CH. 49
TRAFFIC OFFENSES

§49-1
Generally

Illinois Supreme Court

People v. Rizzo, 2016 IL 118599 The court rejected the arguments that the proportionate penalties clause and due process are violated by the prohibition of supervision for aggravated speeding (i.e., more than 40 mph in excess of the speed limit (625 ILCS 5/11-601.5(b)). The trial court's finding of unconstitutionality was reversed and the cause remanded for further proceedings.

People v. Geiler, 2016 IL 119095 Illinois Supreme Court Rule 552 governs the processing of traffic citations and imposes an obligation on the arresting officer to transmit specific portions of the ticket to the circuit court within 48 hours after the arrest. Here the arresting officer gave defendant a speeding ticket on May 5 but did not transmit the ticket to the circuit court until May 9, clearly beyond the 48 hour time limit. There was no dispute that Rule 552 was violated; the only issue was the appropriate consequences for the violation.

Rule 552 does not specify any consequences for the violation or contain negative language prohibiting prosecution or further action where there has been noncompliance. Thus the negative language exception does not apply.

Rule 552 is designed to ensure judicial efficiency and uniformity in processing tickets. A directory reading of Rule 552 would not generally injure judicial efficiency or uniformity. In this case, there was no evidence that the delay in transmitting the citations impaired the trial court's management of its docket. There was also no indication that the delay would ordinarily prejudice the rights of a defendant. A defendant's first appearance on a traffic citation must be set within 14 and 60 days after arrest. Thus even if the citation is not transmitted within 48 hours, it may still be filed before defendant's first court appearance and he would be unaffected by the delay.

The court therefore concluded that Rule 552 is directory and no specific consequence is triggered by noncompliance. But a defendant may still be entitled to relief if he can demonstrate that he was prejudiced by the violation.

People v. Gaytan, 2015 IL 116223 Defendant was convicted of unlawful possession of cannabis with intent to deliver when cannabis was found in his car after a traffic stop. The car was stopped because police believed that a trailer hitch obstructed the vehicle's license plate. At the time of the stop 625 ILCS 5/3-413(b) provided that a license plate must be securely fastened in a horizontal position, "in a place and position to be clearly visible and shall be maintained in a condition to be clearly legible, free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers."

The court concluded that §3-413(b) is ambiguous concerning whether the prohibition applies to all materials which obstruct any part of the license plate, including the ball hitch at issue here, or only to materials which attach to and obstruct the plate. In the course of its holding, the court noted that accepting the State's interpretation of §3-413(b) would render a "substantial amount of otherwise lawful conduct illegal," including transporting electric scooters or wheelchairs on carriers on the back of a car, using bicycle racks, and towing rental

trailers.

Applying the rule of lenity, the court concluded that §3-413(b) prohibits only objects which are physically connected or attached to the license plate and which obstruct the visibility and legibility of the plate. However, the court encouraged the General Assembly to clarify whether equipment and accessories attached to a vehicle near the license plate are restricted.

Although the statute did not apply to a trailer hitch, the court held that the stop was not improper. In **Heien v. North Carolina**, 474 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014), the court concluded that the Fourth Amendment is not violated where a police officer pulls over a vehicle based on an objectively reasonable but mistaken belief that traffic laws prohibit defendant's conduct. The court concluded that because §3-413(b) is ambiguous, a definitive interpretation was reached only by applying the rule of lenity, and there was no prior appellate authority concerning the scope of the statute, a reasonable police officer could have believed that §3-413(b) was violated when a trailer hitch was installed on the car.

People v. Hackett, 2012 IL 111781 625 ILCS 5/11-709(a) provides that where a roadway has been divided into two or more clearly marked lanes, a vehicle "shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." Under **People v. Smith**, 172 Ill. 2d 289, 665 N.E.2d 1215 (1996), §11-709(a) imposes two separate requirements: (1) that the motorist drive "as nearly as practicable entirely within one lane," and (2) that the motorist not move from a lane of traffic without determining that the movement can be made safely.

The Appellate Court erred by finding that a driver commits the offense of improper lane usage only if he or she drives an "appreciable distance in more than one lane of traffic." The court stated, "We now make clear that a distance a motorist travels while violating the proscription of section 11-709(a) is not a dispositive factor in the applicable analysis." Thus, a motorist who crosses a lane line and fails to drive as nearly as practicable within one lane has violated §11-709(a) without regard to the distance traveled.

A deputy who saw the defendant twice deviate from his own lane of travel into another lane for no obvious reason had sufficient basis to suspect that the defendant had committed the offense of improper lane usage. Therefore, an investigatory stop was justified to determine if it was practicable for defendant to have stayed in one lane. The trial court's order granting defendant's motion to suppress was reversed and the cause was remanded for further proceedings.

People v. One 1998 GMC et al., 2011 IL 110236 The court rejected the argument that a prior version of the Illinois forfeiture statute (720 ILCS 5/36-1 *et. al.*) violated due process because it did not require a prompt probable cause hearing after a vehicle is seized. (Public Act 97-544 (eff. 1/1/12) amended the forfeiture act to require a timely, post-seizure probable cause hearing).

Generally, due process compels the government to provide notice and an opportunity to be heard before a person is deprived of property. This general rule is subject to an exception, however, where the property is mobile and could be moved, destroyed or concealed if advance warning of the confiscation is given. Furthermore, the claimants here did not argue that a pre-detention hearing was required, but only that they were entitled to a prompt probable cause hearing after the seizure.

The court rejected the argument that where a forfeiture statute provides a prompt, meaningful post-seizure hearing, due process requires that there also be a probable cause

hearing. The court noted that a probable cause determination is made by the police at the scene and that in most cases, there will be a prompt probable cause determination in connection with the underlying criminal prosecution. Although that probable cause hearing does not necessarily concern the identity of the vehicle or whether it was used to commit a crime, it is unlikely that police will be mistaken about the identity of the vehicle or its connection to the crime, especially for the type of offenses involved here (aggravated DUI and driving with a revoked license).

The court also noted that the claimant has an early opportunity to contest any defects in the proceeding by bringing a motion to dismiss under §2-615 of the Code of Civil Procedure, and that the forfeiture proceeding continues only if the allegations survive the motion to dismiss.

Whether delay in a forfeiture hearing denies due process is determined by applying the **Barker v. Wingo** factors which control whether the right to a speedy trial has been violated. The court concluded that in this case, application of the **Barker** factors show that no due process violation occurred.

The first factor is the length of the delay. Here, the only reason there was no prompt hearing, as the statute required, was that the claimants requested several continuances and then challenged the constitutionality of the statute. Thus, the delay was entirely attributable to the claimants.

The second **Barker v. Wingo** factor concerns the reason for the delay. Because the claimants were responsible for the delay, this factor also favors the State.

The third factor is whether the claimant asserted the right to a judicial hearing. The court concluded that this factor also favored the State because the claimants failed to seek an early return of the vehicle by requesting discretionary remission of the forfeiture. Instead, they filed several motions for continuance and then challenged the constitutionality of the statute.

The final factor is whether the claimants were prejudiced by the delay. Here, the claimants failed to allege any prejudice.

People v. Ziobro, 242 Ill.2d 34, 949 N.E.2d 631 (2011) Supreme Court Rule 504 requires an arresting officer or the clerk of the court to set the first appearance on a traffic offense "not less than 14 days but within 60 days after the date of the arrest, whenever practicable." This rule is violated when the time limitations have not been complied with and there has been no showing of impracticability. The time limitations are directory, as no specific consequence is triggered by the failure to comply with the rule. Dismissal for violation of the rule is therefore not automatic. **Village of Park Forest v. Fagan**, 64 Ill.2d 264, 356 N.E.2d 59 (1976).

The Code of Criminal Procedure sets forth 11 grounds for dismissal of a charge. 725 ILCS 5/114-1(a). A Rule 504 violation is not listed among these grounds. Circuit courts also have the inherent authority to dismiss cases stemming from the obligation to prevent a derivation of due process or miscarriage of justice. A mere violation of Rule 504 is not sufficient grounds, standing alone, to dismiss charges. Therefore, a court abuses its discretion in dismissing due to a Rule 504 violation without requiring a showing of prejudice to the defendant.

Because the circuit court dismissed DUI and other traffic charges at defendant's first court appearance for failure to comply with the time limitations of Rule 504 without any showing of prejudice resulting to the defendant, the court abused its discretion.

On remand, the circuit court will be bound by Public Act 96-694, effective 1/1/10 (adding 625 ILCS 5/16-106.3), which prohibits circuit courts from dismissing DUI charges

due to a violation of Supreme Court Rules 504 and 505. Section 4 of the Statute on Statutes (5 ILCS 70/4) governs where a statute is otherwise silent as to its retroactive effect. Section 4 prohibits retroactive application of substantive provisions and provides that procedural law changes apply to ongoing proceedings. This new provision barring dismissal as a remedy for a 504 or 505 violation is procedural as it does not affect a vested right. Therefore, it controls on the question of the court's authority to dismiss the DUI charges on remand.

People v. Norris, et al., 214 Ill.2d 92, 824 N.E.2d 205 (2005) Supreme Court Rules 504 and 505, which implement a general policy against requiring multiple appearances by defendants charged with traffic offenses, do not guarantee that a traffic defendant will receive a trial on the merits at the first appearance date. Furthermore, Rule 504 and 505 do not preclude a trial court from granting a continuance because the arresting officer fails to appear. Instead, Rules 504 and 505 provide the trial judge with discretion in scheduling cases. Because the record did not indicate whether the judges in question denied the State's motions for continuances because they believed they lacked discretion to grant continuances where the arresting officer failed to appear at the first appearance date on a traffic charge, or in the exercise of discretion, the causes were remanded. The State was not barred by Rules 504 and 505 from refiling charges which had been previously nol prossed because the arresting officer failed to appear at the first hearing date. A nolle prose qui is a formal entry by the prosecuting attorney indicating an unwillingness to prosecute a case. Where nolle prose qui is entered before jeopardy attaches, the State is entitled to refile the charges unless there is a showing of harassment, bad faith or fundamental unfairness.

People v. O'Brien, 197 Ill.2d 88, 754 N.E.2d 327 (2001) Under 720 ILCS 5/4-9, a person may be convicted of an offense which does not include an explicit mental state if the crime is a misdemeanor which is not punishable by incarceration or a fine exceeding $500, or if the statute defining the offense clearly indicates a legislative intent to create an absolute liability offense. Absent a clear indication of intent or an important public policy favoring absolute liability, courts will require a culpable mental state even if the statute appears to impose absolute liability. To prove the offense of operating an uninsured motor vehicle, the State is not required to show that defendant either knew or should have known that the vehicle he was driving was uninsured. The plain language of 625 ILCS 5/3-707, which creates the offense, "unquestionably provides for absolute liability." Furthermore, the penalty for the offense is "relatively minor," and the legislature explicitly chose to provide a culpable mental state for related offenses. Under these circumstances, the legislature clearly intended that operating an uninsured motor vehicle should be an absolute liability offense.

In re K.C., 186 Ill.2d 542, 714 N.E.2d 491 (1999) The minors were charged with committing offenses under 625 ILCS 5/4-102, which creates a Class A misdemeanor (Class 4 felony for a subsequent offense) where a person, without authority, damages, removes or tampers with any part of a vehicle. The Supreme Court held that §4-102 violates due process by punishing what may be wholly innocent conduct without requiring a culpable mental state.

