.5

If the legislature wanted to include a provision that proximity of illegal substances or drug paraphernalia supports a finding of driving while under the influence of drugs, it would have included that language in Section 5/11-501 of the Vehicle Code. Because the legislature chose not to, this Court should not read that into the statute as the State asks this Court to do.

B. Officer Beaty's Cursory Investigation Should not be the Basis of a New Probable Cause Standard

If this Court were to adopt the State's position that lay testimony is sufficient to find probable cause that a motorist is driving under the influence of drugs, the proof necessary to show probable cause would be lowered due to Officer Beaty's cursory investigation and lack of knowledge in drug detection. This position might have the adverse effect of reducing the current growth in trained drug recognition experts or evaluators in Illinois. Surprisingly, the NHTSA studies show that less training results in fewer arrests for impaired driving.

Officer Beaty failed to question Defendant on the syringe found in the car, the burnt can or contents of the baggie. Officer Beaty failed to ask Defendant the basic question of whether he was driving while under the influence of drugs. Justice Schmidt's dissent finds Defendant's statement that he was a diabetic to be self-serving. State's A5 Similarly, the State

argues that upholding the circuit court's opinion would prompt drug abusers to falsely claim they were diabetics.

Caselaw, however, establishes that when asked by an arresting officer, people will often admit to illegal conduct. *See*, *People v. Arrendondo*, 2012 IL App (3d) 110223 (where the defendant produced cannabis and a one-hitter pipe filled with green leafy substance when questioned by the police officer; *Turner* (where the driver admitted to owning the needles and tins with burnt residue found in the car. The passenger admitted to owning the canister which contained white powdery substance in the same car; *Ciborowski* (where defendant admitted to talking Zoloft, Ambien, and Celexium when stopped by a police officer); and *People v. McPeak*, 399 Ill.App.3d 799 (2nd Dist. 2010) (where defendant admitted to taking two hits of cannabis one hour before driving).

Officer Beaty also failed to ask the paramedics basic questions of the meaning of Defendant's vitals. The paramedics offered information that Defendant was not under the influence of alcohol. Officer Beaty failed to ask any follow up questions of the paramedics as to whether Defendant's elevated heartrate was symptomatic of opioid use. When Defendant informed Officer Beaty of his diabetic condition, Officer Beaty never obtained information from the paramedics, hospital personnel, or members of his department on the symptoms of a diabetic reaction. Officer Beaty did not administer any test to Defendant while at the police station. *Compare to*, *People v. Kirk*, 291

Ill.App.3d 610 (1st Dist. 1997) where the police officer required the driver to submit to multiple chemical tests to determine if the driver was under the influence of drugs.

The State argues that requiring experts in the field of drug detection would hamper police departments in prosecuting drug cases. Standardized testing tools to detect driving while under the influence of drugs, however, have been developed and are being implemented throughout the state of Illinois. Increasing numbers of drug recognition experts or evaluators (DREs) are placed throughout the state to assist police officers in detecting drugs during arrests. Based on the annual reports for the International Association of Chiefs of Police, in 2012, there were 24 DREs among 16 agencies in Illinois. A12 In 2014, there were 66 DREs among 42 agencies in Illinois. A14 In 2015, the most recent data available, 72 DREs were placed among 52 agencies in Illinois. A16 The DREs will act as a resource to law enforcement personnel, like Officer Beaty, when confronted with unfamiliar information and arrest scenarios. Additionally, the NHTSA study, "Evaluation of the Effects of SFST Training on Impaired Driving Enforcement", found that increased training created more confidence in the trained officer and resulted in more arrests for driving while impaired. A4

IV. The Items in Defendant's Car do not Establish Probable Cause to Arrest for Driving While Under the Influence of Drugs

The State conflates the distinction between the offenses of driving while under the influence and possession of drugs when proposing that

proximity is sufficient to find probable cause for driving while impaired. Under the Drug Paraphernalia Act, 720 ILCS 600/3.5 evidence of proximity of drugs to the defendant is admissible to show possession because "[k]nowledge is an essential element of the offense of unlawful possession of narcotics. *People v. Bussie*, 41 Ill.2d 323, 324 Driving while under the influence of drugs, 625 ILCS 5/11-501, on the other hand, requires a showing of impairment.

A. The Unknown Item in Defendant's Wallet did not Support Probable Cause

The trial court did not err when giving no evidentiary weight to the contents of Defendant's wallet because there was no test result indicating the baggie contained illicit substances. At the hearing Officer Beaty testified that he did not know the identity of the substance nor did Officer Beaty never asked Defendant about the contents of the baggie. R27

The cases cited by the State to establish that a packet possibly containing an illicit substance is grounds to make a "drug-related arrest" involve charges of drug possession, not driving while under the influence of drugs. (State's brief, 10-11). In *People v. Davis*, 33 Ill.2d 134 (1965) the driver was charged with possession of narcotics. The issue in *Davis* was whether police officer's retrieval of the tin foil packet on the car floor amounted to an illegal search. This Court held that the tin foil package observed by the police officer on the car floor as defendant exited the car did not amount to a search of the car

because it was in plain view. In *Davis*, there was no issue as to whether the driver was driving while under the influence of drugs.

In *State v. Neth*, 196 P.3d 658, (Wash. 2008), the Supreme Court of Washington reversed a conviction of possession of methamphetamine with intent to deliver because the facts within the search warrant amounted to mere suspicion of criminal activity not a reasonable belief of criminal activity.

The allegations within the search warrant were that the driver was overly nervous, driving a car not his own, unable to show insurance or registration information, did not have any identification on his person, could not specify where he was living, admitted to having $2,500 - $3,000 in cash in the car, had several clear plastic bags, and was a convicted felon for possession of heroin. The State erroneously relies on *Neth* for the proposition that the baggie found in Defendant's wallet was evidence that it contained an illicit substance.

In *People v. Dickinson*, 928 P.2d 1309 (Colo. 1960), the Colorado Supreme Court found probable cause to arrest for attempt to distribute a controlled substance when the police officer observed the defendant in a car with both cash and the white powdery substance in his hands. When the officer asked the defendant to show his hands, defendant put the substance in his mouth, and fled from the car. As in all the previous cases cited by the State, *Dickinson* deals with probable cause to arrest for either possession or attempt to distribute.

There was no evidence presented at Defendant's hearing to establish that the substance found in Defendant's wallet was illicit. Moreover, Officer Beaty presented no testimony that Defendant had ingested any amount of that unknown substance resulting in impaired driving. Therefore, the circuit court did not err when giving no evidentiary weight to Officer Beaty's testimony that he found the baggie.

B. No Evidence Linking Substance in Can to Defendant's Condition

The State argues for this Court to adopt a new position that a positive field test of drugs on an item within a car is sufficient to establish probable cause that a driver was driving under the influence of drugs. (State's Brief, p. 11)

Evidence of drug paraphernalia has never been a basis for probable cause to arrest based on driving while drug impaired. In *People v. Turner*, 373 Ill.App.3d 121 (2nd Dist. 2007), the defendant was the passenger in his own car. Defendant consented to the search of the car during which the police found a shoebox behind the driver's seat containing hypodermic needles, tins with burnt residue, and a wire hanger. The driver admitted that he owned the items within the shoebox, and steals to support his drug addiction. Defendant admitted to using marijuana and cocaine, but not with hypodermic needles. A canister with white powdery substance, which defendant admitted was his, was found in the car as well. Defendant was found guilty of unlawful possession of a controlled substance.

The State's reliance on *People v. Koesterer*, 44 Ill.App.3d 468 (1st Dist. 1976) fails to acknowledge key evidence which distinguishes this case from the instant one. The State cites to *Koesterer* for the contention that a burnt spoon and syringes, and track marks were "ample evidence" that defendant had consumed drugs before the interrogation. (State's Brief, p. 12) In *Koesterer*, the appellate court reversed the conviction of armed robbery based primarily on defendant's written confession because the defendant being under the influence of drugs at the time she made the confession. Evidence considered by the reviewing court, and not included in the State's brief, was defendant's statement that she had been on drugs for 4-5 years. She used marijuana, acid, crystal, and methamphetamines. Defendant testified that she took 30 – 50 pills of preludin per week. When she could not obtain preludin, she ingested methamphetamines intravenously. During the week prior to her arrest she was taking 7-8 various barbiturate-based pills per day. On the day of the arrest, defendant admitted to boiling down 100 preludin tablets and injected 1/3 of this solution. She injected another 1/3 of the solution later that night.

Additional testimony came from a medical doctor in neurology and pharmacology who testified to the effects of the amounts and types of drugs taken by defendant on the night of her arrest. Based on the testimony of defendant, the medical doctor, as well as the police observing the empty, 100 tablet bottle of preludin, syringes, bloody cotton and a burnt spoon, the

appellate court held that there was ample evidence that defendant was under the influence such that her confession was not voluntary. Thus, in *Koesterer*, the "ample evidence" was much more than a burnt spoon and a syringe. It also included testimony of extensive and large amounts of drug use up to the time the confession was written, testimony by a pharmacologist, and the officer's own observations of a pill container that corroborated defendant's testimony.

The State's reliance on *People v. Morrison*, 178 Ill.App.3d 76 (4th Dist. 1988), highlights the overly broad generalizations the State is asking this Court to make. At issue in *Morrison* was whether there were sufficient allegations within the complaint for a search warrant to show probable cause to search defendant's residence. The complaint outlined two controlled buys within 7 days of one another by an undercover officer and observed by a supervisor. On both occasions, the officer observed the go-between entering into defendant's house and returning with the substance that field tested positive. The opinion in *Morrison* was limited to whether the complaint established probable cause to issue a search warrant of defendant's house. *Morrison* has never been enlarged to the extent that the State asks this Court; that is, sufficient to support a finding of probable cause of driving while under the influence of drugs.

The State argues Defendant's failure to offer an innocent explanation for the burnt beverage can is evidence that Defendant was driving while

under the influence of drugs. The facts establish that Officer Beaty never received any explanation about the can because Beaty simply never bothered to ask.

C. Appellate Court Gave Proper Weight to the Contents of the Can

The State claims that the appellate court's opinion discounted the can because Officer Beaty administered a test for cocaine yet concluded the test was positive for opiates. The appellate court's opinion is correct in light of the State's brief in the appellate court and Officer Beaty's lack of training. The State argued in its brief before the appellate court that Beaty was trained in the opiate testing procedure and the residue tested positive for opiates. (State's brief in the appellate court, 3-16-0025, p. 37) This was a mischaracterization of Officer Beaty's testimony that the cocaine testing kit showed a positive result for opiates. The appellate court's mention of the discrepancy between the cocaine test and Beaty's conclusion of the presence of opiates was likely in response to the State's argument presented before that tribunal.

The majority opinion in the appellate court did not discount the can, rather saw Officer Beaty's testimony regarding the can as indicative of two major problems with the investigation. Officer Beaty testified he never received any DUI drug detection or drug arrest training. R20-21 Officer Beaty's inability to differentiate between cocaine and opiates underscored his

lack of training necessary to offer reliable testimony, much less opinion testimony.

Officer Beaty's reliance on the can, without any additional investigation into Defendant's condition, failed to establish probable cause that Defendant was driving under the influence of either cocaine or opiates. Both the trial court and the appellate court stressed the lack of evidence linking the can to Defendant ingesting its contents and driving under the influence of drugs – as opposed to a diabetic reaction.

Officer Beaty's lack of knowledge and cursory investigatory efforts are in sharp contrast to *People v. Ciborowski*, 2016 IL App (1st) 143342, a case relied upon by the State. In *Ciborowski,* the arresting officer testified at the suppression hearing to observing hundreds of people under the influence of drugs during his professional career in which he worked extensively in illegal narcotics. The officer testified to observing the effects of drugs ranging from cocaine to anti-depressants. Additionally, the police officer testified he received training at the academy on drug detection. The defendant admitted to taking Zoloft, Ambien, and Celexium. The officer testified to conducting 3 field sobriety tests on defendant, who failed them all. The trial court found the officer to be very credible and found the officer had probable cause to arrest defendant for driving while under the influence of drugs.
Similarly, the State relies on *People v. McPeak*, 399 Ill.App.3d 799 (2nd Dist. 2010) to argue that the presence of drug paraphernalia was sufficient

circumstantial evidence that the defendant had drugs in his system while driving. The reviewing court in *McPeak* rejected that argument and said that more factual circumstances were necessary to support a strong inference of driving while impaired. In *McPeak*, defendant admitted to taking "two-hits" of cannabis one hour before driving as well as the odor of cannabis on his person. The appellate court found this evidence was insufficient to establish that cannabis remained on defendant's breath, blood or urine when he was driving. The appellate court reversed defendant's conviction of driving while under the influence, pursuant to 625 ILCS 5/11-501(a)(6).

In the instant case, there is even less evidence linking the contents of the can to Defendant's condition than in *McPeak*. Officer Beaty never asked Defendant if he had ingested the contents of the can. Moreover, Officer Beaty never asked the paramedics if Defendant's vitals were indicative of drug impairment. Thus, under the *McPeak* standard, this Court should find that the existence of the can, without more direct evidence, was insufficient to create probable cause that Defendant was driving while under the influence of drugs.

D. Track Mark and Syringe do not Establish Defendant was Under the Influence of Drugs While Driving

The State erroneously refers to "legal authority" to deduce the ingestion of illegal drugs with an item that has legitimate uses based on items close by when citing the Possession of Drug Paraphernalia provision,

720 ILCS 600/3.5 (State's Brief, p. 14) The authority, however, is statutory, not legal, because it derives from the plain language of the Section 600/3.5.

The State only cites cases involving drug possession charges in support of its position that proximity of drug paraphernalia amounts to probable cause for arrest for driving while under the influence. In *State v. Harris*, 52 Ill.2d 558 (1972) and *People v. Ash*, 346 Ill.App.3d 809 (4th Dist. 2004) the appellate opinion focused on the admissibility and sufficiency of the evidence at trial. The charges at issue there were possession of drug paraphernalia, not driving while under the influence of drugs. Moreover, in *Ash*, the evidence of powder was being methamphetamine was based on a thorough testing by the crime laboratory.

The State relies on *People v. Smith*, 95 Ill.2d 412 (1983) and *People v. Bibbs*, 176 Ill.App.3d 521 (4th Dist. 1988) for the position that the existence of drug paraphernalia undermines any innocent explanation and corroborates guilt. Neither cases support the State's contention. The issue in *Smith*, however, was whether the warrantless search of a box in defendant's car was unconstitutional. In *Smith*, the defendant was charged with unlawful possession, not driving under the influence. This Court found that the police officer had reason to stop the motorist due to the invalid safety-inspection sticker. The officer smelled alcohol on the driver's breath and observed an open beer bottle in the car. These observations were sufficient to warrant the officer to search the car, which resulted in finding a syringe and a one-hitter

box. The decision *Smith* focused on the legality of the search, not whether the existence of drug paraphernalia corroborates guilt.

People v. Bibbs involves a case in which the defendant was charged with the offense of possession of a controlled substance, not driving while under the influence. At the suppression hearing, two officers testified to their 13-14 year employment with the police department; their training in the identification of illegal drugs, and their experience in identifying cannabis, cocaine, and heroin. Moreover, the officers were executing a valid search warrant. At no time during the search was the defendant present or offered an alternative explanation for the white powdery substance, as suggested by the State. *Bibbs*, moreover, is distinguishable from the instant case because the officer's in *Bibbs* had extensive experience in law enforcement and training in the detection of illegal drugs. This knowledge is reflected in their ability to distinguish cocaine drug from heroin, unlike Officer Beaty.

The State again relies on drug possession caselaw when discussing *State v. Nimer*, 246 P.3d 1194 (Utah Ct. App. 2010). The issue in *Nimer* was whether the syringes found on defendant were used as drug paraphernalia. This case did not hinge on the fact that the syringes were not within a medical kit. The Utah reviewing court looked at the totality of the circumstances which included: when police arrived on the scene in response to a call of suspicious activity in a parking lot, they encountered a women injecting herself with a syringe filled with what was later tested as heroin,

eyewitnesses informed the officer that defendant was with the woman in the immediate past, defendant had many syringes in his pocket which were similar to the one used by the woman, and the officer had over two years' experience with seeing drugs and drug paraphernalia on a weekly basis.

The Utah court also looked at its state statutes which define hypodermic syringes, needles and other objects intended for use to parenterally inject a controlled substance a syringe as drug paraphernalia. Utah Code 58-37a-3. Additionally, the Utah code identifies 14 factors that a trier of fact can consider to determine if an object is drug paraphernalia. Utah Code 58-37a-4 Relevant factors in *Nimer* were the proximity of time and space to a direct violation, and the proximity of the object to a controlled substance.

The State's reliance on *Commonwealth v. Landry*, 779 N.E.2d 638 (2002) was dictum. The opinion found that when a person presents a valid exchange program membership card, a police officer may not arrest that person for violating the state provision prohibiting the possession of hypodermic needles and syringes.

E. State Relies on Information not Introduced at the Hearing in its Discussion of Track Marks

The State argues matters that were not testified to by Officer Beaty and not exhibits entered into evidence at the hearing. The State also *dehors* the record when attempting to bolster the evidence presented. The State's brief quotes to a Law Enforcement Sworn Report that "witnesses told Beaty

that the driver 'was passed out'". (Page 3 of State's Brief, citing to the Law Enforcement Sworn Report, C5). This police report was not admitted into evidence at the rescission hearing and not considered by the circuit court.

The State improperly cites to the Troy ambulance report even though it was never entered into evidence at the rescission hearing. (References to information within the ambulance report are found in the State's brief on pages 3-5, 10, 16, 18, and 33) The State's reliance on the ambulance report underscores the insufficiency of Officer Beaty's testimony. If the State was confident that Officer Beaty's testimony established probable cause to arrest Defendant, then the State would have to argue facts no in evidence at the hearing on Defendant's petition to rescind statutory summary suspension to bolster its argument before this Court.

The State's inclusion in its brief of documents not admitted into evidence at the rescission hearing also indicates the type of evidence the State needed to establish probable cause to arrest Defendant. To wit: Officer Beaty had no knowledge of the significance of Defendant's vitals or information linking his appearance to being under the influence of drugs while driving. Noteworthy is that Officer Beaty only asked one question of the paramedics: "I asked if he, if he had any alcohol, if he had the smell of alcohol or anything. Paramedics told me no." R29 Officer Beaty failed to ask the paramedics for any information to establish probable cause that Defendant was driving while under the influence of drugs.

The State cites to the summary of the testimony of a forensic pathologist as to a "track-mark scar" found on a person's arm in *People v. Nere*, 2017 IL App (2d) 141143. The State improperly extrapolates this summary in *Nere* to be a medical definition applicable to the instant case. Moreover, there was no mention of any scar on Defendant's arm. Officer Beaty testified only to being told by the paramedic that Defendant had a fresh track mark. Officer Beaty obtained no further information from the paramedic or the hospital personnel as to what defines a mark as "fresh", whether the mark was due to an insulin injection, and even if Defendant's vitals were indicative of illegal drug use.

The State again *dehors* the record when citing to the IL Administrative Code to argue a distinction between vein and subcutaneous. (State's Brief, p. 15, citing 59 Ill.Admin.Code §§116.10, 115.50(b)) This provision within the IL Administrative Code is within the subsection entitled, "Administration of Medicine in a Community Setting." Officer Beaty did not testify to having any knowledge of this provision of the Illinois Administrative Code. Officer Beaty never testified to previously working in the medical field and being responsible for administering medicine. This is completely outside the realm of Officer Beaty's knowledge at the time of the arrest. The police officer did not testify to having any knowledge of insulin injections by diabetics, much less the differing effects of diabetic seizure vs. drug exposure.

Moreover, the provision of the administrative code cited by the State refers to use of an insulin "pen". There is no evidence in the record that an insulin pen is the same as the syringe found in Defendant's car. Moreover, Officer Beaty did not testify to seeing Defendant's track mark or ever seeing a track mark as a police officer or at any other time. Officer Beaty only testified to what the paramedic allegedly told him. There was no evidence presented in the instant case as to the technician's definition of a track mark and whether there was any differentiation between a mark caused by injection of insulin vs. illegal substances.

CONCLUSION

For these reasons, the Defendant, Ahmet Defendant, respectfully asks this Court to affirm the Third District's judgment affirming the circuit court's order granting Defendant's petition to rescind summary suspension.

April 17, 2017

Respectfully submitted,

/s/ Elizabeth Butler
Elizabeth Butler
Attorney at Law
707 Skokie Blvd., Suite 600
Northbrook, IL 60062
(312) 371-5533
elizabeth@ebutlerlaw.com

Counsel for Defendant-Appellee,
Ahmet Defendant

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 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 40 pages.