People v. Johns & Wall, 153 Ill.2d 436, 607 N.E.2d 148 (1992) The Supreme Court ruled that there is a rational relationship between the possession of incomplete titles and the legislative purposes of preventing thefts of motor vehicles and facilitating the tracing, accuracy, and security of automobile titles. In addition although possession of an incomplete title may result in a more severe penalty than would be imposed for the theft of the same vehicle, the penalty is not so disproportionate to the offenses as to shock the moral sense of

the community. See also, **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992) (Illinois law requires that a defendant knowingly possess an incomplete title with the intent to commit a crime); **People v. Gean**, 143 Ill.2d 281, 573 N.E.2d 818 (1991).

People v. Simmons, 145 Ill.2d 264, 583 N.E.2d 484 (1991) The Court upheld the validity of Ch. 95½, ¶3-707, which provides that any person who operates a motor vehicle not covered by a liability insurance policy is guilty of a business offense and "shall be required to pay a fine in excess of $500, but not more than $1,000." The mandatory fine does not violate equal protection or constitute excessive punishment under the Eighth Amendment.

People v. Morris, 136 Ill.2d 157, 554 N.E.2d 235 (1990) Defendant was convicted of possession of an altered temporary registration permit. The conviction was based upon the fact that the defendant altered the expiration date of the temporary registration permit on his own vehicle. The Supreme Court reversed the conviction holding that "a Class 2 penalty for a person who alters a temporary registration permit for a vehicle he or she owns or to which he or she is legally entitled is not reasonably designed to protect automobile owners against theft, nor is it reasonably designed to protect the general public against the commission of crimes involving stolen motor vehicles. Such a penalty is violative of the due process clause of our constitution, and may not stand."

People v. Lindner, 127 Ill.2d 174, 535 N.E.2d 829 (1989) Ch. 95½, ¶6-205(b)(2) which provided that a conviction for certain sex offenses would result in the mandatory revocation of the defendant's driver's license, without regard to whether a motor vehicle was used in the commission of the offense is unconstitutional. The Court found that the statute does not bear a reasonable relationship to the State's interest of keeping the roads free from those who threaten the safety of others or abuse the driving privilege.

People v. Kohrig, 113 Ill.2d 384, 498 N.E.2d 1158 (1986) The Court held that the mandatory seat safety belt law does not infringe upon a fundamental right of privacy and that there is a rational basis for requiring the use of seat belts (i.e., to "protect persons other than the belt wearers by helping drivers maintain control of their vehicles and . . . promote [the] economic welfare of the State by reducing the costs associated with serious injuries and deaths caused by automobile accidents").

People ex rel. Eppinga v. Edgar, 112 Ill.2d 101, 492 N.E.2d 187 (1986) The Supreme Court upheld the revocation of plaintiff's driving privileges pursuant to Ch. 95½, ¶6-206, and rejected the plaintiff's contention that the lack of a prerevocation hearing denied due process.
People v. Tosch, 114 Ill.2d 474, 501 N.E.2d 1253 (1986) The defendant was arrested for standing in the road and stopping vehicles containing males and engaging them in conversation. She was charged with the offense of "Pedestrians soliciting rides or business" (Ch. 95½, ¶¶11-1006(a) & (b)) which provides that (a) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle and (b) No person shall stand on a highway for the purpose of soliciting employment or business from the occupant of any vehicle." Subsection (c) of the statute provides an exception under which charitable organizations engaged in a Statewide fundraising activity are allowed to solicit contributions from vehicles at intersections where all traffic is required to come to a full stop.

The Supreme Court upheld the validity of the statute holding that the statute does not involve or abridge any First Amendment right and does not create an unreasonable

classification. The Court stated,"the State may treat different classes of persons differently, and absent a fundamental right may differentiate between persons similarly situated if there is a rational basis for doing so. The General Assembly has determined that soliciting rides or business on the public highways creates problems concerning the health, safety and welfare of the citizens of this State. It has apparently also decided that solicitation of charitable contributions stands on a different footing than solicitation for other purposes and results in benefits to the public which offset the risks inherent in solicitation on the highways. We find the classification reasonably related to a legitimate governmental objective."

People v. Tumminaro, 102 Ill.2d 331, 465 N.E.2d 90 (1984) The Supreme Court upheld Ch. 95½, ¶11-1403, which provides that "any person who operates a motorcycle on one wheel is guilty of reckless driving." The Court found that the statute creates an absolute liability, which is not unreasonable or arbitrary, because the legislature could reasonably determine that "one-wheel motorcycle driving is dangerous and that strict punishment of drivers who operate motorcycles on one wheel would better protect people and property in the vicinity."

People v. Brown, 98 Ill.2d 374, 457 N.E.2d 6 (1983) The Court upheld the validity of Ch. 95½, ¶4-102(a)(4), which makes it a Class A misdemeanor to possess a motor vehicle or component part if the identification number has been removed or falsified and "such a person has no knowledge that the number is removed or falsified." The legislature has the authority to create absolute liability offenses, without a knowledge requirement, and this statute is a reasonable use of the police power to combat the steady increase in stolen motor vehicles and their parts.

Malone v. Cosentino, 99 Ill.2d 29, 457 N.E.2d 395 (1983) Defendant pleaded guilty to certain traffic violations, was ordered to pay fines, and was sentenced to a year of supervision. The fines included $24.50 payable to the Traffic and Criminal Conviction Surcharge Fund of the State Treasury and $10 in fees to provide proceeds for financing the court system. Defendant did not appeal from his conviction or sentence, but filed a class action suit seeking an injunction on the ground that the statutes creating the assessments and fees violate equal protection. The Supreme Court held that the defendant's complaint should have been dismissed because it was an impermissible collateral attack on his criminal conviction. "Once a court with proper jurisdiction has entered a final judgment, that judgment can only be attacked on direct appeal, or in one of the traditional collateral proceedings now defined by statute." In this case, the trial court had jurisdiction and defendant failed to challenge the penalties on direct appeal.

People v. One 1979 Pontiac, 89 Ill.2d 506, 433 N.E.2d 1301 (1982) An individual purchased a 1979 Pontiac from an auto dealer, and received a title containing a vehicle identification number which matched the number on the dashboard of the automobile. It was later discovered that the Pontiac carried a false VIN number. Additionally, the hidden "confidential" VIN number was mutilated, making it impossible to determine the true VIN. Pursuant to Ch. 95½, ¶4-107(i), the Pontiac was seized as contraband to be sold. Chapter 95½, ¶4-107(i) provides that an automobile which has the manufacturer's identification number removed, altered, defaced or destroyed may be seized. If the true manufacturer's identification number cannot be identified, the automobile shall be considered contraband. The statute also states that a person owning, leasing or possessing such an automobile has no property rights in it and that the automobile may be sold. The Supreme Court held that the above statute violates due process by depriving an innocent purchaser of his property.

The purchaser in this case took the necessary steps to assure himself that the identification number on the title matched that on the vehicle.

People v. Searle, 86 Ill.2d 385, 427 N.E.2d 65 (1981) The defendant was charged with unknowingly possessing a motorcycle without a required identification number. The motorcycle was seized, but the charges were dropped. Defendant sought the return of his motorcycle, but the State refused until defendant paid storage charges of several thousand dollars pursuant to Ch. 95½, ¶4-207. The Supreme Court discussed the purposes of the various storage charge provisions of the Illinois Vehicle Code, and held that neither ¶4-207 nor the other sections were applicable. The defendant was entitled to the return of his motorcycle without charge.

Illinois Appellate Court

People v. Green, 2024 IL App (1st) 231167 For purposes of sealing under the Criminal Identification Act [20 ILCS 2630/5.2(c)], a bond forfeiture on a traffic case is not equivalent to a conviction, despite the fact that the Illinois Driver Licensing Law [625 ILCS 5/6-100 to 6/1013], treats it as a conviction for most practical purposes.

Section 5.2 of the Criminal Identification Act authorizes the expungement or sealing of certain traffic charges resulting in conviction. Under that Act, a "conviction" is defined as a judgment or sentence entered upon a plea or verdict of guilty, excluding successfully-completed sentences of supervision or qualified probation. Here, defendant was cited for driving on a suspended license and subsequently had a bond forfeiture judgment entered against her for failure to appear. No further proceedings were ever held in the matter. Under the plain language of the Act, the bond forfeiture was not a conviction, and the appellate court declined to look to the Illinois Driver Licensing statutes or elsewhere to expand that definition.

People v. Garcia, 2023 IL App (1st) 220524 During defendant's trial on a charge of felony driving while license revoked, the State introduced a "court purposes" driving abstract to establish that defendant's license was revoked at the time and that he had the requisite prior convictions. Defendant did not object to admission of the abstract at trial or in his post-trial motion. On appeal, though, defendant argued that admission of the abstract deprived him of the right to confrontation.

The appellate court affirmed. There was no error, and thus no plain error. A driving abstract is not testimonial and therefore the confrontation clause does not apply. A driving abstract contains historical information about defendant's driving record. Attaching the label "court purposes" to the abstract does not mean that it was prepared in anticipation of trial and does not render it testimonial. Further, a driving abstract from the Secretary of State is a public record and therefore fits within an exception to the hearsay rule under Illinois Rule of Evidence 803(8).

People v. Jackson, 2022 IL App (3d) 190621 Defendant Jackson was the passenger in a vehicle being driven by codefendant Joiner when a police officer initiated a traffic stop. The officer testified that Joiner failed to signal as he pulled over to the curb to park on a residential street. The traffic stop ultimately led to the discovery of a handgun and marijuana. A motion to suppress was filed and denied. Joiner was convicted of unlawful possession of a weapon by a felon, and Jackson was convicted of unlawful possession of cannabis with intent to deliver.

Section 11-804 of the Illinois Vehicle Code requires that a signal be used when a vehicle turns, changes lanes, encroaches onto the other side of the street, and leaves the roadway. The trial court concluded that Joiner had violated the statute because he changed lanes without signaling. But, the Appellate Court noted that there were no markings on the residential street differentiating the traffic lanes from areas used for parking. Further, the word "lane" implies that the area of the roadway is used for driving, not parking, such that moving to the right to park did not constitute a change of lane regardless. The statute does not require that a driver signal before moving to the curb to park. Thus, the trial court's conclusion was erroneous under the plain language of the statute. The Appellate Court reversed the denial of the motion to suppress and went on to reverse defendants' convictions outright, finding that the officer's conclusion that a traffic violation had been committed was objectively unreasonable.

People v. Torrance, 2020 IL App (2d) 180246 Simple fleeing and or attempting to elude a peace officer requires proof that a motorist failed to stop after an officer gives certain signals, such as squad lights or sirens. Aggravated fleeing and eluding requires proof that a defendant ignored two or more traffic control devices during the attempt to flee or elude.

Here, an officer activated the necessary lights and sirens after seeing defendant, whom he knew to be driving on a suspended license. He watched defendant blow a stop sign, but because he was in a residential neighborhood, the officer deactivated his lights and gave up the chase. After he did so, he observed the defendant blow a red light and four stop signs.

After conviction, defendant argued on appeal that the aggravating factors were not proven because the officer deactivated his lights prior to the second disregard of a traffic control device. He argued that the statute requires a willful mental state, and that at the time of the second traffic infraction, he could not have been wilfully disobeying the officer's pursuit, as it had ended. The Appellate Court affirmed. It did not reach the issue of whether the State can prove the aggravating factors absent any evidence that a chase is ongoing at the time of the infractions. Rather, the court noted that the officer testified only that he turned off his lights, not his siren. If the siren were still sounding when the defendant drove through the red light, as it appeared from reading the record in the light most favorable to the State, and if defendant continued to disobey four additional stop signs, then it was fair to infer that his disobedience was done with the intent to flee and elude.

People v. Garcia-Gutierrez, 2019 IL App (3d) 180283 The trial court's rescission of defendant's statutory summary suspension was erroneous. The trial court based its decision on the fact that the police did not provide a Spanish-language warning to motorist. The purpose of the warning to motorist is to assist evidence collection, not to provide the suspect with an "informed choice." The police are therefore under no obligation to ensure the defendant understands the warning.

People v. Hansen, 2019 IL App (3d) 170302 Aggravated fleeing or attempting to elude a peace officer under section 11-204(a) of the Vehicle Code requires proof that the pursuing officer activated "red or blue lights" in an effort to stop defendant's vehicle. Here, even though the officer did not specify the colors of his lights, the evidence was sufficient to prove defendant guilty beyond a reasonable doubt where the officer testified that he activated the "emergency lights" of his marked squad car and there was other clear evidence defendant knew he was being pursued by the police.

People v. Varnauskas, 2018 IL App (3d) 150654 Where defendant's vehicle was equipped

with a bicycle rack which obscured all but two numbers of the license plate, a traffic stop for a violation of 625 ILCS 5/3-413(b) was proper. That subsection provides for the placement of vehicle license plates and states that they are to be "free from any materials that would obstruct the visibility of the plate." Defendant's counsel initially filed a motion to suppress, but abandoned that motion based on **People v. Gaytan**, 2015 IL 223, which construed a prior version of the statute as encompassing only obstructions which were physically attached to the license plate, but which also held that officers had an objectively reasonable belief that a trailer hitch violated the statute because it was ambiguous. Counsel's abandonment of the motion was reasonable in light of **Gaytan** and because the statute had since been amended to remove the ambiguity.

During the traffic stop, a K-9 alerted on defendant's vehicle. Two officers searched without locating any contraband and then opted to relocate defendant's vehicle to the police station for further searching, citing cold weather conditions, traffic, and darkness on the side of the road. At the station, drugs were located in a hidden engine compartment. Under these circumstances, probable cause did not dissipate because of the relocation.

The dissenting justice believed that the amended version of Section 3-413(b) only applied to materials actually affixed to the license plate. She also would have followed **People v. Pulido**, 2017 IL App (3d) 150215, and would have concluded that justification for the warrantless search of defendant's vehicle dissipated with its relocation and that the officer needed to get a warrant to continue the search.

In re M.R., 2018 IL App (2d) 170342 Section 5-125 of the Juvenile Court Act provides that any minor found guilty of a traffic violation may be punished as an adult. "Traffic violation" is defined as including reckless homicide, DUI, and any similar county or municipal ordinance. While that list is not exclusive, the Appellate Court found that possession of a stolen motor vehicle (PSMV) is not a traffic violation for purposes of Section 5-125 because PSMV does not involve, or relate to, the use of a highway, which is an essential part of the definition of "traffic."

People v. Mueller, 2018 IL App (2d) 170863 The trial court properly quashed and suppressed evidence stemming from an illegal traffic stop. The officer testified that he stopped defendant's car for illegal lane usage because, while following the car, he observed three separate instances during which the car tires touched the lane lines. The Appellate Court affirmed. Illegal lane usage occurs when a driver actually leaves the lane, and touching the line is not leaving the lane. The State's argument that defendant could have been stopped for driving erratically within the lane was forfeited. The stop could not be justified as a good faith mistake because caselaw clearly outlined the elements of illegal lane usage.

People v. Moises, 2015 IL App (3d) 140577 20 ILCS 2610/30(e) provides that a stop resulting from a suspected violation of certain provisions of the Illinois Vehicle Code "shall be video and audio recorded." The recordings are required to be maintained for at least 90 days.

The trial judge found that by ordering defendant to perform field sobriety tests in an area that could not be seen by the camera, the officers engaged in the equivalent of destroying or losing the videotape on which a field sobriety test was recorded. The judge imposed a discovery sanction prohibiting deputies from testifying about any part of the traffic stop where the arresting officer took defendant off-camera, including the field sobriety tests.

The Appellate Court held that the trial court erred by entering the sanction order. First, no discovery violation occurred where the State disclosed the videotape from the traffic stop in response to defendant's request. The court rejected the argument that the failure to

record a traffic stop is the equivalent of destroying a tape after it is made.

Second, the police are not required to conduct field sobriety tests within view of a squad car camera. The majority opinion noted that protecting the safety of both the officer and the driver may require that field sobriety testing be conducted away from the camera.

The trial court's sanction order against the State was reversed and the cause remanded for further proceedings.

In a concurring opinion, Justice Lytton noted that even the prosecutor "lamented" that the reasons for conducting the field testing outside the camera view were unknown. Because the record did not disclose whether the officer's reasons for conducting the field sobriety tests out of the camera's view were sufficient to overcome the legislature's intent that video and audio must be captured during traffic stops, Justice Lytton would have remanded the cause for a hearing to consider any reasons offered by the State for conducting the sobriety testing outside the view of the camera.

In dissent, Justice Holdridge stated that the legislative intent of §30(e) is to require that traffic stops be recorded, in order to provide objective evidence of the incident and thereby assist in the truth-seeking process. Because such legislative intent is thwarted where a police officer fails to make the recording, Justice Holdridge would hold that the trial court did not abuse its discretion by ordering discovery sanctions.

People v. Gonzalez-Carrera, 2014 IL App (2d) 130968 625 ILCS 5/12-201(b) provides that all motor vehicles other than motorcycles must have at least two lighted tail lamps which are mounted on the left rear and right rear of the vehicle "so as to throw a red light visible for at least 500 feet in the reverse direction." 625 ILCS 5/12-201(c) provides that such tail lights must be illuminated whenever the vehicle's headlights are on. Under §12-201(b), a vehicle's headlights must be illuminated from sunset to sunrise, when rain, snow, fog or other conditions require the use of windshield wipers, and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 1000 feet.

The court concluded that the officer lacked a reasonable basis to suspect that defendant violated 625 ILCS 5/12-201(b) because the red tail light cover on his vehicle contained a hole which allowed white light to show through when the brakes were activated. Section 12-201(b) requires that tail lights be illuminated from sunset to sunrise, when conditions require the use of windshield wipers, and when persons and vehicles are not clearly discernible at a distance of 1000 feet. Because the stop occurred at 3:40 p.m. and the citation indicated that the conditions were clear and dry, §12-201(b) did not require the use of two red tail lights.

Under these circumstances, the officer lacked a reasonable basis to believe that a traffic offense was occurring. The order granting defendant's motion to suppress was affirmed.

The court concluded that because §12-201(b) was not applicable, it need not determine whether **People v. Girot**, 2013 IL App (3rd) 110936 was correctly decided. **Girot** found that §12-201(b) was violated where defendant drove his vehicle after dark with a hole in the red tail light cover which allowed both red and white light to be visible.

People v. Girot, 2013 IL App (3d) 110936 The Illinois Vehicle Code requires that all motor vehicles exhibit at least two lighted tail lamps that throw a red light visible for at least 500 feet in the reverse direction. 625 ILCS 5/12-201(b). The Code also provides that "[u]nless otherwise expressly authorized by this Code, all other lighting or combination of lighting on any vehicle shall be prohibited." 625 ILCS 5/12-212.

There was a chip the size of a dime or a nickel in the red plastic lens that covered the taillight of defendant's vehicle. As a result, the taillight emitted a red and white light. This was not authorized by the Code, and provided reasonable suspicion authorizing a police officer to stop defendant's vehicle to investigate the violation.

People v. Haywood, 407 Ill.App.3d 540, 944 N.E.2d 846 (2d Dist. 2011) In the course of holding that a traffic stop was not supported by a reasonable suspicion of criminal activity, the court noted that 625 ILCS 5/11-804(d), which requires, prohibits, or permits the use of turn signals depending on the circumstances, permits a driver to activate a turn signal without intending to turn unless the vehicle is parked or disabled or the driver is using the turn signal as a "do pass" signal. Furthermore, because §11-804 mandates the minimum (but not the maximum) distance for activating a signal before a turn, and because several opportunities to turn might be located within a short distance, the statute might require a motorist to activate a signal and pass an opportunity to turn.

The court also concluded that 625 ILCS 5/12-208(b), 625 ILCS 5/12-212(b) and 625 ILCS 5/12-212(c), which deal with flashing lights on a vehicle, were intended to specify the equipment which must be on a vehicle and not to regulate drivers' conduct. Therefore, the officer could not have reasonably believed that any of the above sections prohibited driving past three opportunities to turn with a signal activated. (See **SEARCH & SEIZURE**, §44-12(a)).

People v. Greco, 336 Ill.App.3d 253, 783 N.E.2d 201 (2d Dist. 2003) The Appellate Court held that a police officer's observation of a driver weaving within a single lane is sufficient to justify a traffic stop. The court overruled **People v. Manders**, 317 Ill.App.3d 337, 740 N.E.2d 64 (2d Dist. 2000), which held that observing a motorist weaving within her own lane as she attempted to pass a truck did not justify a suspicion that a traffic offense was occurring.

People v. Walter, 335 Ill.App.3d 171, 779 N.E.2d 1151 (3d Dist. 2002) Under Supreme Court Rule 504, "whenever practicable" the arresting officer must set the first appearance in a traffic case not less than 14 days but within 60 days of the arrest. Where the officer sets a first appearance date outside this period, the trial court need not dismiss the charge for lack of jurisdiction if the State establishes that it was impracticable to comply with the rule's time limitations. In determining whether it was practicable to set the first appearance date within the 14 to 60-day period, neither the officer's intent nor prejudice to the defendant are relevant considerations. If the trial court determines that it was "not impracticable" to set the first appearance within Rule 504's specified period, an order dismissing the charges will not be disturbed unless the trial court abused its discretion. Where defendant was arrested for DUI on December 15, 2001, and both the arresting officer and jail personnel set the first appearance for "January 23, 2001," the trial court did not abuse its discretion by dismissing the charges upon the State's failure to present evidence that setting a time within the limits of Rule 504 was not practicable. Noting that the defendant did not cause the "scrivener's errors," the court stated, "Clearly, defendant was not obliged to guess what date the officers truly intended for him to appear in court or to bring the officers' errors to the court's attention before seeking a dismissal of the charge."

People v. Benton, 322 Ill.App.3d 958, 751 N.E.2d 1257 (3d Dist. 2001) The Appellate Court held that 625 ILCS 5/3-707, which provides that an uninsured motor vehicle may not be operated in Illinois, is inapplicable to vehicles registered in other states.

People v. Merritt, 318 Ill.App.3d 115, 742 N.E.2d 451 (3d Dist. 2001) The Court found that defendant was not proven guilty beyond a reasonable doubt of driving an uninsured motor vehicle. When asked at trial why he had issued the citation, the officer responded, "[T]here was no evidence that the vehicle was insured. There was no insurance card presented to me at the time of this traffic stop." Under 625 ILCS 5/3-707, a driver may be convicted of driving an uninsured vehicle if he fails to comply with a request by a law enforcement officer for proof of insurance. Because there was no evidence that the officer asked anyone to produce an insurance card, but only that no valid card was shown, there was an insufficient basis to infer that defendant was driving an uninsured vehicle.