/s/ Elizabeth Butler
Elizabeth Butler,
Attorney for Appellee

APPENDIX

U.S. Department of Transportation
National Highway Traffic Safety Administration

TRAFFIC SAFETY FACTS
Research Note

NHTSA
www.nhtsa.gov

DOT HS 811 455

May 2011

Evaluation of the Effects of SFST Training on Impaired Driving Enforcement

Jack Stuster,[a] Eunyoung Lim,[b] Amy Berning,[b] and Yll Agimi[c]

Introduction

In 2008, 11,773 people died in alcohol-impaired-driving vehicle crashes, accounting for nearly 32% of the total traffic fatalities (NHTSA, 2008). Fatalities resulting due to a driver with a blood alcohol concentration (BAC) of .08 grams per deciliter (g/dL) or higher are considered alcohol-impaired-driving fatalities. To decrease the number of alcohol-related motor vehicle fatalities and injuries, the National Highway Traffic Safety Administration has contributed to the improvement of highway safety by giving law enforcement officers tools to assist in the identification of impaired drivers for the purpose of more effectively and consistently enforcing impaired driving laws. Beginning in 1975, NHTSA sponsored research that led to the development of the Standardized Field Sobriety Tests (SFST) for law enforcement officers to use to evaluate motorists who are suspected of driving while impaired (DWI). SFST is a battery comprised of three different tests: the horizontal gaze nystagmus (HGN) test, the walk-and-turn test, and the one-leg-stand test (see Stuster, 2001). The purpose of SFST training is to give a law enforcement officer the knowledge and tools to identify an impaired driver, make effective roadside evaluation of the driver on initial contact, and evaluate a suspected impaired driver using scientifically validated tests. Additionally, the training shows law enforcement officers how to effectively record and describe observed behaviors of impaired driving suspects and present effective testimony in court.

Officers have used SFSTs since 1981 to help identify impaired drivers with BACs equal or greater than .10 g/dL and since 1998 to discriminate at the .08 g/dL BAC level. Many studies have found NHTSA's SFSTs to provide accurate and reliable support for officers when making roadside arrest decisions for DWI (Burns & Moskowitz, 1977; Tharp, Burns, & Moskowitz, 1981; Burns & Anderson, 1995; Anderson & Burns, 1997; Burns & Dioquino, 1997; and Stuster & Burns, 1998). Overall, when the three components of SFST are combined, officers are accurate in detecting drivers with BACs higher than the limit of .08 g/dL in 91% of cases (Stuster & Burns, 1998). Furthermore, officers have found the SFST to be appropriate for field use. In 1986, the Advisory Committee on Highway Safety of the International Association of Chiefs of Police (IACP) recommended that law enforcement agencies adopt and implement SFSTs and the associated training program.

Since the SFST battery was developed in 1981, it has largely replaced the non-validated sobriety tests used by patrol officers to make DWI arrest decisions. Currently, the SFST is used in all 50 States and has become the standard pre-arrest procedures for evaluating DWI in many law enforcement agencies. In addition to the scientific evidence in support of the SFST, extensive operational experience with SFSTs has convinced many law enforcement officers and courts of SFST's diagnostic utility. However, despite NHTSA's support for SFST training, some police agencies do not require their officers to receive SFST training. The purpose of this study was to evaluate the benefits of SFST training on officers in performing DWI-related tasks.

[a] Anacapa Sciences, Inc.
[b] Office of Behavioral Safety Research, National Highway Traffic Safety Administration
[c] Public Health Fellow, Association of Schools of Public Health

Methods

Anacapa Sciences, Inc.,[1] was selected by NHTSA to conduct an evaluation, including selecting a study site, devising and conducting data collection, and analyzing the data. Following the selection of the New York City Police Department's (NYCPD) Highway District as the study site, the New York Governor's Traffic Safety Committee gave SFST training to study participants free of charge.

Study Site

The NYCPD Highway District was well suited for the project because many officers had traffic enforcement as a primary responsibility, and very few officers had been previously trained in administration of the SFST battery.

The NYCPD Highway District is responsible for all law enforcement on the 418 miles of highway in the five boroughs of New York City. The Highway District officers also provide traffic enforcement support to other commands when requested by the borough chiefs and they conduct special enforcement programs. One unit of the Highway District focuses exclusively on the surface streets of Manhattan. At the time of the study, the Highway District—known traditionally as the Highway Patrol—was composed of 280 officers, whose primary responsibility and mission was traffic enforcement.

Despite the focus on traffic enforcement, at the time of the study only 20 officers of the Highway District had received SFST training and only 2 officers were certified SFST instructors. No other officers of the Highway Patrol had received any formal training concerning DWI detection or sobriety evaluation, either at the police academy or in service. Instead, the officers relied exclusively on observation and portable breath testing (PBT) devices to assess impairment during enforcement stops.

Training

A central part of this study was the administration of SFST training to a group of officers at the study site. Training was sponsored by the Governor's Traffic Safety Committee. From April to December 2004, 102 NYCPD officers received a standard SFST training course administered during six 3-day sessions, amounting to some 22 hours of instruction. The officers receiving the training were grouped into 6 classes. The goals were to make officers more skillful at detection and description, increase DWI arrests, and present stronger cases for prosecution of DWI offenses. The principal activity of this training was hands-on practice by the participants.

During standard SFST training, officers spend most of the time on various elements of DWI detection and description tasks such as video-taped presentations, brief "testimony" sessions, controlled drinking practices, and practice administering the SFSTs as well as recording and interpreting test results. Training on report writing and participation in moot courts, a written test, and a field proficiency examinations are considered part of standard SFST training (NHTSA, n.d.).

Data Collection and Analyses

In order to evaluate the impact of SFST training on officers' DWI-related activities, data on patrol hours, number of DWI arrests, and self-reported data on DWI arrest skills were gathered. For comparison purposes, such data were also gathered from a "control" group of officers who did not receive SFST training.

The 102 officers were trained as part of this study and two types of comparisons were conducted. For officers selected for training, DWI-related activities data prior to their SFST training was compared with their data following SFST training. This type of within-group comparison was intended to show the effect of SFST training on the various DWI-related activities on officers receiving SFST training using their own pre-training experiences for comparison. For within-group analysis 54 officers with no DWI arrest data were excluded. Within-group analyses compared the same officers before and after they received SFST training to determine whether the training made a difference in their DWI enforcement.

In the second type of analysis, self-reported measures on DWI-task-related activities of 80 SFST-trained officers were compared to those of 84 officers who did not receive SFST training. This type of between-group analysis was intended to show the effect of SFST training on officer's DWI-related activities using non-SFST training officers as a comparison group.

Results

Within-Group Comparisons

Of the 102 officers who received SFST training, 80 completed questionnaires on various aspects of SFST administration prior to and after receiving SFST training. New

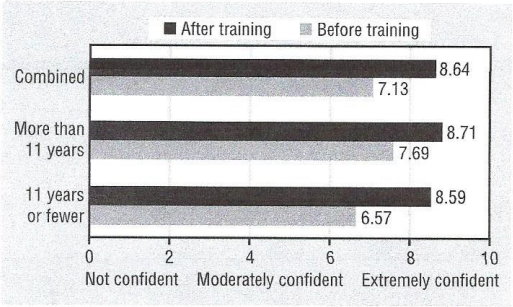
[1] Under NHTSA Contract # DTNH22-98-D5-0798

officer recruits, who did not complete pre-training questionnaire, were excluded from these comparisons. The group of trained officers included in the comparisons averaged 11 years of law enforcement experience.

Using a questionnaire, officers were asked how confident they felt in determining whether to arrest a driver for DWI.[2] Following SFST training, all officers reported feeling more confident in their ability to accurately determine whether to arrest a driver for DWI when compared to their reported levels before receiving the SFST training. Following SFST training, on average, officers reported feeling highly to extremely confident in accurately determining whether to arrest a driver for DWI.

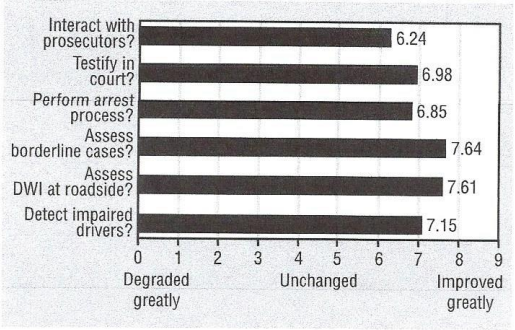
When examining officers' confidence in determining whether to carry out a DWI-related arrest responses varied according to the officer's years of experience. Those with 11 or fewer years of experience, on average, reported a greater improvement in their confidence level compared to officers with more than 11 years of experience after receiving the training (Figure 1). This difference in improvement may be due to the lower confidence level reported by officers with 11 or fewer years of experience prior to receiving SFST training than officers with more than 11 years of experience.

Figure 1
How confident were you in your ability to accurately determine whether to arrest a driver for DWI before and after SFST training, by officers' years of experience (mean responses)



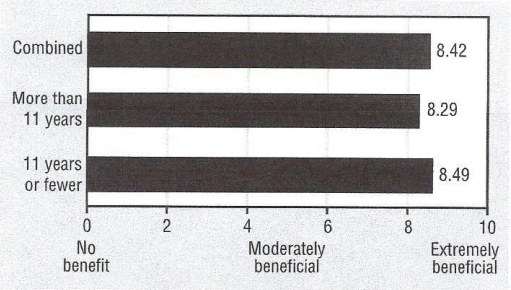
When asked to rate the effect of SFST training on their ability[3] to conduct DWI related tasks following training, officers report that SFST training slightly improved their ability to interact with prosecutors. Officers also reported that SFST training moderately improved their ability to detect impaired drivers, assess DWI at roadside, assess borderline cases, and perform the arrest process including testifying in court (Figure 2).

Figure 2
Has SFST training affected your ability to: (mean responses)



Overall, officers who received SFST training found it to be highly beneficial in conducting their assigned DWI-related duties. Officers with 11 or fewer years of experience found SFST training slightly more beneficial than those with more than 11 years of training (Figure 3).