People v. Nadermann, 309 Ill.App.3d 1016, 723 N.E.2d 857 (2d Dist. 2000) The court concluded that 625 ILCS 5/11-502, which prohibits the presence of alcohol in the passenger compartment of a vehicle except "in the original container and with the seal unbroken," was not violated where a torn cardboard outer package contained several unopened cans of beer.

People v. DePalma, 256 Ill.App.3d 206, 627 N.E.2d 1236 (2d Dist. 1994) The defendant was indicted for possession of a vehicle with knowledge that the Vehicle Identification Number (VIN) had been removed, a Class 2 felony under Ch. 95½, ¶4-103(a)(4) (625 ILCS 5/4-103(a)(4)). The evidence showed that defendant was in possession of a car with a temporary buyer plate from Texas. When the investigating officer discovered that the dashboard VIN was missing, defendant said that the VIN plates on the dash and door jams had been removed when the vehicle was stolen from the previous owner. There was also testimony that defendant had been stopped twice in the recent past concerning the missing VIN numbers, and that the car was stolen in Florida but had been recovered several months earlier. The State did not contest that defendant was lawfully in possession of the vehicle. Defendant claimed that §4-103(a)(4) violates due process because it imposes the same punishment for innocent possession as for possession by a thief who removed the VIN numbers. The Appellate Court found that defendant's argument would be persuasive if the statute was interpreted as written. However, under **People v. Tolliver**, 147 Ill.2d 397, 589 N.E.2d 527 (1992) and **People v. Gean**, 143 Ill.2d 281, 573 N.E.2d 818 (1991), the statute must be read as requiring that the defendant act with the intent to defraud or commit a crime. (In Tolliver and Gean, the Illinois Supreme Court held that another section of the Traffic Code which did not require a culpable mental state should be interpreted to require that the defendant act with "criminal knowledge.") The Court reversed the conviction, finding that although the evidence showed that defendant knew that the VIN plates had been removed, there was no showing that he intended to defraud or to commit a crime.

People v. Podhrasky, 197 Ill.App.3d 349, 554 N.E.2d 578 (5th Dist. 1990) A reckless driving information alleged that defendant "drove a 1977 gold Ford . . . on Lebanon Avenue near Sir Lawrence Drive in St. Clair County, Illinois with a wanton disregard for the safety of persons or property. . . ." Citing **People v. Griffin**, 36 Ill.2d 430, 223 N.E.2d 158 (1967), the Court held that the above information was not sufficiently definite to bar further prosecution for the same acts.

People v. Hagen, 191 Ill.App.3d 265, 547 N.E.2d 577 (4th Dist. 1989) The Court upheld the statute which prohibits tinted windows (Ch. 95½, ¶12-503(a)). See also**, People v. Strawn**, 210 Ill.App.3d 783, 569 N.E.2d 269 (4th Dist. 1991) (defendant was properly convicted though

her automobile, which was registered in Illinois, was purchased in a state which permitted tinted windows; furthermore, the police may stop a vehicle solely for a violation of ¶12-503(a)).

People v. Angell, 184 Ill.App.3d 712, 540 N.E.2d 1106 (2d Dist. 1989) The driver of a vehicle may be convicted of illegal transportation of liquor under Ch. 95½, ¶11-502(a) without proof that he knew of the open container of alcohol in the passenger section. See also, **People v. Graven**, 124 Ill.App.3d 990, 464 N.E.2d 1131 (4th Dist. 1984). Contra, **People v. DeVoss**, 150 Ill.App.3d 38, 501 N.E.2d 840 (3d Dist. 1986).

People v. Alfonso, 191 Ill.App.3d 963, 548 N.E.2d 452 (1st Dist. 1989) Defendant was arrested for DUI and the arresting officer set the first appearance date for 13 days after the arrest. On that date defendant appeared and requested a continuance to obtain an attorney. The cause was continued, and on the next date defense counsel moved to dismiss the charges pursuant to Rule 504, which provides that the appearance date shall be set "not less than 14 days but within 49 days (now 60 days) after the date of the arrest, whenever practicable." The arresting officer testified that he set the appearance date on the 13th day after the arrest because that was his first scheduled court date following the arrest and his next scheduled court date would have been 48 days after the arrest, but he did not set the appearance for that day because he thought it should be scheduled before the 46-day statutory summary license suspension deprived defendant of his driver's license. The trial judge granted the motion to dismiss, finding that: (1) the appearance date was not set within the time period required under Rule 504, and (2) it was practicable to have done so. The judge noted that the officer, in good faith, set a date outside the limits of the Rule because he was concerned about the summary suspension. The Appellate Court stated that if an appearance date is not set within the time limits of the Rule, the State is required to establish it was impracticable to do so. Furthermore, the trial judge's determination regarding impracticability will not be disturbed absent an abuse of discretion. The Court found that the trial court did not abuse its discretion. The Court noted that the "good intentions of the arresting officer or the convenience of the parties are irrelevant where, as here, it was practicable to set the appearance date within 14 to 49 days after the date of the arrest."

People v. Worthington, 108 Ill.App.3d 932, 439 N.E.2d 1101 (3d Dist. 1982) Pursuant to Ch. 95½, ¶16-102, a municipality may prosecute a traffic violation if written permission is given by the State's Attorney. Here, the required permission was given. See also, **People v. Koetzle**, 40 Ill.App.3d 577, 352 N.E.2d 433 (5th Dist. 1976).

People v. Delay, 70 Ill.App.3d 712, 388 N.E.2d 1316 (4th Dist. 1979) The offense of using a false name on a vehicle registration or title application (Ch. 95½, ¶4-105) does not require the mental state of willfulness, but is instead an absolute liability offense.

§49-2
Driving Under the Influence

§49-2(a)
Generally

Illinois Supreme Court

People ex rel. Hartrich v. 2010 Harley-Davidson, 2018 IL 121636 Illinois' civil forfeiture statute [720 ILCS 5/36-1] allows the State to seize any vehicle used in the commission of certain offenses. Here, the claimant's motorcycle, which she purchased for $35,000 in 2010, was forfeited because her husband drove it while committing aggravated DUI. The claimant raised an as-applied challenge to the forfeiture statute based on the excessive fines clause of the Eighth Amendment to the U.S. Constitution.

The Supreme Court applied the three-part test it adopted in **People ex rel. Waller v. 1989 Ford F350 Truck**, 162 Ill. 2d 78 (1994) to evaluate whether the forfeiture state was unconstitutional as applied to these facts under the excessive fines clause. That test requires courts to weigh (1) the gravity of the offense compared to the harshness of the penalty, (2) how integral the property was in the commission of the offense, and (3) whether the criminal conduct involving the property was extensive.

Here, after asserting an "innocent owner" defense below, the claimant conceded in the Supreme Court that she had allowed her husband to drive the motorcycle knowing he was intoxicated. The Court concluded that the claimant bore "more than marginal culpability" for her husband's DUI and the inherent danger to the public from that offense. The Court could not weigh that factor against the harshness of the forfeiture, however, because the claimant had not presented any evidence as to the value of the motorcycle at the time of the offense or at the time of the forfeiture. The only evidence of value was that the claimant had paid $35,000 for the motorcycle in 2010, four years before its seizure. In light of the Court's duty to construe the statute as constitutional whenever possible, the claimant's as-applied challenge was rejected.

In dissent, Chief Justice Karmeier criticized the majority as wrong on the facts, wrong in its interpretation of the relevant statutes, and wrong in its construction and application of Eighth Amendment law. Specifically, he found that the evidence failed to show the claimant's knowledge of the significance of her husband's prior DUI and license revocation. He also concluded that the evidence did establish that the claimant had acquiesced in her husband's operation of the motorcycle, without any real choice in the matter, but had not consented to it. Chief Justice Karmeier construed the forfeiture statute as applying only when it is the vehicle's owner who uses the vehicle to commit an offense. He also concluded that if it applied here, the forfeiture statute was unconstitutional as applied under the excessive fines clause of the Eighth Amendment.

In a separate dissent, Justice Burke concluded that the claimant had not consented to her husband's driving the motorcycle. She also disagreed with the majority's rejection of the Eighth Amendment claim on the merits and would have remanded to the trial court to hold a hearing on the as-applied challenge in order to develop a factual record for review.

People v. McKown, 236 Ill.2d 278, 924 N.E.2d 941 (2010)

When performed in compliance with the protocol adopted by the National Highway Traffic Safety Administration, horizontal gaze nystagmus testing has gained general acceptance as a reliable indication of alcohol consumption. However, the results of HGN testing do not, in and of themselves, establish that a particular person is impaired by the consumption of alcohol. Instead, HGN test results are but one factor to be considered in determining impairment. (See **EVIDENCE**, §19-27(a)).

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. McKown, 226 Ill.2d 245, 875 N.E.2d 1029 (2007) The court concluded that evidence of horizontal gaze nystagmus (HGN) is subject to the **Frye** standard for admissibility of scientific evidence, and remanded the cause for a **Frye** hearing.

People v. McClure, 218 Ill.2d 375, 843 N.E.2d 308 (2006) 625 ILCS 5/2-118.1(b), which requires that a request for a statutory summary suspension hearing must be filed within 90 days after notice of the suspension is served, should be construed in accordance with 735 ILCS 5/13-217, which provides that an action which is voluntarily dismissed can be refiled within one year. Thus, where the defendant voluntarily dismissed his timely request for a summary suspension hearing, he was entitled to refile the petition within one year.

People v. Johnson, 218 Ill.2d 125, 842 N.E.2d 714 (2005) Although a DUI suspect's refusal to take a breath alcohol test may be admitted to show consciousness of guilt, the prosecutor erred by arguing in both opening and closing argument that defendant's refusal to take the test represented a failure to take advantage of an opportunity to "prove" that he was not guilty of DUI. However, the error was harmless.

People v. Jones, 214 Ill.2d 187, 824 N.E.2d 239 (2005) 625 ILCS 5/11-501.2(c)(2) provides: Notwithstanding any ability to refuse under this Code to submit to these tests or any ability to revoke the implied consent to these tests, if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical control of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test or tests of his or her blood, breath or urine for the purpose of determining the alcohol content thereof or the presence of any other drug or combination of both.

The Supreme Court held that §11-501.2 does not grant a statutory right to refuse chemical testing in a situation not involving the death or personal injury of another. Defendant argued that by authorizing nonconsensual chemical testing in situations involving death or personal injury, the legislature intended to recognize a right to refuse testing in other situations. The Court reasoned that: (1) prior to the enactment of §11-501.2(c)(2), it was well-settled that nonconsensual chemical testing of a DUI arrestee was permissible in all DUI situations; (2) following principles of statutory construction, the Court would not interpret a statute to effect a change in settled law unless its terms clearly require such a construction; and (3) the language of §11-501.2(c)(2) does not clearly create a right to refuse testing. The Court added that its holding "does not give law enforcement officers unbridled authority to order and conduct chemical tests."

People v. Every, 184 Ill.2d 281, 703 N.E.2d 897 (1998) 625 ILCS 5/11-501.1(a), which authorizes an Illinois law enforcement officer who is investigating a potential DUI to complete his investigation in an adjoining state, is constitutional. Section 11-501.1 does not purport to give an Illinois law enforcement officer authority to make an arrest or otherwise exercise his official powers in an adjoining state, but merely allows an officer to obtain evidence under the Illinois "implied consent" statute, which provides that persons who drive in Illinois impliedly agree to allow chemical testing of their blood for alcohol content.

City of Naperville v. Watson, 175 Ill.2d 399, 677 N.E.2d 955 (1997) A person need not drive to be in "actual physical control" of a vehicle under 625 ILCS 5/11-501(a). A person who is "sleeping it off" in a parked car may be in "actual physical control" of a vehicle.

People v. Fate, 159 Ill.2d 267, 636 N.E.2d 549 (1994) The defendant was charged with DUI under Ch. 95½, ¶11-501(a)(5) (625 ILCS 5/11-501), which prohibits driving a vehicle with

"any amount" of a substance in one's blood or urine "resulting from the unlawful use" of cannabis or a controlled substance. Defendant claimed that the statute violated due process in that it created a per se prohibition of driving, without any relationship to actual impairment. The Supreme Court disagreed, finding that considering the vast number of illegal drugs, the difficulty in measuring their precise concentration and variations in impairment between various drugs and individuals, the statute was a reasonable attempt to protect the safety of Illinois highways.

People v. Moore, 138 Ill.2d 162, 561 N.E.2d 648 (1990) The defendant was arrested for DUI, and a breath test was taken. Defendant's driver's license was summarily suspended; however, a petition to rescind the suspension was granted after the judge found that the arresting officer lacked probable cause to stop the defendant. Before his DUI trial, the defendant moved to suppress the breath test results due to the finding of no probable cause. The trial judge granted the motion on the grounds of collateral estoppel. The Supreme Court reversed citing many decisions of the Appellate Court holding that collateral estoppel is not applicable in this situation. See, **People v. Filitti**, 190 Ill.App.3d 884, 546 N.E.2d 1142 (2d Dist. 1989); **People v. Flynn**, 197 Ill.App.3d 13, 554 N.E.2d 668 (1st Dist. 1990).

People v. Hester, 131 Ill.2d 91, 544 N.E.2d 797 (1989) The defendant was convicted of driving under the influence of alcohol and reckless homicide. The charges resulted from the defendant losing control of her car and striking a pedestrian. Shortly after the incident, the defendant was given a breathalyzer test which showed her blood-alcohol level to be .20%. Several State witnesses noticed a strong odor of alcohol on defendant's breath and that she appeared intoxicated. Other witnesses testified that the brake lights on defendant's car were not activated and that the car was speeding and did not slow down. The defendant testified that she had consumed one beer, that she felt the car go "bump" and pull to the right, and that she could not regain control of the car. She also stated that she was dizzy and did not know what was happening after the incident. Defendant also testified that she took prescription drugs, which defense counsel argued had affected the breath test. Both sides presented expert testimony regarding the accuracy of the breathalyzer machine and accident reconstruction testimony. The jury was given the following instruction:
"If you find that the amount of alcohol in the defendant's blood as shown by a chemical analysis of her breath was .10 percent or more by weight of alcohol, you may presume that the defendant was under the influence of intoxicating liquor.
However, this presumption is not binding on you and you may take into consideration any other evidence in determining whether or not the defendant was under the influence of intoxicating liquor, at the time the defendant drove a vehicle."
This instruction is IPI 23.06 as modified by replacing the word "shall" with the word "may," as emphasized above. The Supreme Court discussed mandatory and permissive presumptions and held that the above instruction was permissive. A permissive presumption is proper when there is a rational connection between the facts proved and the fact presumed, the ultimate fact must be more likely than not to flow from the basic fact, and the inference must be supported by corroborating evidence of guilt. The presumption that a person with a blood alcohol level of at least .10% is intoxicated is rational and more likely than not to be accurate. In addition, there was corroborative evidence of the defendant's guilt.

People v. Baker, 123 Ill.2d 233, 526 N.E.2d 157 (1988) The defendant pleaded guilty to driving under the influence, and pursuant to Ch. 95½, ¶11-501(f) was ordered to undergo a "professional evaluation to determine if an alcohol or other drug abuse problem exists and

the extent of such problem." Section 11-501(f) provides that such an evaluation "shall be required" prior to any disposition on a DUI offense. Defendant filed a motion to rescind the above order on the ground that such an evaluation violated his Fifth Amendment rights. The Supreme Court held that the professional evaluation under the above statute is not mandatory, but permissive. Thus, a trial judge may impose sentence in a DUI case in the absence of such an evaluation. The Court also stated that the professional evaluation assists the judge in determining a proper course of treatment for the defendant and may supply mitigating factors. Since a judge may sentence a defendant to the maximum penalty unless the evaluation reveals reasons for a lesser sentence, the "defendant's fear that the evaluation could impose a heavier penalty and violate his fifth amendment privilege is without merit." The Court acknowledged that a defendant may assert his Fifth Amendment right in regard to the professional evaluation. However, the right is not self-executing, but must be asserted in a "timely and proper manner." To properly assert the Fifth Amendment privilege, the defendant must "claim it during the examination and as questions are asked." Additionally, the claim may only be asserted "in response to incriminating questions," and the defendant "must have a reasonable ground to believe that his answers to question asked might tend to incriminate him."

People v. Eckhardt, 127 Ill.2d 146, 535 N.E.2d 847 (1989) The Supreme Court upheld Ch. 38, ¶1005-6-1(d) over the contention that it violates equal protection. Section 1005-6-1(d) provides that a defendant charged with driving under the influence is not eligible for supervision if, within the past 5 years, he "pleaded guilty to or stipulated to the facts supporting a charge or a finding of guilty to [reckless driving] and the plea or stipulation was the result of a plea agreement."

People v. Coleman, 111 Ill.2d 87, 488 N.E.2d 1009 (1986) The defendant pleaded guilty to DUI and requested supervision. Three years earlier, defendant had pleaded guilty to DUI and received supervision. Ch. 38, ¶1005-6-1(d) prohibits supervision to a defendant charged with DUI if he has received supervision for the same offense within the previous five years. The trial judge found that since ¶105-6-1(d) became effective after the defendant's prior offense, but before his second offense, it was an ex post facto law. The trial judge also held that ¶1005-6-1(d) violated equal protection. The defendant was given supervision, and the State appealed. The Supreme Court held that ¶1005-6-1(d) was not ex post facto law as to this defendant. The statute did not increase the penalty imposed for an offense which occurred prior to its effective date, but merely created an enhanced penalty for offenses occurring after its effective date. Furthermore, the defendant had adequate notice at the time of his second offense that being convicted of DUI within five years of his prior supervision would subject him to a heightened sanction. With regard to equal protection, the defendant contended that "no basis exists for classifying him differently than others who have never been charged with, or who have been acquitted of, driving under the influence," because he had no prior "conviction" for DUI (since the prior DUI charges were dismissed after he successfully completed supervision).The Supreme Court found that there is a rational basis for distinguishing between those who have previously undergone supervision for DUI and those who have not.

People v. Emrich, 113 Ill.2d 343, 498 N.E.2d 1140 (1986) Following a traffic accident, the defendant was taken to a hospital where blood samples were taken. The defendant was subsequently charged with reckless homicide and driving under the influence. The trial court suppressed the blood sample evidence. The trial judge found that since no anticoagulant and

preservative had been added to the vials of blood, it was impossible for the defendant to obtain an independent analysis. In addition, the trial court found that the evidence was inadmissible under Ch. 95½, ¶11-501.2(a). The Supreme Court held that the trial judge properly suppressed the blood sample as to the DUI prosecution. Section 11-501.2(a) requires that, in order to be admissible, blood samples must be in tubes "containing an anticoagulant/preservative." This statute is mandatory; since the State failed to comply with the anticoagulant and preservative requirement, the blood sample evidence cannot be introduced on the DUI charge. However, compliance with ¶11-501.2 is a prerequisite for the use of blood sample evidence only for DUI and not for reckless homicide. Thus, the admissibility of the blood sample evidence as to the reckless homicide charge depends on "whether the blood analysis meets the ordinary test of admissibility." In this case, the failure to preserve the blood sample did not rise to the level of a constitutional violation.

People v. Bartley, 109 Ill.2d 273, 486 N.E.2d 880 (1985) The Court upheld DUI roadblocks. The Court balanced the public interest (the serious problem of drivers under the influence of alcohol) against the resulting intrusions, and held that roadblocks are constitutionally acceptable when the discretion of the officers conducting the roadblock is limited and the intrusion is minimal. The Court listed several factors to be considered in determining whether a roadblock is constitutionally permissible. First, the potential for arbitrary enforcement or unbridled discretion is reduced when: (1) the decision to establish a roadblock is selected by supervisory-level personnel, (2) vehicles are stopped in a "pre-established, systematic fashion," and (3) there are "guidelines in the operation of the roadblock." The Court also found that the anxiety to motorists caused by a roadblock is allayed if: (1) "there is a sufficient showing of the official nature of the operation and it is obvious that the roadblock poses no safety risk," and (2) there is "advance publicity of the intention of the police to establish DUI roadblocks, without designating specific locations at which they will be conducted." Although the roadblock here was "not a model roadblock, the subjective intrusion here was sufficiently limited to pass constitutional muster." See also, **People v. Conway**, 135 Ill.App.3d 887, 482 N.E.2d 437 (4th Dist. 1985).

People v. Ziltz, 98 Ill.2d 38, 455 N.E.2d 70 (1983) The Court upheld the validity of Ch. 95½, ¶11-501(a)(1) (operating a motor vehicle with a blood alcohol concentration in excess of 0.10%) over the contention that it violates due process by creating a mandatory presumption of guilt and shifting the burden of persuasion to the defendant. The Court held that there are no presumptions in the above statute. Instead, the State must show that the defendant was operating a motor vehicle and that his blood alcohol concentration was over 0.10%.

Illinois Appellate Court

People v. Cruz Aguilar, 2024 IL App (5th) 220651 The trial court did not err in dismissing charges of aggravated DUI under 625 ILCS 5/11-501(a)(1), (2), and (d)(1)(H). Under (a)(1) and (2), DUI is normally a Class A misdemeanor. The charge is elevated to a Class 4 felony under subsection (d)(1)(H) where "the person committed the violation while he or she did not possess a driver's license or permit...". Here, the charges alleged that defendant did not "possess" a driver's license in that his license, while not expired, "was suspended pursuant to a financial responsibility insurance suspension."

Under the plain language of subsection (d)(1)(H), a DUI conviction is not elevated to a felony by a driver's license suspension. Rather, under subsection (d)(1)(G), the legislature

has specifically enumerated circumstances where a suspended driver's license will elevate a DUI to a Class 4 felony. An insurance suspension is not one of those circumstances.

The court rejected the State's reliance on **People v. Rosenbalm**, 2011 IL App (2d) 100243, where the Second District stated, in *dicta*, that while subsection (H) does not expressly refer to possession of a valid driver's license, "to read the statute to avoid application of the aggravating factor where a person possesses a revoked, suspended, or expired license would lead to absurd results." **Rosenbalm**, 2011 IL App (2d) 100243, ¶ 9. The **Rosenbalm** court conceded that its interpretation of subsection (d)(1)(H) rendered subsection (d)(1)(G) superfluous.

Here, the court instead chose to follow the reasoning in **People v. Hartema**, 2019 IL App (4th) 170021-U. In **Hartema**, the Fourth District disagreed with the **Rosenbalm** court's *dicta*, noting the general principle of statutory construction that statutes should be interpreted in a manner so as not to render provisions superfluous whenever possible. Consistent with that mandate, subsection (H) does not act as a catchall to extend aggravated DUI to individuals with suspended licenses for reasons not listed in subsection (G); such an interpretation would render subsection (G) wholly superfluous.