Figure 3
Overall, how would you rate the SFST training you received? (by officers' years of experience)



The participating officer's number of DWI arrests was used as an indicator of DWI arrest performance. The number of arrests prior to SFST training was compared to the officer's arrests after training. Of the 102 officers trained in SFST, the DWI arrest performance of 48 officers was analyzed before and after receiving SFST training. Of the 54 officers excluded from DWI arrest data analysis, 21 were new officer recruits without pre-training DWI arrest data, and 29 officers made no DWI arrest before or after SFST training. An additional four

[2] Questions used a 10-point Likert scale ranging from a low of 1="Not Confident" to 10="Extremely Confident."

[3] Questions used a 10-point Likert scale with anchors ranging from 1="Degraded Greatly" to 10="Improved Greatly."

officers who didn't have any patrol hours were also excluded from analyses.

Individual DWI arrest performance for the 48 officers during the study period ranged from 1 DWI arrest to 43 arrests. Six officers made their only arrest during their pre-training period and 14 officers made their only arrest after receiving SFST training. On average, the 48 officers made 3 DWI arrests during their pre-training periods and 3.5 arrests during their post-training periods.

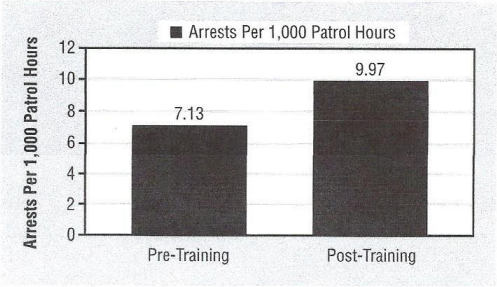
When comparing the number of pre-training DWI arrests to post-training DWI arrests on a per-1,000-patrol-hour basis, officers made an average of 10 arrests per 1,000 patrol hours after SFST training, compared to 7 arrests before training. This difference is significant with a 95% confidence level (p=0.04). DWI arrest summaries and patrol hours for the 48 officers included in the analyses are shown in Table 1.

Table 1
Summary of Pre- and Post-Training DWI Arrest Data

	Pre-Training	Post-Training
DWI Arrests	140	168
Patrol Hours	19,631	16,859
Arrests Per 1,000 Patrol Hours	7.13	9.97
Average BAC (g/dL)	.12	.12

SFST training was administered to officers separated into six classes. When examining the number of DWI arrests pre-SFST training to post-SFST training by SFST training class, all classes showed higher rate of arrests after receiving SFST training compared to pre-SFST training performance. Across all classes, on average, officers made 10 arrests following training compared to 7 arrests before training (Figure 4).

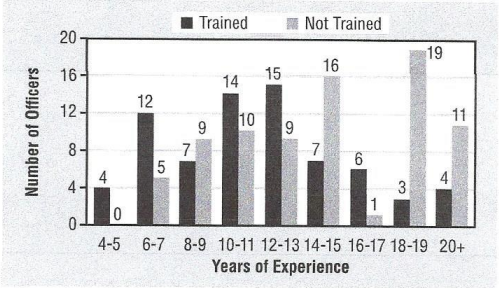
Figure 4
Arrests per 1,000 patrol hours



Comparisons Between Groups

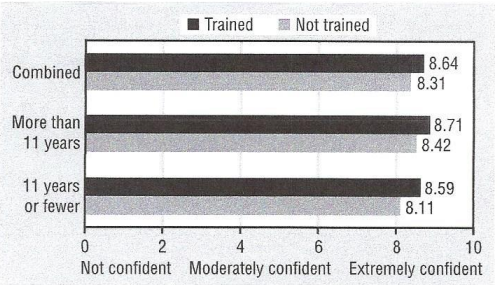
The second type of analysis conducted included comparisons between various DWI-related outcomes for SFST-trained officers and a group of non-SFST-trained officers. For these comparisons, the survey administered to the 80 officers who had received SFST training was also administered to 84 officers who had not received the training. The group of trained officers averaged 11 years of law enforcement experience compared to 14 years for non-trained officers (Figure 5).

Figure 5
Years of experience distribution of SFST trained and non-trained officers



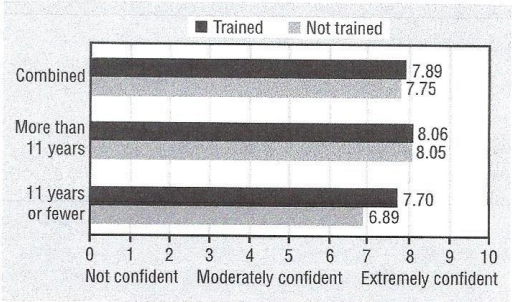
Officers who received SFST training and those who did not receive training were asked to report their levels of confidence in making DWI arrest decisions. SFST-trained officers, on average, reported slightly higher confidence in their ability to accurately determine whether to arrest a driver for DWI than non-SFST-trained officers. Trained officers in both experience categories, on average, reported slightly greater confidence in performing this task than non-trained officers (Figure 6).

Figure 6
How confident are you in your ability to accurately determine whether to arrest a driver for DWI?



Officers were also asked to report their confidence levels in testifying in court in support of a DWI arrest.[4] The confidence level of SFST-trained officers to testify in court in support of a DWI arrest did not differ from the confidence level of non-SFST-trained officers. However, since non-SFST-trained officers have more years of experience, the level of experience may be a confounder. When examining the level of confidence according to officers' years of experience, those with 11 or fewer years of experience who received SFST training reported being more confident in testifying in court compared to non-SFST-trained officers with similar years of experience (Figure 7).

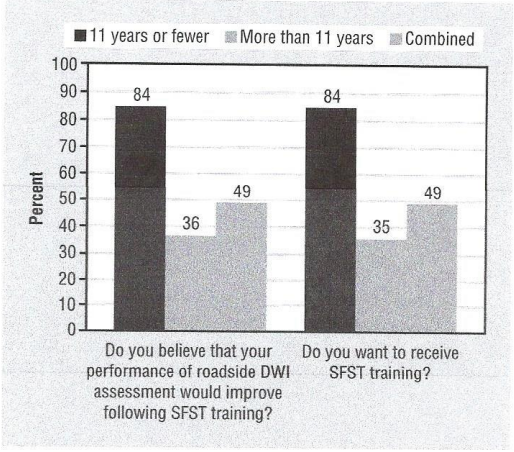
Figure 7
How confident are you in your ability to testify in court in support of a DWI arrest?



Non-SFST-trained officers were also asked if they considered their DWI roadside assessment skills would improve if they received SFST training and whether they wanted to be trained. Approximately 49% of officers who did not receive SFST training said their performance in roadside DWI assessments might improve following SFST training, and a similar proportion of non-SFST-trained officers were interested in receiving SFST training. However, when separated by years of experience, non-SFST-trained officers with 11 or fewer years of experience were much more likely to believe their DWI performance would improve following SFST training. Some 84% of officers from this group indicated interest in receiving SFST training compared to 35% for those with more than 11 years of experience (Figure 8).

[4] Questions used a 10-point Likert scale ranging from a low of 1="Not Confident" to 10="Extremely Confident."

Figure 8
Percent of non-SFST-trained officers responding "Yes" according to years of experience



Conclusions and Discussion

As a result of SFST training, officers reported increased confidence in performing DWI-related activities compared to pre-SFST training levels. For example, regardless of their number of years in service, officers reported increases in their confidence levels in DWI detection skills after SFST training. Additionally, following SFST training, the number of DWI arrests per officer patrol hour increased significantly, compared to pre-SFST-training levels. The majority of officers who received SFST training as part of the study consider SFST training to be highly beneficial, and the majority of non-SFST-trained officers with 11 or fewer years of experience reported interest in receiving such training and thought it would improve their DWI roadside assessment skills.

When compared to officers with more than 11 years of experience, those with less work experience showed a greater increase in their reported confidence levels to conduct DWI assessments. The results indicate SFST training may benefit most officers early in their careers.

Among SFST-trained officers, those with less experience showed a greater improvement in confidence in DWI detection and abilities to testify in court when compared to non-SFST-trained officers with comparable years of experience. In general, officers with less than 11 years of experience reported greater confidence in their abilities to make accurate arrest decisions. They also reported higher levels of confidence in testifying in court in sup-

port of their DWI arrest decisions compared to officers who did not receive the training.

SFST training provides an essential background on DWI problems and issues, and aims to increase the skills of officers involved in alcohol-impaired-driving enforcement. Based on the results of this study, SFST training may contribute to increasing officer's confidence in performing DWI roadside assessments. Specifically, officers reported that SFST training improved their skills in detecting impaired drivers, assessing DWI at roadside, and assessing borderline cases.

Limitations

A number of limitations existed in this study. First, officers selected for the SFST training were in their early years of their Highway Patrol careers, which reflects the reasonable intentions of the Highway Patrol to provide training primarily to those officers who might benefit from the knowledge of SFST for a longer period. Many of the officers who were not selected to receive SFST training were in their final years at the department; therefore comparisons between these two groups should be made with caution, as officers' years of experience may be related to their DWI-related activities.

Second, data collection goals were not fully achieved. Due to study constraints, the post-DWI data collection period was shortened and as indicated previously, officers who had no pre-SFST-training records were excluded from analyses.

Finally, during the course of the study it was learned that the department's procedures and customs inhibited officers from a significant increase in the number of DWI arrests. For example, while the department's overtime policy created an incentive to make DWI arrests, the amount of paperwork required, constraints imposed by the prosecutors and the courts, and other customary practices, acted as a powerful barrier to making more than one arrest per patrol shift. Although on a per-patrol-hour basis, officers conducted significantly more DWI arrests post-SFST-training compared to pre-SFST-training, these barriers may have limited the full benefit of SFST training on DWI arrests.

Citation

Anderson, E. W., & Burns, M. (1997). Standardized Field Sobriety Tests: A Field Study. *Proceedings of the 14th International Conference on Alcohol, Drugs and Traffic Safety, 2*, 635-639.

Burns, M., & Anderson, E. W. (1995). A Colorado Validation Study of the Standardized Field Sobriety Test (SFST) Battery. Denver, CO: Colorado Department of Transportation.

Burns, M., & Dioquino, T. (1997). A Florida Validation Study of the Standardized Field Sobriety Test (S.F.S.T.) Battery. Tallahassee, FL: State Safety Office,

Burns, M., & Moskowitz, H. (1977, June). Psychophysical Tests for DWI Arrest. (DOT HS 802 424). Washington, DC: National Highway Traffic Safety Administration.

NHTSA. (n.d). DWI Detection and Standardized Field Sobriety Testing: Administrator's Guide. Washington, DC: National Highway Traffic Safety Administration.

NHTSA. (2008). Traffic Safety Facts: Alcohol-Impaired Driving, 2008 Data. DOT HS 811 155. Washington, DC: National Highway Traffic Safety Administration.

Stuster, J. (2001, November). Development of a Standardized Field Sobriety Test (SFST) Training Management System. (DOT HS 809 400). Washington, DC: National Highway Traffic Safety Administration.

Stuster, J. W. (2006). Validation of the Standardized Field Sobriety Test (SFST) Battery at 0.08 Percent BAC. *Journal of the Human Factors and Ergonomics Society*, 48 (3), 608-614.

Stuster, J., & Burns, M. (1998). Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent. (DOT HS 808 839). Washington, DC: National Highway Traffic Safety Administration.

Tharp, V., Burns, M., & Moskowitz, H. (1981). Development and Field Test of Psychophysical Tests for DWI Arrest. (DOT HS 805 864). Washington, DC: National Highway Traffic Safety Administration.

U.S. Department of Transportation
National Highway Traffic Safety Administration

This research note and other general information on highway traffic safety may be accessed by Internet users at: www-nrd.nhtsa.dot.gov/CATS/index.aspx

NHTSA's National Center for Statistics and Analysis

1200 New Jersey Avenue SE., Washington, DC 20590

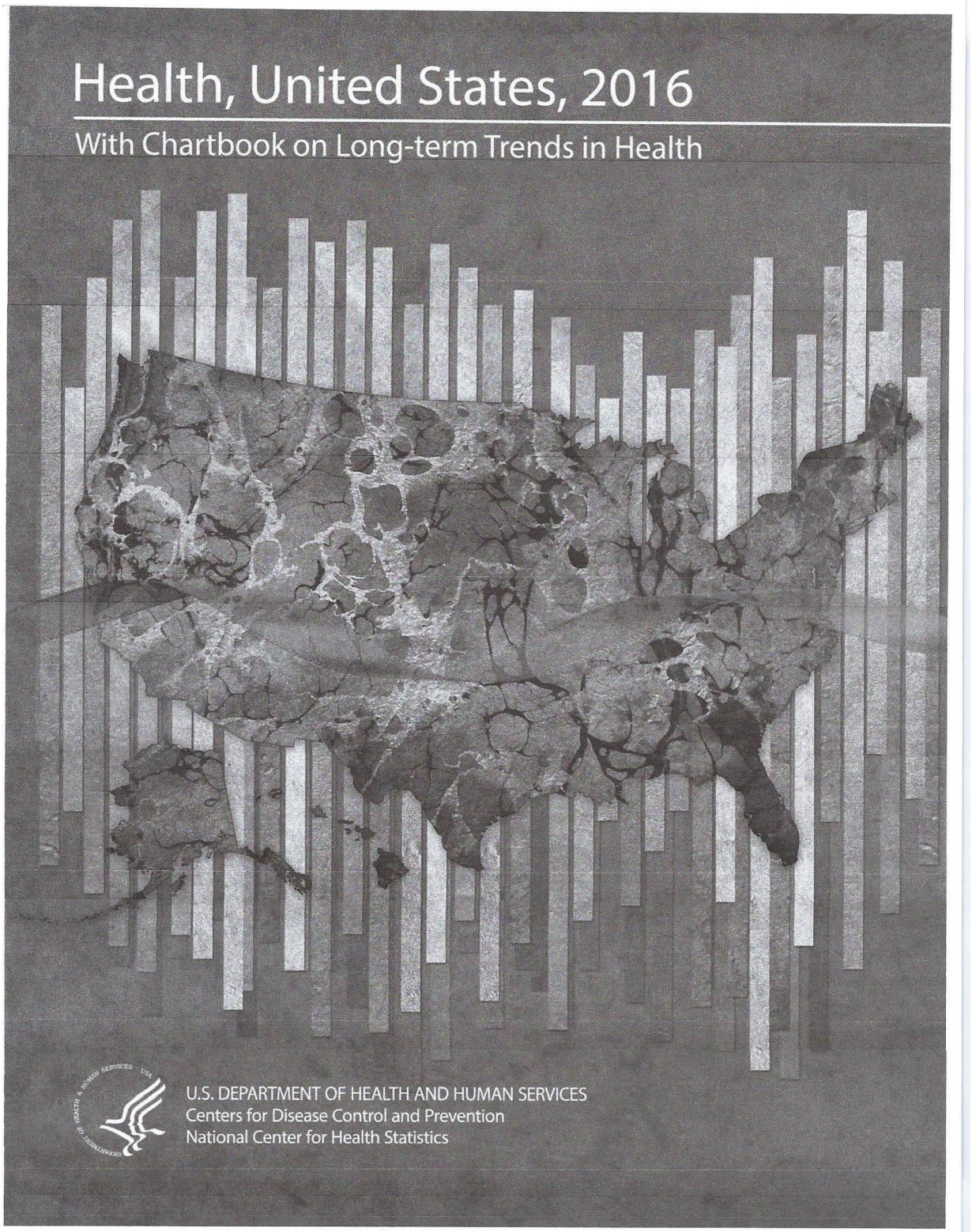


Table 80 (page 1 of 3). Selected prescription drug classes used in the past 30 days, by sex and age: United States, selected years 1988–1994 through 2011–2014

Excel and PDF versions (with more data years and standard errors when available): http://www.cdc.gov/nchs/hus/contents2016.htm#080.

[Data are based on a sample of the civilian noninstitutionalized population]

Age group and Multum Lexicon Plus therapeutic class[1] (common indications for use)	Total			Male			Female		
	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014
	Percent of population with at least one prescription drug in drug class in past 30 days								
All ages									
Antihyperlipidemic agents (high cholesterol)	1.7	6.5	14.3	1.5	7.1	15.0	1.8	5.8	13.7
Analgesics (pain relief)	7.2	9.4	9.1	5.4	7.3	7.6	9.0	11.3	10.5
Antidepressants (depression and related disorders)	1.8	6.4	10.7	1.2	4.4	7.3	2.3	8.3	13.9
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	2.8	5.3	8.5	2.4	4.7	7.5	3.0	5.9	9.4
Beta-adrenergic blocking agents (high blood pressure, heart disease)	3.1	4.4	7.7	2.7	4.1	7.1	3.5	4.6	8.4
ACE inhibitors (high blood pressure, heart disease)	2.4	4.6	7.3	2.4	4.7	8.1	2.4	4.5	6.6
Antidiabetic agents (diabetes)	2.6	3.7	6.6	2.5	3.7	6.8	2.6	3.8	6.3
Diuretics (high blood pressure, heart disease, kidney disease)[3]	3.4	4.1	5.6	2.3	3.1	4.4	4.4	5.1	6.7
Thyroid hormones (hypothyroidism)	2.3	3.9	5.1	0.8	1.5	1.9	3.7	6.2	8.0
Bronchodilators (asthma, breathing)	2.6	3.5	4.6	2.5	3.1	4.5	2.7	3.8	4.6
Sex hormones (contraceptives, menopause, hot flashes)[4]	...	...	...	...	...	...	9.8	15.2	8.7
Anxiolytics, sedatives, and hypnotics (anxiety, insomnia, and related disorders)	2.8	3.3	5.3	1.9	2.6	4.4	3.6	4.0	6.2
Antihypertensive combinations (high blood pressure)	2.4	2.9	4.1	1.4	1.9	3.3	3.3	3.8	4.8
Anticonvulsants (epilepsy, seizure, and related disorders)	1.4	2.4	4.9	1.2	2.1	4.3	1.6	2.7	5.5
Calcium channel blocking agents (high blood pressure, heart disease)	3.6	4.2	4.7	3.4	3.5	4.6	3.8	4.8	4.7
Under 18 years									
Bronchodilators (asthma, breathing)	3.0	4.0	4.4	3.3	4.4	4.9	2.7	3.6	3.9
CNS stimulants (attention-deficit/hyperactivity disorder)	*0.8	2.9	3.4	*1.2	4.4	5.0	*	1.4	1.7
Penicillins (bacterial infections)	6.1	5.1	2.6	5.9	5.2	2.0	6.4	5.0	3.2
Leukotriene modifiers (asthma, allergies)	...	0.7	2.1	...	*0.9	2.5	...	*	1.7
Antihistamines (allergies)	2.0	4.4	2.0	2.1	4.9	2.3	1.9	3.9	1.8
Respiratory inhalant products (asthma, chronic obstructive pulmonary disease, and related disorders)	*0.7	1.5	1.9	*	1.7	2.4	*	1.3	*1.3
Adrenal cortical steroids (anti-inflammatory)	*0.5	0.8	1.0	*	*0.7	*1.0	*0.5	0.9	*1.1
Nasal preparations (nose symptoms)	*	1.1	1.7	*	*1.3	2.2	*	1.0	*
Antidepressants (depression and related disorders)	*	1.8	*1.3	*	2.2	*0.7	*	*1.5	*
Upper respiratory combinations (cough and cold, congestion)	2.3	2.3	*	2.6	*2.4	*	2.0	*2.2	*
Analgesics (pain relief)	1.2	1.4	1.1	*1.2	1.3	*1.0	1.4	1.6	*1.3
Dermatological agents (skin symptoms)	0.7	1.1	1.1	*	1.1	*0.9	*1.0	*1.1	1.4
18–44 years									
Analgesics (pain relief)	7.2	8.0	7.0	5.1	6.0	5.3	9.1	9.9	8.8
Antidepressants (depression and related disorders)	1.6	6.0	8.8	*1.0	3.6	6.4	2.3	8.5	11.2
Sex hormones (contraceptives, menopause, hot flashes)[4]	...	...	...	...	...	...	11.5	13.5	13.4
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	2.0	3.0	3.8	1.6	3.0	4.2	2.4	3.0	3.4
Anxiolytics, sedatives, and hypnotics (anxiety, insomnia, and related disorders)	1.4	2.1	4.2	*1.0	*1.7	3.5	1.9	2.5	5.0
Anticonvulsants (epilepsy, seizure, and related disorders)	0.8	1.6	4.1	*0.6	1.6	4.0	1.0	*1.5	4.2
Bronchodilators (asthma, breathing)	1.4	2.2	2.9	*1.1	1.6	2.6	*1.8	2.8	3.2
Antihyperlipidemic agents (high cholesterol)	*0.4	1.3	2.3	*	2.0	2.9	*	*	1.8
Antihistamines (allergies)	2.5	3.9	1.8	1.8	3.6	*1.6	3.2	4.2	*2.0
Thyroid hormones (hypothyroidism)	1.3	1.6	2.2	*	*	*0.7	2.1	2.8	3.6
ACE inhibitors (high blood pressure, heart disease)	0.7	1.4	2.1	*0.9	1.5	2.1	*0.6	*1.2	2.2
Antidiabetic agents (diabetes)	*1.0	1.5	2.5	*	*1.5	2.1	*1.0	*1.6	2.9
Muscle relaxants (muscle spasm and related disorders)	1.0	1.3	1.7	*1.3	*1.1	1.4	*0.7	*1.4	2.1
Beta-adrenergic blocking agents (high blood pressure, heart disease)	1.1	*1.2	1.6	*0.9	*1.3	1.2	1.3	*	2.0
Nasal preparations (nose symptoms)	*0.6	1.5	1.4	*	*1.2	*0.8	*0.7	1.7	2.1

See footnotes at end of table.