People v. Lee, 2023 IL App (4th) 220779 Defendant fell asleep at the wheel and crashed his pickup truck into another car, killing both of its occupants. A drug test taken within two hours of the accident revealed a blood-THC concentration of 6.5 nanograms per milliliter. Defendant was convicted after a bench trial of aggravated DUI resulting in two deaths in violation of 625 ILCS 5/11-501(a)(7), which requires a THC concentration of at least 5 ng/mL.

On appeal, defendant argued section 11-501(a)(7) violated equal protection by carving out an exception for cardholders under the Medical Cannabis Act. The exception stated that for medical users, the State must show actual impairment, rather than a blood-THC level of 5 ng/mL. Defendant argued that card holders are similarly situated with non-card holders, and that the two groups "use and are affected by cannabis similarly and, thus[,] pose the same potential danger to the public." He argued it was therefore not rational to distinguish between card holders and non-card holders.

The appellate court disagreed that the two groups were similarly situated because medical users have legitimate medical reasons for their use while recreational users do not. Even if similarly situated, the statute represents a rational attempt to balance the interest in medical cannabis with traffic safety.

People v. Workheiser, 2022 IL App (3d) 200450 The police had probable cause to arrest defendant for DUI based on the totality of the evidence. The arresting officer observed defendant touching the center line and making wide turns. After the officer followed him with lights and sirens on, the defendant pulled into a gas station, left his car, and tried to enter the gas station before officers ordered him back to the car. Defendant admitted to drinking three beers and exhibited confusion and difficulty following directions, had slurred speech, and had dexterity issues, fumbling with and dropping his wallet. Although it was also revealed that the officer administered a faulty HGN test, the remaining evidence was sufficient to convince a reasonably cautious person that defendant was under the influence of alcohol.

People v. Rogers, 2022 IL App (3d) 180088-B Defendant, who was convicted of DUI under 625 ILCS 5/11-501(a)(6), based on his having "any amount" of cannabis in his system, challenged the statute as unconstitutional. Specifically, defendant alleged that subsection (a)(6), as it existed at the time of his conduct, violated due process because advances in

cannabis metabolite analysis have rendered the zero-tolerance standard an unreasonable method of accomplishing the legislature's objection of protecting the public from drivers impaired by cannabis. Defendant noted that the DUI statute has since been amended to criminalize driving with cannabis in a person's system only if the concentration of cannabis metabolites exceeds a specific threshold.

The Appellate Court rejected defendant's argument. At the time of defendant's conduct, the "any amount" version of (a)(6) was in effect. That statute had been held constitutional in **People v. Fate**, 159 Ill. 2d 267 (1994), and **Fate** remains controlling. Accordingly, the court concluded that at the time of defendant's conduct, (a)(6) bore a rational relationship to the legislative objective of keeping cannabis-impaired drivers off the road. Defendant's conviction of DUI was affirmed.

People v. Patel, 2020 IL App (4th) 190917 During a traffic stop for speeding, the officer smelled the odor of alcohol and noted that defendant's eyes were glassy. The officer questioned defendant, who admitted consuming 2.5 IPA beers, which the officer knew generally contained a higher alcohol content than standard beer. After completing the traffic citation, but before giving it to defendant, the officer had defendant exit his vehicle to perform field sobriety tests. Following the tests, defendant was arrested for DUI.

The trial court granted defendant's motion to suppress, concluding that the officer's observations did not provide reasonable articulable suspicion to prolong the traffic stop for the purpose of conducting field sobriety tests where defendant was not seen driving erratically, was not slurring his words, and had no difficulty producing his driver's license and proof of insurance. The Appellate Court disagreed.

While the circumstances of a defendant's driving may be relevant to the question of reasonable suspicion, they were irrelevant to the outcome here because the officer's reasonable suspicion was based on what he observed during his interaction with defendant after he had initiated the traffic stop for speeding. An officer is not required to be certain that a defendant was driving under the influence before conducting field sobriety tests, but rather need only be able to articulate facts suggesting he might have been. Here, the officer pointed to specific, artculable facts to support prolonging the stop for further investigation.

People v. Rowell, 2020 IL App (4th) 190231 625 ILCS 5/11-501(c)(3) provides that a defendant "is subject to" six months of imprisonment if convicted of committing DUI while an individual under the age of 16 is in the vehicle. The trial court concluded that this was a mandatory provision, requiring a six-month jail sentence, with the sentencing judge noting that he would not have imposed a jail sentence otherwise.

The Appellate Court declined to find the jail term mandatory. The court first looked to the plain language of the statute and concluded that "subject to" could mean mandatory or could merely mean that such a sentence was available. The court acknowledged that the classification of the offense already allowed for a jail term of up to 364 days, but was reluctant to read a mandatory requirement into the statute where it was not specifically expressed.

The court also looked to other sections of the DUI statute, applying the doctrine of *in pari materia*, and concluded that the legislature used the word "mandatory" in other sections, indicating that the legislature knew how to express when something was meant to be mandatory. Absence of that language here weighed against finding that the jail term was required.

While legislative history can be useful in construing legislative intent, the statute in question here has been amended many times since this provision was originally enacted.

Thus, the court found the legislative history to be of little value in interpreting the current version of the statute.

And, when considered as a whole, the court found questionable the argument that a six-month jail term was required. The court noted that driving under the influence which causes death or great bodily harm to a child under 16 is aggravated DUI, which is a Class 4 felony, rather than a Class A misdemeanor, but which does not carry a mandatory jail term. The same is true for a second DUI while transporting a child; the class of the offense is increased but imprisonment is not required.

Ultimately, the court concluded that the "subject to" language is ambiguous and applied the rule of lenity. That rule requires that the ambiguity be resolved in favor of the more lenient punishment. Accordingly, defendant's sentence was vacated and the cause was remanded for resentencing.

People v. Paranto, 2020 IL App (3d) 160719 In assessing defendant's challenge to the constitutionality of the 2014 version of 625 ILCS 5/11-501(a)(6), the Appellate Court was bound to follow **People v. Fate**, 159 Ill. 2d 267 (1994), where the Illinois Supreme Court found the statute facially constitutional. The Appellate Court rejected defendant's argument that advances in scientific testing rendered her challenge a distinct issue from the challenge brought in 1994 in **Fate**.

The Appellate Court also held that even if **Fate** did not control, the record was inadequately developed to consider defendant's facial challenge here. While normally only an as-applied challenge requires that a factually-developed record be made below, the facial challenge here was dependent on evolutions in scientific testing which lacked evidentiary support in the record. On appeal, defendant could not rely on secondary sources as substantive evidence of necessary scientific facts to support her constitutional challenge.

People v. Meo, 2018 IL App (2d) 170135 A reliable tip from an informant can support a traffic stop. A 911 call is not an anonymous tip and therefore is not viewed with the usual skepticism applied to tips from confidential informants. Further, a tip concerning a possible drunk driver requires less corroboration because of the imminent danger to the public inherent in DUI.

Here, a gas station employee reported that defendant drove his car over the curb and nearly hit the building. An officer responded, observed defendant drive away from the gas station, and followed. Although it was dark out, defendant turned off his headlights for a few seconds while driving, but he did not commit any traffic violation during the 30 seconds the officer followed him before initiating a stop. The traffic stop was supported by reasonable suspicion; the tip, coupled with the defendant's unexplained blinking of his headlights, provided an adequate basis for the stop. And, there was probable cause for the subsequent DUI arrest where the officer detected an odor of alcohol on defendant, and also observed defendant's bloodshot eyes, slurred speech, and fumbling to provide his license and insurance. Defendant admitted drinking alcohol that night and refused to take a breath test. These factors, considered together, provided probable cause.

People v Durden, 2017 IL App (3d) 160409 Following his arrest for DUI, the defendant was read the Warning to Motorist and given a breath test. The test produced a result of 0.035 (below the 0.05 level for presuming that an individual is *not* under the influence of alcohol). The police then requested he take a blood or urine test, he refused, and his driver's license was summarily suspended.

The request for further testing was permissible because the defendant's actions and

behavior were inconsistent with the breath test result. It was reasonable for the police to request additional testing to determine if the defendant was under the influence of drugs.

As a matter of first impression in Illinois, the court also determined that the police are not required to provide a second Warning to Motorist when requesting further testing, particularly where the subsequent testing was requested within an hour after the initial warnings were given.

People v. Motzko, 2017 IL App (3d) 160154 The officer who investigated a one-vehicle motorcycle accident lacked probable cause to arrest the rider for DUI. A security guard told the officer that he saw defendant drive at a high rate of speed, fail to negotiate a turn, and crash. The guard also said he could smell alcohol on defendant's breath. The officer did not question the security guard further.

The officer then questioned defendant, who was being treated at the scene. Defendant said he had been coming from "downtown" and that he had consumed one 20-ounce beer. Defendant declined to take a breath test. He was then taken to the hospital.

At the hospital, the officer conducted Horizontal Gaze Nystagmus testing and concluded that defendant's BAC was greater than .08. Defendant told the officer before the testing that he was blind in his right eye, but the officer did not ask whether defendant had a head injury from the accident or whether dirt or debris got into his eyes as a result of the accident.

The officer testified that he arrested defendant based on the HGN testing, the odor of alcohol on defendant's breath, defendant's glassy, bloodshot eyes, and defendant's admission of drinking. The officer also believed that since defendant stated he was coming from "downtown" he had probably been at a bar.

In finding that there was no probable cause for the arrest, the Appellate Court noted that under Illinois precedent, the mere odor of alcohol on a person's breath and inadequate performance of field sobriety tests does not create probable cause for a DUI arrest. The same is true for speeding and becoming involved in an accident and the combination of admitting to consuming alcohol and exhibiting glassy, blood-shot eyes.

Evidence of HGN testing, when performed according to protocol by a properly trained officer, is admissible to show that the subject has likely consumed alcohol. However, HGN testing does not constitute evidence of impairment or a particular blood alcohol content or level of intoxication. The officer's testimony that defendant's performance on the HGN testing indicated a BAC in excess of .08 showed that the officer was not properly trained to understand and interpret the results of HGN testing. Thus, the trial court did not err by discounting the officer's testimony.

Furthermore, the arrest could not be based on the security guard's observations where the officer did not question the guard about how fast he thought defendant was going. Finally, where the officer had no experience or qualifications in accident reconstruction, he had no reason to believe that the accident resulted from impaired driving.

Where the trial court finds that State's only witness at a suppression hearing lacks credibility, it acts properly by granting a motion to suppress. The trial court's suppression order was affirmed.

People v. Morris, 2014 IL App (1st) 130512 The Illinois Vehicle Code defines the offense of driving under the influence of alcohol as driving or being "in actual physical control" of a vehicle while under the influence of alcohol. 625 ILCS 5/11-501(a)(2). A vehicle does not need to be moving or the engine running for the defendant to be in actual physical control of the vehicle. The purpose of deeming someone to be in control of a vehicle that is not moving or

running is to prevent people who have the capability to begin driving a vehicle from making the decision to begin driving while they are impaired.

Defendant argued that the phrase "in actual physical control" was unconstitutionally vague and ambiguous as applied to him because it did not provide proper notice about what constitutes actual physical control, and failed to provide a reasonable standard to allow an ordinary person to gauge or regulate his conduct.