Table 80 (page 2 of 3). Selected prescription drug classes used in the past 30 days, by sex and age: United States, selected years 1988–1994 through 2011–2014

Excel and PDF versions (with more data years and standard errors when available): http://www.cdc.gov/nchs/hus/contents2016.htm#080.

[Data are based on a sample of the civilian noninstitutionalized population]

Age group and Multum Lexicon Plus therapeutic class[1] (common indications for use)	Total			Male			Female		
	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014
	Percent of population with at least one prescription drug in drug class in past 30 days								
45–64 years									
Antihyperlipidemic agents (high cholesterol)	4.3	13.8	25.6	4.4	17.2	28.2	4.2	10.7	23.1
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	5.2	9.9	14.1	5.3	8.4	12.7	5.2	11.3	15.4
Antidepressants (depression and related disorders)	3.5	10.5	17.5	*2.3	7.0	12.5	4.6	13.8	22.2
Sex hormones (contraceptives, menopause, hot flashes)[4]	...	...	...	...	...	...	19.9	30.3	10.1
Analgesics (pain relief)	11.9	16.0	15.5	9.2	13.5	14.3	14.3	18.3	16.7
Beta-adrenergic blocking agents (high blood pressure, heart disease)	6.6	8.7	11.5	7.0	7.8	10.8	6.2	9.5	12.1
ACE inhibitors (high blood pressure, heart disease)	5.2	8.8	12.5	5.7	9.8	14.9	4.6	7.9	10.2
Antidiabetic agents (diabetes)	5.5	7.0	11.3	5.9	7.8	12.5	5.1	6.3	10.2
Thyroid hormones (hypothyroidism)	4.7	6.6	8.1	*1.2	*2.7	*2.6	8.1	10.1	13.2
Antihypertensive combinations (high blood pressure)	5.3	5.6	7.9	3.3	*3.7	7.4	7.1	7.3	8.3
Anxiolytics, sedatives, and hypnotics (anxiety, insomnia, and related disorders)	6.0	6.2	8.6	4.3	4.9	7.7	7.5	7.4	9.4
Diuretics (high blood pressure, heart disease, kidney disease)[3]	6.1	6.6	8.6	4.8	4.8	7.2	7.3	8.3	9.9
Anticonvulsants (epilepsy, seizure, and related disorders)	2.7	4.3	7.5	*2.5	3.5	6.3	2.9	5.1	8.6
Bronchodilators (asthma, breathing)	3.4	3.8	5.2	2.9	3.1	*4.6	3.8	4.5	5.8
Calcium channel blocking agents (high blood pressure, heart disease)	7.0	6.7	6.6	8.2	5.9	7.9	5.9	7.5	5.4
65 years and over									
Antihyperlipidemic agents (high cholesterol)	5.9	23.4	50.3	5.3	24.3	54.4	6.4	22.7	47.1
Beta-adrenergic blocking agents (high blood pressure, heart disease)	11.8	15.9	30.5	10.4	17.5	31.4	12.8	14.8	29.8
Diuretics (high blood pressure, heart disease, kidney disease)[3]	16.2	19.2	21.1	12.2	17.1	19.0	19.1	20.7	22.7
ACE inhibitors (high blood pressure, heart disease)	9.5	16.9	24.1	9.8	18.0	28.1	9.3	16.1	21.0
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	7.5	14.6	23.2	7.2	14.1	19.8	7.7	15.0	25.9
Antidiabetic agents (diabetes)	9.0	12.4	19.5	9.0	12.9	22.6	9.0	12.0	17.1
Anticoagulants or antiplatelet agents (blood clot prevention)[5]	6.1	9.1	14.6	6.8	11.5	17.8	5.6	7.4	12.1
Analgesics (pain relief)	13.8	18.4	16.4	11.4	15.0	14.2	15.6	20.9	18.2
Calcium channel blocking agents (high blood pressure, heart disease)	16.1	19.1	17.8	14.5	17.4	16.7	17.3	20.4	18.7
Thyroid hormones (hypothyroidism)	7.0	14.3	15.5	3.3	6.7	7.7	9.7	19.8	21.7
Antihypertensive combinations (high blood pressure)	9.6	9.8	11.7	6.0	7.4	8.0	12.2	11.6	14.6
Antidepressants (depression and related disorders)	3.0	9.3	18.9	*2.3	7.2	12.0	3.5	10.8	24.4
Angiotensin II inhibitors (high blood pressure, heart disease)	...	4.8	12.2	...	4.1	11.8	...	5.3	12.6
Antiarrhythmic agents (heart rhythm irregularities)	23.1	16.6	8.8	21.6	17.9	8.4	24.3	15.6	9.0
65–74 years									
Antihyperlipidemic agents (high cholesterol)	7.3	26.2	49.1	6.2	26.6	51.9	8.1	25.9	46.7
Beta-adrenergic blocking agents (high blood pressure, heart disease)	11.3	14.8	25.8	10.6	16.0	27.9	11.9	13.9	24.1
ACE inhibitors (high blood pressure, heart disease)	9.6	17.2	23.5	10.6	18.1	28.9	8.9	16.4	18.9
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	7.0	14.7	20.7	6.3	13.4	18.3	7.5	15.8	22.8
Antidiabetic agents (diabetes)	8.8	12.9	19.9	8.0	13.8	22.5	9.4	12.0	17.7
Diuretics (high blood pressure, heart disease, kidney disease)[3]	14.2	15.9	17.2	10.8	14.6	14.6	17.0	16.9	19.4
Analgesics (pain relief)	13.0	18.5	16.8	10.5	14.9	15.3	15.0	21.4	18.0
Antihypertensive combinations (high blood pressure)	8.1	8.0	11.8	4.8	*6.7	8.5	10.8	9.0	14.5
Anticoagulants or antiplatelet agents (blood clot prevention)[5]	5.4	6.7	10.7	6.3	9.8	*13.8	4.6	*4.2	8.1
Antidepressants (depression and related disorders)	2.8	9.3	18.7	*2.3	5.8	12.6	3.1	12.1	23.9
Calcium channel blocking agents (high blood pressure, heart disease)	15.0	16.1	14.4	14.0	15.3	15.0	15.8	16.8	13.9
Thyroid hormones (hypothyroidism)	6.4	13.0	14.6	*3.4	*5.0	*7.3	8.9	19.7	20.8
Angiotensin II inhibitors (high blood pressure, heart disease)	...	4.2	11.1	...	*3.5	9.5	...	4.9	12.4
Antiarrhythmic agents (heart rhythm irregularities)	20.2	13.0	6.4	19.0	15.5	*5.8	21.1	10.8	6.9

See footnotes at end of table.

Table 80 (page 3 of 3). Selected prescription drug classes used in the past 30 days, by sex and age: United States, selected years 1988–1994 through 2011–2014

Excel and PDF versions (with more data years and standard errors when available): http://www.cdc.gov/nchs/hus/contents2016.htm#080.

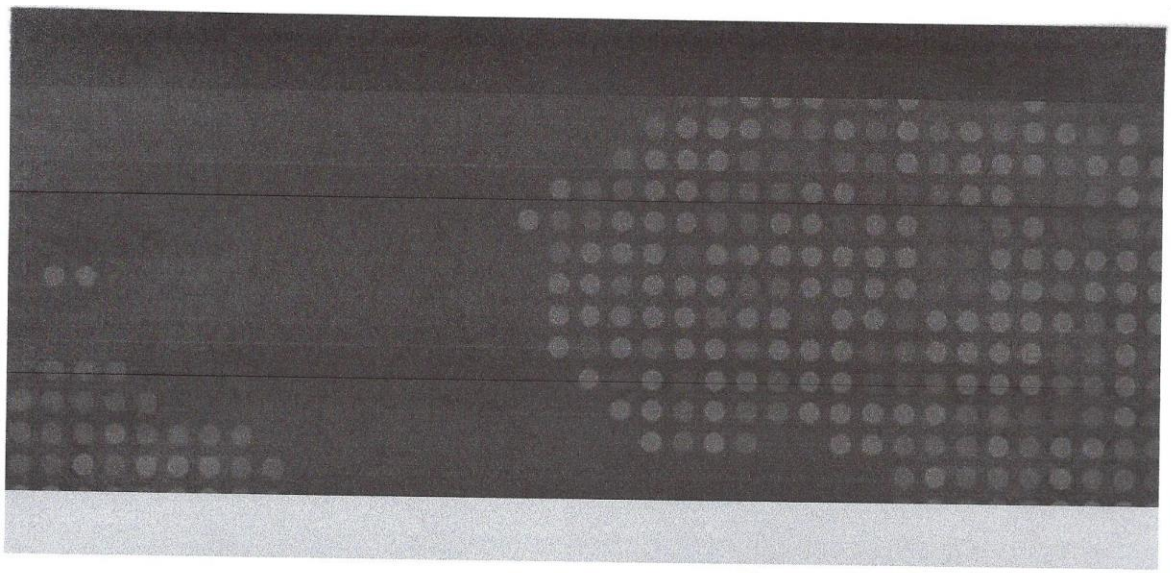
[Data are based on a sample of the civilian noninstitutionalized population]