A vagueness challenge is rooted in due process and asks whether a person of ordinary intelligence would reasonably understand what is prohibited. A statute is unconstitutionally vague if its terms are so ill-defined that its meaning rests on the opinions and whims of the trier of fact rather than objective criteria or facts. Vagueness challenges that do not involve the First Amendment are examined in light of the specific facts of the case. The defendant must show that the statute did not did not provide effective notice that his conduct was prohibited.

Here, the police found defendant passed out in the front seat of a parked car, with the ignition off, the driver's side door open, and keys in his right hand. The Appellate Court held that the statute as applied to defendant in this situation was not unconstitutionally vague. It is not unreasonable to require a person to know that he could be found in actual physical control of a vehicle under these facts. While defendant may not have "actually known" that his conduct constituted actual physical control, ignorance of the law is not a defense, and does not alone render a statute unconstitutionally vague.

People v. Harris, 2014 IL App (2d) 120990 Instrument logs certifying the accuracy of a Breathalyzer machine are hearsay, but may be admitted under the business-records exception to hearsay if the State lays a proper foundation. This foundation is laid by showing that the writing or record was made in the regular course of business at the time of the event or transaction, or a reasonable time thereafter. 720 ILCS 5/115-5(a). Illinois Rule of Evidence 803(6) similarly requires that a business entry be made at or near the time of the event or transaction.

Here the State presented evidence that the entry in the instrument logbook (showing that a Breathalyzer machine had been certified as accurate) was made in the regular course of business, but no evidence that it was made at the time of the event or within a reasonable time thereafter. The State thus failed to lay the necessary foundation. Without the logbook, there was no evidence about the accuracy of the Breathalyzer machine, which in turn meant the results of the Breathalyzer test could not be relied upon to find defendant guilty of driving under the influence of alcohol. The court reversed his conviction and remanded for a new trial.

People v. Borys, 2013 IL App (1st) 111629 Evidence of HGN field-sobriety testing is admissible for the purpose of showing whether the subject has likely consumed alcohol and may be impaired if the test is performed under National Highway Transportation Safety Administration (NHTSA) standards. A foundation must be laid showing that the witness is properly trained and that he performed the test in accordance with proper procedures.

NHTSA standards require that the examining officer place a stimulus 12 to 15 inches from the subject's eyes as the officer moves the stimulus to investigate for the presence of nystagmus. Where the officer testified that he placed the stimulus four inches from defendant's eyes, he failed to perform the test in accordance with NHTSA standards and the results of the test were inadmissible. However, the court concluded that the error in the admission of this evidence was harmless because retrial without the challenged evidence would produce no different result.

People v. Korzenewski, 2012 IL App (4th) 101026 In addition to any other fine or penalty, an individual who is convicted of DUI concerning an incident in which the operation of a motor vehicle proximately caused an appropriate emergency response must pay restitution for the cost of that response. (625 ILCS 5/11-501.01(i)). The Appellate Court concluded that a routine traffic stop for speeding does not qualify as "an appropriate emergency response" under the meaning of §11-501.01(i). Applying **Gaffney v. Board of Trustees of the Orland Fire Protection District**, 2012 IL 110012, the court concluded that the word "emergency" should be interpreted to mean "an unforseen circumstance involving imminent danger to a person or property requiring an urgent response."

Where the arresting officer testified that he was conducting speed enforcement as part of his assignment to the traffic enforcement detail, and that he stopped the defendant's car for going 19 miles over the speed limit, the court concluded that the officer was conducting a routine stop rather than reacting to a situation which required an urgent response. Because defendant did not proximately cause an incident requiring an emergency response, restitution to the police department was not authorized under §11-501.01(i).

The court vacated the restitution order requiring the payment of $133 to the police department which stopped defendant for speeding.

People v. McPeak, 2012 IL App (2d) 110557 The State bears the burden of proving all elements of the offense beyond a reasonable doubt. Where a statutory exception to an offense is "part of the body of the substantive offense," the State's burden includes disproving the exception beyond a reasonable doubt. Even where an exception appears within the statutory definition of an offense, however, it is "part of the body" of the offense only if it is "so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception."

By contrast, a statutory exception which merely withdraws certain acts or persons from the operation of the statute is not part of the body of the offense. The defense has the burden of proof concerning such exceptions.

625 ILCS 5/6-303(a) defines the offense of driving with a suspended or revoked license as driving or being in actual physical control over a motor vehicle while one's license is revoked or suspended, "except as may be specifically allowed by" statutes authorizing a "monitoring device driving permit," which authorizes the offender to drive upon installation of a device which prevents the vehicle from starting if the driver's breath alcohol exceeds a specified level. The Secretary of State must issue such a permit to first offenders unless the offender declines.

The court concluded that the MDDP provision merely withdraws drivers who receive an MDDP from the scope of the statute defining the offense of driving with a revoked or suspended license, and that the provision is therefore not part of the body of the offense. Thus, the State need not present evidence affirmatively showing that the defendant was not granted an MDDP. Because the defendant did not raise as a defense that she had been issued and was driving in compliance with an MDDP, the State met its burden of proof concerning the offense despite its failure to present evidence whether defendant had been granted an MDDP.

People v. Jacobs, 405 Ill.App.3d 210, 939 N.E.2d 64 (4th Dist. 2010) The Sixth Amendment requires that a witness against the defendant appear at trial and be subject to cross-examination, or, if unavailable, that defendant have had a prior opportunity to cross-examine the witness. In **Melendez-Diaz v. Massachusetts**, 557 U.S. ___, 129 S.Ct. 2527, ___

L.Ed.2d ___ (2009), the Supreme Court concluded that a sworn certificate of analysis showing the results of forensic testing of seized substances were the functional equivalent of live, in-court testimony and thus inadmissible absent a showing that the analysts were unavailable to testify and that defendant had a prior opportunity to cross-examine them. The court noted that it did not hold that "anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case." 129 S.Ct. at 2532 n.1.

One of the foundational requirements for the admission of a breathalyzer-test result is that the machine used was regularly tested for accuracy. A police officer's testimony that the machine was certified as accurate based on logbook entries, offered to satisfy that foundational requirement, were not testimonial. The certifications were not compiled during the investigation of a particular crime and do not establish the criminal wrongdoing of a defendant. They did nothing more than establish that the machine was tested and working properly.

People v. Sprind, 403 Ill.App.3d 772, 933 N.E.2d 1197 (5th Dist. 2010) Regulations that require that blood be drawn with use of a non-alcohol disinfectant and that urine be collected by police personnel rather than a hospital nurse were invalid. The regulations exceeded the authority delegated by statute (625 ILCS 5/11-501.2), which is only to prescribe regulations to ensure the validity of test results. Requiring that a disinfectant be used during a blood draw is for the subject's well-being, not for evidence-collection purposes. Urine samples collected by police are not more reliable than those taken by a nurse, so requiring that the urine only be collected by a police officer also exceeded the authority delegated by statute.

People v. Hirsch, 355 Ill.App.3d 611, 824 N.E.2d 321 (2d Dist. 2005) Court affirms defendant's conviction of aggravated driving while under the influence (625 ILCS 5/11-501(d)(1)). At trial, defendant, who was confined to a wheelchair, contended that his actions were attributable to his physical condition and his medications. On appeal, defendant argued, inter alia, that the State failed to prove defendant guilty beyond a reasonable doubt because the many prescribed medications that defendant took rendered the breathalyzer test inaccurate. Defendant relied on **People v. Miller**, 166 Ill.App.3d 155, 519 N.E.2d 717 (1988), to argue that the State was obligated to establish that when a defendant is administered medicine shortly before a blood test, the prescribed treatment did not affect the accuracy of the test. Rejecting defendant's reliance on **Miller** and relying on **People v. Bishop**, 354 Ill.App.3d 549, 821 N.E.2d 677 (1st Dist. 2004), the court concluded that absent evidence that defendant's medications rendered the test results inaccurate, the accuracy of the test is presumed.

People v. Toia, 333 Ill.App.3d 523, 776 N.E.2d 599 (1st Dist. 2002) Public Act 89-637 (eff. 1/1/97), which specifically excludes DUI arrests from records which are subject to expungement where supervision is ordered, did not violate the ex post facto clauses of the Illinois or Federal Constitutions although it was enacted during the five-year waiting period after which, under the prior law, defendant could have moved for expungement.

People v. Ullrich, 328 Ill.App.3d 811, 767 N.E.2d 411 (1st Dist. 2002) 625 ILCS 5/2-118.1(b), which authorizes consideration of the arresting officer's hearsay report at a hearing on a petition to rescind a statutory summary suspension, complies with due process. However, the motorist's waiver of his statutory right to subpoena the officer must be knowing, voluntary and intentional.

People v. Shelton, 303 Ill.App.3d 915, 708 N.E.2d 815 (5th Dist. 1999) A defendant charged with DUI has a right to an attorney during any "critical stage" of the criminal process, "just as any defendant charged with any crime has the right to speak to an attorney." Although the rules are "slightly different" in regards to DUI (because the right to speak to an attorney "may not unduly delay" chemical testing for the presence of alcohol or drugs), the State may not attempt to draw a negative inference from a suspect's exercise of his right to counsel. Thus, although the arresting officer had a right to conduct chemical testing, the State "should not have emphasized [defendant's] request for an attorney, since this evidence may lead the jury to assume that defendant would not have asked for an attorney unless he were guilty. The Court also found that by characterizing a request to speak to an attorney as a "legal refusal" to submit to chemical testing, the prosecutor improperly suggested to the jury that a request to speak to counsel carries "some legal presumption of guilt." See also**, People v. Whipple**, 307 Ill.App.3d 43, 716 N.E.2d 806 (3d Dist. 1999) (person suspected of driving while intoxicated has no constitutional or statutory right to consult with an attorney before submitting to breathalyzer test).

People v. Schaefer, 274 Ill.App.3d 450, 654 N.E.2d 267 (2d Dist. 1995) The Appellate Court held that statutory DUI provisions do not apply to a bicyclist under the influence of alcohol.

People v. Kamide, 254 Ill.App.3d 67, 626 N.E.2d 337 (2d Dist. 1993) Defendant was convicted of driving with an alcohol concentration of .10 or greater, and claimed that the trial judge should have given supplemental instructions on the legal meaning of the word "alcohol." Defendant claimed that he had consumed Ventolin, an asthma medication, before he was pulled over. Expert testimony showed that the active ingredient of Ventolin is an "alcohol type compound" that would register on the breathalyzer. The Court vacated the conviction because the trial court failed to clarify the jury's confusion concerning the legal definition of "alcohol." The Court found that the legislature intended the DUI statutes to apply only to consumption of ethyl alcohol, and not to substances that may register as alcohol on a breathalyzer but do not cross the blood/brain barrier and cause impairment of the brain's functions.

People v. Boshears, 228 Ill.App.3d 667, 592 N.E.2d 1187 (5th Dist. 1992) The defendant was charged with driving under the influence of alcohol and DUI with a blood or breath alcohol concentration in excess of .10. At trial, two officers repeatedly testified that based upon their observations of defendant, they believed that his blood alcohol content exceeded .10. The Court found that while a witness may testify to his opinion that an individual is intoxicated, the only admissible evidence of blood-alcohol concentration is chemical analysis of the person's blood, urine, or breath. However, any prejudice was cured in this case because the trial court sustained defense objections and ordered the jury to disregard the testimony.

People v. Thomas, 199 Ill.App.3d 79, 556 N.E.2d 1246 (2d Dist. 1990) At the defendant's trial for DUI, the State introduced a videotape which showed the defendant being processed at the police station. The tape also showed two unrelated DUI arrests in which the persons arrested took performance and breathalyzer tests. (The defendant took neither test.) The Court held that defendant was prejudiced because the jury was allowed to see the unrelated incidents.

People v. Halsall, 178 Ill.App.3d 617, 533 N.E.2d 535 (3d Dist. 1989) Following conviction for DUI, the defendant was sentenced to one year probation, participation in an alcohol education program, and a $500 fine. In denying defendant's request for supervision, the trial judge said that "it was virtually certain that no defendant convicted of driving under the influence would receive supervision." Because the trial judge did not properly exercise discretion and consider the factors which may warrant supervision, the sentence was vacated and the cause remanded.

People v. Hanna, 185 Ill.App.3d 404, 541 N.E.2d 737 (5th Dist. 1989) The trial judge dismissed a DUI charge because the arresting officer did not transmit the citation to the clerk's office within 48 hours, as is required by Rule 552. The Court reversed, holding that Rule 552 is directory rather than mandatory.

People v. Pelc, 177 Ill.App.3d 737, 532 N.E.2d 552 (4th Dist. 1988) A police officer had probable cause to arrest defendant for DUI where the defendant admitted being in an automobile accident, smelled of alcohol, had bloodshot eyes and slurred speech, and performed poorly on the field sobriety tests. See also, **People v. Sanders**, 176 Ill.App.3d 467, 531 N.E.2d 61 (4th Dist. 1988); **People v. Broudeur**, 189 Ill.App.3d 936, 545 N.E.2d 1053 (2d Dist. 1989); **People v. Wolff**, 182 Ill.App.3d 583, 538 N.E.2d 610 (3d Dist. 1989).

People v. Brown, 177 Ill.App.3d 671, 532 N.E.2d 547 (4th Dist. 1988) A hearing was held on defendant's motion to rescind the statutory summary suspension of his driver's license. The arresting officer testified and defendant's motion was denied. Subsequently, the defendant filed a motion to suppress evidence on the ground that there was no probable cause for his arrest. After the defendant testified, the State asked the judge to take judicial notice of the arresting officer's testimony at the earlier hearing. The judge did so and found that probable cause existed. The Court held that the trial judge erred by taking judicial notice of the officer's previous testimony. There was no indication why the arresting officer was not present at the suppression hearing, and no showing regarding the existence of an exception which would allow the prior hearsay to be used as substantive evidence.

People v. Hightower, 138 Ill.App.3d 5, 485 N.E.2d 452 (3d Dist. 1985) The Court held that in imposing a sentence for driving under the influence, the judge may properly rely on the fact that defendant had previously pleaded guilty to a DUI charge and was placed on supervision.

§49-2(b)
Sufficiency of the Evidence

Illinois Supreme Court
People v. Johnson, 197 Ill.2d 478, 758 N.E.2d 805 (2001) Inaccurate implied consent warnings concerning the effect of refusing to take a blood alcohol test require rescission of a driver's license suspension only if the inaccuracy "directly affects the motorist's potential length of suspension." Rescission was not required where the warning given to a first offender contained incorrect information about the length of suspension applicable to a non-first offender. In the course of its holding, the court stated that the purpose of implied consent warnings is not to permit motorists to make an informed choice whether to take a blood alcohol test, but to assist the State in obtaining objective evidence of impairment and

removing "problem drivers" from the roads.

People v. Fisher et al., 184 Ill.2d 441, 705 N.E.2d 67 (1998) Neither equal protection nor due process are violated by imposition of a two-year-suspension of a driver's license for a non-first-time DUI offender who refuses to submit to chemical testing after an arrest for DUI, but only a one-year-suspension for persons who submit to testing and are found to have a blood-alcohol content in excess of the legal limit. Similarly, neither equal protection nor due process are violated by provisions permitting a non-first offender who fails chemical testing to apply for a hardship driving permit after 90 days, while prohibiting the issuance of hardship permits for non-first offenders who refuse to submit to chemical testing. The court concluded that the distinction between drivers who refuse to submit to chemical testing and those who fail such testing is rationally related to the goal of improving highway safety, because it provides an incentive for drivers to comply with implied consent laws and promotes highway safety by permitting authorities to remove impaired drivers from the highways. In addition, equal protection is not violated because non-first-time offenders who refuse chemical testing and who are subject to a two-year-license suspension may receive hardship relief if they are under the age of 21. The Court refused to assume that non-first offenders under the age of 21 present a greater risk to highway safety than non-first offenders over that age, declined a request to take judicial notice of that assertion, and concluded that in the absence of any evidence on the point defendants had failed to carry their burden of establishing an equal protection violation.

People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756 (1989) The defendant was convicted of DUI after the car he was driving hit and killed a person walking on the highway. Patrons of the tavern in which defendant was drinking before the accident and defendant's wife testified that he did not appear to be intoxicated. The arresting officers did not notice any erratic driving and could not form an opinion as to defendant's intoxication. A blood test at a hospital (about two hours after the accident) showed that defendant had an alcohol concentration of .165. but the results of this test were "effectively discredited" by another expert witness. The Court held that the question of defendant's intoxication was one of fact for the jury, and the following evidence was sufficient to support the jury verdict: defendant admitted spending the afternoon in a tavern drinking; defendant's behavior after the accident could be viewed as "irrational"(the victim's wallet and glove flew through defendant's shattered windshield onto the passenger seat and a police car, with lights flashing, immediately gave chase, but defendant insisted that he had hit a mailbox and never noticed the police car), and an officer at the scene smelled alcohol on defendant's breath and administered field sobriety tests on which defendant performed poorly.

Illinois Appellate Court

People v. Gonzalez, 2025 IL App (4th) 240384 Defendant's conviction for driving under the influence of alcohol was reversed outright due to the State's failure to prove beyond a reasonable doubt that defendant was in actual physical of the vehicle or that she was intoxicated. The only evidence before the court at defendant's stipulated bench trial was the transcript from an earlier hearing on defendant's motion to dismiss the DUI charge on the basis of double jeopardy. At that hearing, the investigating officer testified that when he arrived at the scene of the accident which resulted in defendant's being charged with DUI, nobody was in the vehicle. He later met the vehicle's occupants at the hospital, and the other two occupants told him defendant was the driver.

The officer had no independent knowledge to suggest defendant was the driver, and because the vehicle's other occupants did not testify, their statements to the officer were hearsay. While defendant did not object to that hearsay evidence, allowing the court to give it its natural probative effect, that evidence "was not particularly convincing" on the subject of whether defendant had been in actual physical control of the vehicle, even when considered in the light most favorable to the State. The two other occupants were visibly intoxicated and admitted drinking prior to the accident. The vehicle was not registered to defendant, and there was no evidence that defendant admitted to being the driver. Accordingly, no rational trier of fact could have found beyond a reasonable doubt that defendant was in actual physical control of the vehicle.

The State argued that defendant's guilty plea to two other traffic offenses arising out of the same incident, failure to reduce speed to avoid an accident and failure to report an accident to the police, was a judicial admission to driving the vehicle. The appellate court rejected this argument because the prior conviction was never admitted at trial. While both parties referenced the prior plea, as it formed the basis for defendant's earlier motion to dismiss, neither party admitted the plea as evidence either at the motion hearing or at the stipulated bench trial. Accordingly, it could not serve as evidence that she was in actual physical control of the vehicle.

Additionally, the State failed to prove beyond a reasonable doubt that defendant was intoxicated. The investigating officer testified that defendant did not show signs of intoxication after the accident. She did not smell of alcohol and did not have bloodshot eyes. He requested she submit to a blood test at the hospital only because of the injuries to the other occupants of the vehicle. And, the only testimony about the blood test was that, after receiving the results, the officer issued citations for DUI and DUI with a BAC of 0.08 or more. But, a charge is not evidence against an accused, and the fact that the officer issued citations could not be used to prove that defendant was under the influence of alcohol or had a BAC over the legal limit. The failure to prove defendant's intoxication served as an additional reason to reverse her DUI conviction outright.

People v. McAndrew, 2024 IL App (1st) 230881 Defendant argued that the State failed to prove her guilty of DUI under 625 ILCS 5/11-501(a)(2), which states in relevant part: "(a) A person shall not drive or be in actual physical control of any vehicle within this State while: (2) under the influence of alcohol." Defendant reasoned that she was not driving or in actual physical control of the vehicle when the officers approached her, as the vehicle was stuck in the snow and immobilized and incapable of being driven or moved. The State argued defendant need not drive to be in actual physical control, nor need it prove intent to put the vehicle in motion, but that it was enough for defendant to be in the driver's seat with the engine running in a car capable of moving once it was dug out of the snow.

The issue of actual physical control is determined case-by-case, with consideration given to whether defendant: (1) possessed the ignition key, (2) had the physical capability of starting the engine and moving the vehicle, (3) was sitting in the driver's seat, and (4) was alone with the doors locked. As to the "capable of moving the vehicle" factor, courts in Illinois and in other jurisdictions have consistently held that actual physical control only requires that the temporarily inoperable vehicle be reasonably capable of being rendered operable without substantial mechanical repairs. Here, applying this the "reasonably capable of being rendered operable" standard, and viewing all the evidence in the light most favorable to the State, any rational trier of fact could find defendant was in actual physical control, given that she was sitting in the driver's seat of a running vehicle that was only temporarily stuck in the snow.

Regardless, the court could have also affirmed on the basis that the State proved that defendant actually drove the vehicle while intoxicated. The circumstantial evidence tending to show that defendant already drove while intoxicated included the fact that defendant was in the driver's seat of a running car, and admitted she drove it into the snow, with glassy eyes, smelling of alcohol, and a bottle of vodka on the passenger seat. These facts permit an inference that defendant's vehicle was temporarily inoperable because she had driven it into the snowy field while intoxicated.

People v. Olvera, 2023 IL App (1st) 210875 Defendant was charged with aggravated driving under the influence of alcohol following a motor vehicle accident. The accident occurred when defendant, who had been traveling in the left lane of a busy road with two lanes of traffic in each direction, quickly moved into the right lane and struck the victim and her disabled vehicle, which she and another individual were pushing at the time. On appeal, defendant argued that he was not proved guilty beyond a reasonable doubt, specifically challenging the sufficiency of the evidence of impairment and proximate cause.

As to impairment, the evidence at trial was that defendant failed all three field sobriety tests at the scene and repeatedly failed to follow instructions during those tests. The officer who administered the tests testified to his belief that defendant was impaired based on his training and experience. Defendant had open alcohol in his vehicle, which he discarded into the bushes demonstrating consciousness of guilt. Defendant provided shifting, false exculpatory statements during the course of the police investigation. And, a witness testified that defendant had been driving aggressively prior to the crash.

Further, five hours after the accident, defendant's BAC was 0.101. Pursuant to **People v. Epstein**, 2022 IL 127824, the delay between driving and testing went to the weight of the BAC evidence but did not affect its admissibility. And, because defendant was in the presence of the police from the time of the accident until his BAC was tested, he had to have consumed alcohol prior to the crash in a quantity sufficient to result in a BAC that was still over the legal limit five hours later. Thus, there was an ample basis on which a rational trier of fact could find that defendant was impaired.

On the question of proximate case, defendant argued that it was not reasonably foreseeable that his changing lanes would result in a crash where, prior to changing lanes, he could not see the victim pushing the disabled vehicle in the other lane and could not react in time to avoid the collision. But