Age group and Multum Lexicon Plus therapeutic class[1] (common indications for use)	Total			Male			Female		
	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014	1988–1994	1999–2002	2011–2014
75 years and over	Percent of population with at least one prescription drug in drug class in past 30 days								
Antihyperlipidemic agents (high cholesterol)	3.8	19.9	48.2	*3.5	21.1	55.7	4.0	19.2	43.1
Beta-adrenergic blocking agents (high blood pressure, heart disease)	12.5	17.3	37.9	9.8	19.6	37.6	14.1	15.8	38.1
Diuretics (high blood pressure, heart disease, kidney disease	19.2	23.2	25.4	14.7	20.5	24.5	21.9	24.9	26.1
ACE inhibitors (high blood pressure, heart disease)	9.3	16.4	25.0	8.5	17.7	27.0	9.8	15.6	23.7
Anticoagulants or antiplatelet agents (blood clot prevention)[5]	7.2	12.0	20.1	7.8	13.9	24.1	6.9	10.9	17.4
Proton pump inhibitors or H2 antagonists (gastric reflux, ulcers)[2]	8.3	14.6	26.8	9.0	15.3	22.3	7.9	14.2	30.0
Calcium channel blocking agents (high blood pressure, heart disease)	17.8	22.8	22.6	15.3	20.5	19.4	19.2	24.2	24.9
Thyroid hormones (hypothyroidism)	7.9	15.8	16.8	3.0	9.2	8.2	10.9	20.0	22.9
Analgesics (pain relief)	15.1	18.4	16.0	13.0	15.1	12.6	16.3	20.4	18.3
Antidiabetic agents (diabetes)	9.3	11.8	18.9	10.7	11.5	22.8	8.5	12.0	16.3
Antihypertensive combinations (high blood pressure)	11.9	12.0	11.5	8.3	*8.2	7.1	14.0	14.4	14.6
Antiarrhythmic agents (heart rhythm irregularities)	27.7	21.0	12.1	26.3	21.3	12.6	28.6	20.7	11.7
Angiotensin II inhibitors (high blood pressure, heart disease)	...	5.4	13.9	...	*4.9	15.2	...	5.8	12.9
Antidepressants (depression and related disorders)	3.4	9.3	19.2	*2.3	9.2	11.0	4.0	9.4	25.0

* Estimates are considered unreliable. Data preceded by an asterisk have a relative standard error (RSE) of 20%–30%. Data not shown have an RSE greater than 30%.
... Category not applicable.
[1] The drug therapeutic class is based on the December 2014 Lexicon Plus, a proprietary database of Cerner Multum, Inc. Lexicon Plus is a comprehensive database of all prescription and some nonprescription drug products available in the U.S. drug market. Data on prescription drug use are collected by the National Health and Nutrition Examination Survey. Respondents were asked if they had taken a prescription drug in the past 30 days. Those who answered "yes" were asked to show the interviewer the medication containers for all prescriptions. If no container was available, the respondent was asked to verbally report the name of the medication. Each drug's complete name was recorded and classified. Data presented here are based on the second level classification of prescription drugs. Up to four classes are assigned to each drug. Drugs classified into more than one class were counted in each class. For more information, see https://wwwn.cdc.gov/nchs/nhanes/1999-2000/RXQ_DRUG.htm. See Appendix II, Multum Lexicon Plus therapeutic class.
[2] The drugs classes proton pump inhibitors (272) and H2 antagonists (94) have been combined because of their similar indications for use.
[3] This category includes carbonic anhydrase inhibitors which are primarily used to treat glaucoma.
[4] Although sex hormones may be used by males, most are used by females. Therefore, data for sex hormones are only presented for females.
[5] The drugs classes anticoagulants (82) and antiplatelet agents (83) have been combined because of their similar indications for use.

NOTES: Some drug classes were not available in 1988–1994 and are coded as not applicable. See Appendix II, Drug. Standard errors are available in the spreadsheet version of this table. Available from: http://www.cdc.gov/nchs/hus.htm. Data have been revised and differ from previous editions of *Health, United States*.

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



The 2012 Annual Report of the Drug Recognition Expert Section

October 2013

Illinois
DRE Year End Summary Report 2012

Current DREs

Number of evaluators (DREs) in your state:	24
Number of DRE instructors in your state:	1
Number of agencies that have DREs:	16

Evaluations

Number of enforcement evaluations :	49
Number of training evaluations:	45
Total number of evaluations:	94

1. Drug Category (DRE's Opinion)

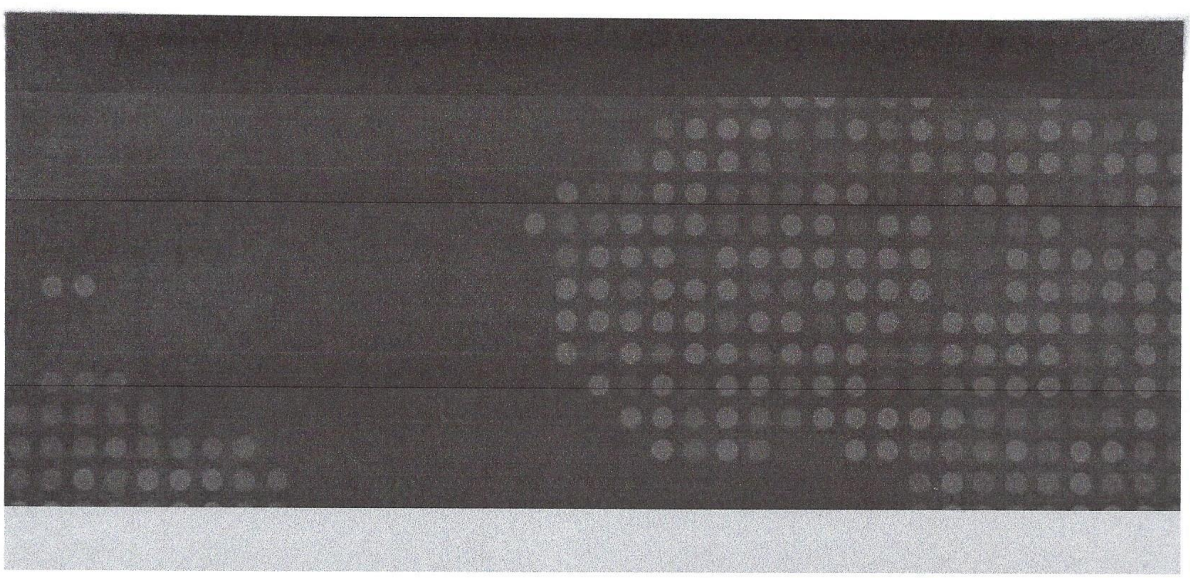
• Depressants:	13
• Stimulants:	9
• Hallucinogens:	3
• Dissociative Anesthetics:	1
• Narcotic Analgesics:	12
• Inhalants:	0
• Cannabis:	32

2. Poly Drug Use

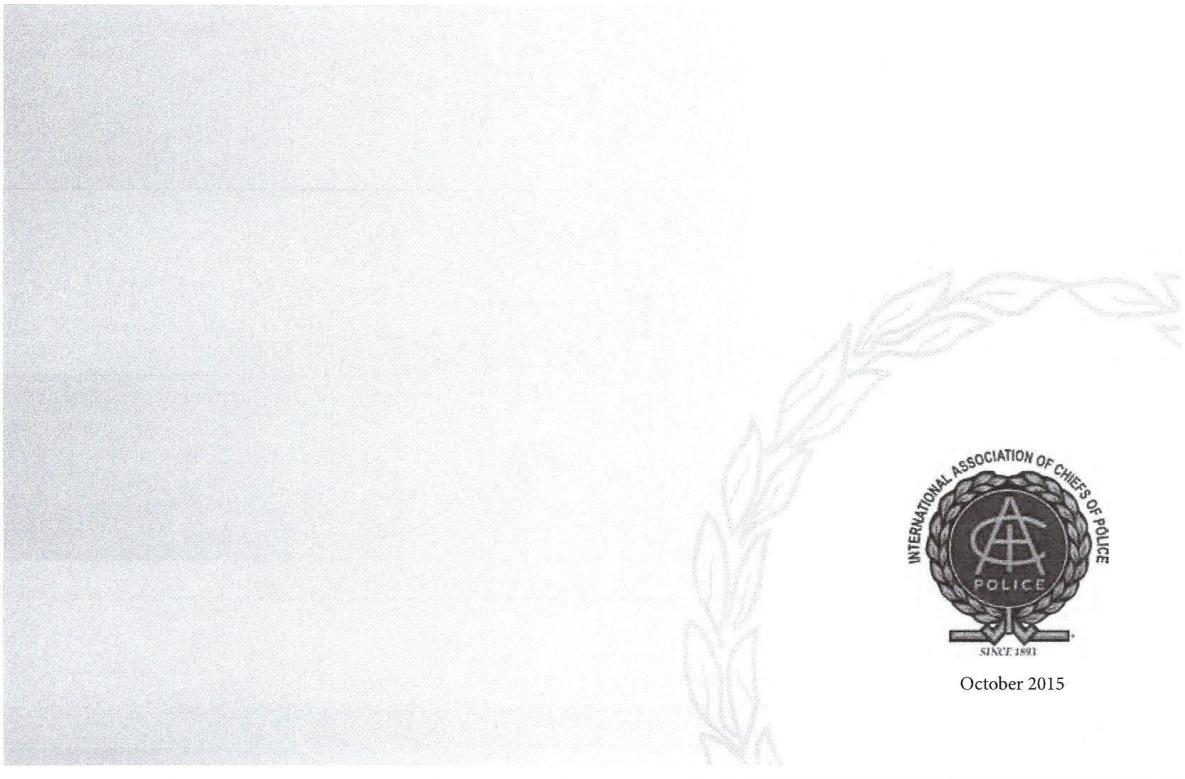
• Poly Drugs:	18

3. Other

• Alcohol Rule Outs:	0
• Medical Rule Outs:	1
• No Opinion of Impairment:	4
• Tox Results: Pending:	7
• Tox Found: No Drugs:	1
• Refused:	9



The 2014 Annual Report of the Drug Recognition Expert Section



October 2015

Illinois

DRE Year End Summary Report 2014

Current DREs

Number of evaluators (DREs) in your state:	66
Number of DRE instructors in your state:	4
Number of agencies that have DREs:	42

Evaluations

Number of enforcement evaluations :	177
Number of training evaluations:	14
Total number of evaluations:	42

1. Drug Category (DRE's Opinion)

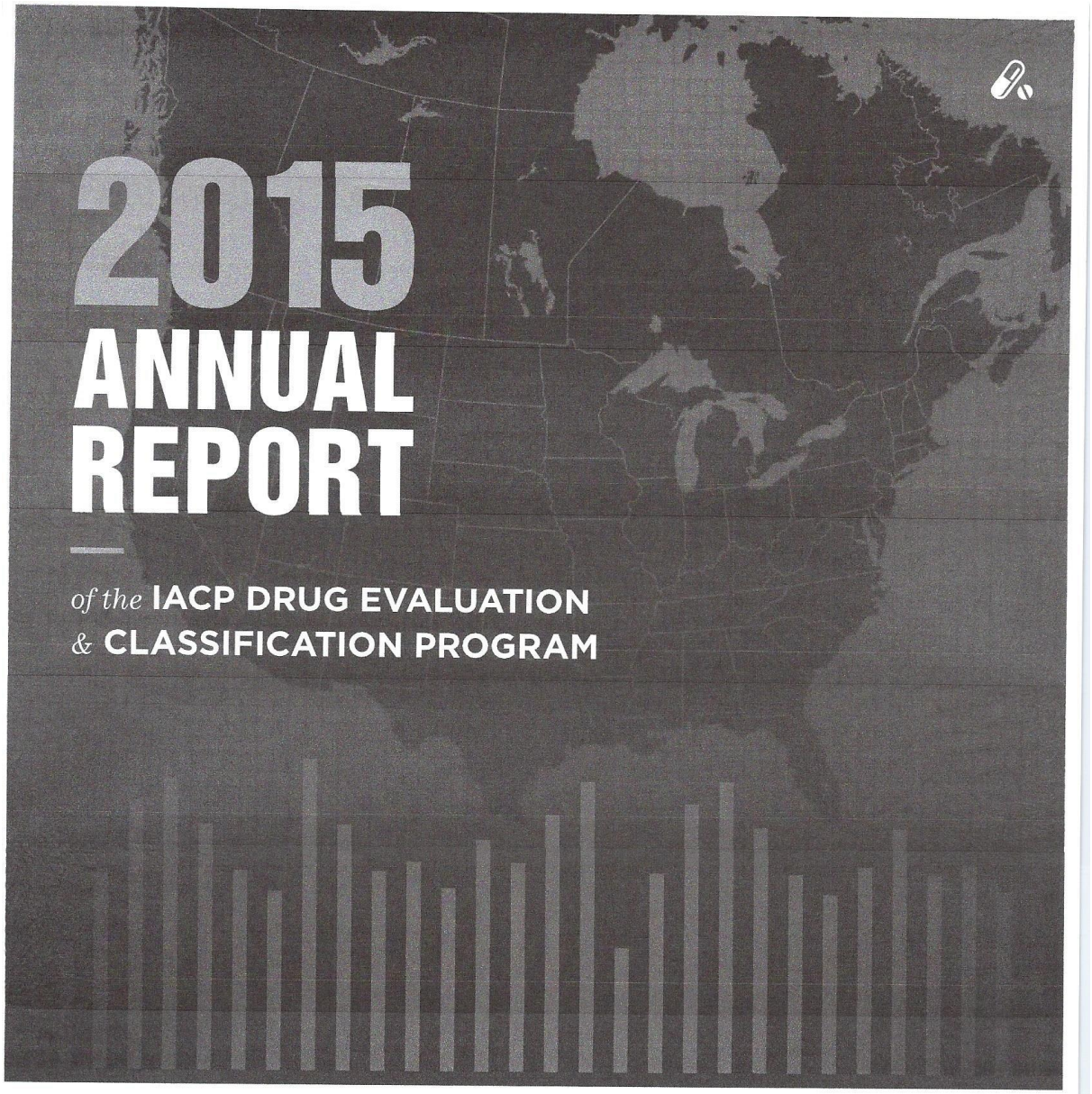
• Depressants:	47
• Stimulants:	20
• Hallucinogens:	1
• Dissociative Anesthetics:	3
• Narcotic Analgesics:	47
• Inhalants:	2
• Cannabis:	85

2. Poly Drug Use

• Poly Drugs:	44

3. Other

• Alcohol Rule Outs:	0
• Medical Rule Outs:	2
• No Opinion of Impairment:	9
• Tox Results: Pending:	unk
• Tox Found: No Drugs:	9
• Refused:	21



2015 ANNUAL REPORT

of the IACP DRUG EVALUATION & CLASSIFICATION PROGRAM

U.S. DEC State Totals for 2015

		STATE																			
		AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME
Current DREs	Certified DREs	21	26	298	176	1,690	244	21	13	12	197	258	73	107	72	136	135	83	63	76	76
	DRE Instructors	8	8	125	42	254	52	2	1	2	44	48	22	30	10	25	19	11	11	15	16
	State Policy/HP DREs	10	11	37	29	745	66	8	0	8	12	59	N/A	32	17	12	31	25	16	33	8
	City Police Department DREs	8	14	207	101	708	141	13	1	3	81	54	64	56	47	76	61	43	42	15	55
	Sheriff's Derpartment DREs	2	0	46	20	189	30	0	0	0	96	29	6	19	7	44	37	15	4	18	12
	Other Agency DREs	1	1	8	2	48	7	0	12	1	8	13	3	2	1	4	4	0	1	10	1
	LE Agencies w/ Certified DREs	13	10	69	54	313	81	10	3	4	85	96	6	36	52	50	104	31	30	20	49
Evaluations	Enforcement	105	102	929	302	6,951	432	66	19	55	530	327	142	506	214	436	762	398	183	245	385
	Training	43	45	139	70	320	156	12	13	0	288	129	8	45	65	61	101	243	55	82	100
	Total	148	147	1,068	372	7,271	588	78	32	55	818	461	59	551	279	497	863	641	238	327	485
Drug Category (DRE's Opinion)	Depressants	54	56	266	161	1,274	100	20	5	17	349	70	40	157	36	129	119	104	41	89	199
	Stimulants	36	40	286	32	3,642	101	11	0	5	169	49	35	119	78	56	266	106	59	66	59
	Hallucinogens	0	1	5	2	59	3	0	0	0	7	1	1	1	3	0	8	0	1	3	2
	Dissociative Anesthetics	0	1	7	3	75	3	6	9	4	2	5	2	4	5	5	6	12	1	4	4
	Narcotic Analgesics	41	54	251	74	1,961	95	23	1	10	254	43	27	93	59	107	100	139	61	100	195
	Inhalants	1	2	1	4	81	4	0	0	0	5	0	0	2	1	4	9	4	1	1	2
	Cannabis	61	41	503	54	2,470	217	25	1	16	319	85	87	116	106	170	429	201	69	162	164
Poly Drug Use	Total Number	60	46	363	71	2,915	116	23	5	18	344	167	58	148	61	88	202	213	57	122	237
Other	Alcohol Rule Outs	3	0	6	0	15	26	1	0	0	4	7	0	1	3	1	4	3	0	8	1
	Medical Impairment	0	1	13	8	59	15	1	0	1	13	14	2	29	2	10	17	4	1	1	15
	No Opinion of Impairment	10	3	53	38	282	64	8	1	7	50	12	8	36	6	39	58	33	8	11	32
	Toxicology Results: Pending	Unk	30	488	0	Unk	0	0	0	7	Unk	0	5	Unk	Unk	305	106	255	127	18	7
	Toxicology - No Drugs	9	2	23	4	1,626	27	1	0	1	47	15	3	20	8	12	26	11	0	4	8
	Toxicology Refused	11	2	3	32	234	45	15	2	1	30	63	6	13	35	32	163	33	21	34	24
DRE Training	DRE Schools	1	0	3	2	11	3	1	0	0	3	4	1	1	1	2	1	2	1	2	1
	Students	16	-	50	40	389	61	4	-	-	45	42	25	14	23	40	12	29	10	27	21
	DREs Certified	10	-	50	36	373	29	4	-	-	39	39	24	13	19	7	12	9	10	27	21
	DRE Instructor Schools	1	0	1	1	3	1	0	0	0	0	1	0	0	0	1	0	1	0	1	0
	Students	4	-	10	4	20	12	-	-	-	-	6	-	-	-	4	-	3	-	7	-
	DRE Instructors Certified	4	-	10	4	23	12	-	-	-	-	6	-	-	-	2	-	3	-	7	-
	DRE Recertification Classes	1	1	11	1	47	1	1	1	0	1	3	1	0	0	1	4	6	2	2	1
	Students	19	26	250	80	466	105	21	13	-	86	57	64	-	-	106	48	56	19	40	67
ARIDE Training	ARIDE Schools	9	4	11	8	96	31	8	2	1	18	13	4	5	7	3	10	7	7	6	3
	Students	238	40	250	103	1,766	620	160	41	17	385	217	51	103	156	52	260	129	96	162	50
DITEP Training	Classes	0	0	5	0	12	3	0	0	0	0	0	0	1	0	0	1	1	0	1	1
	School Nurses	-	-	40	-	Unk	-	-	-	-	-	-	-	10	-	-	Unk	0	-	1	Unk
	SROs	-	-	1	-	Unk	-	-	-	-	-	-	-	-	-	-	Unk	12	-	8	Unk
	Other Students	-	-	113	-	Unk	-	-	-	-	-	-	-	70	-	-	Unk	10	-	39	Unk
	Total Students	-	-	154	-	389	112	-	-	-	-	-	-	80	-	-	23	22	-	48	Unk
Phlebotomy Training	Classes	0	0	5	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	3
	Students	-	-	40	-	-	-	-	-	-	-	-	-	18	-	-	-	-	-	-	34
SFST Training	SFST Classes	6	4	23	19	74	9	5	2	4	26	16	15	4	Unk	5	9	26	7	8	11
	Students Trained	181	110	233	584	1,454	153	125	47	133	505	384	264	157	Unk	528	122	416	149	192	128
	SFST Instructor Classes	1	0	3	1	3	4	0	0	0	7	1	2	1	0	1	2	0	0	3	0
	Students	6	-	17	26	45	138	-	-	-	107	16	14	15	-	28	30	-	-	66	-

** Training evaluations are not reported from Maryland. Training evaluations in Maryland are so heavily weighted toward narcotic analgesics it would drastically misrepresent the frequency of that category of drug found in our driving population.

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 April 18, 2018, the Brief and Appendix of Defendant-Appellant, Ahmet Defendant, was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and served by transmitting a copy from my email address to the email addresses of the persons named below:

Leah Bendik
Assistant Attorney General
lbendik@atg.state.il.us

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/ Elizabeth Butler
Attorney for Appellee

E-FILED
4/19/2018 8:05 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK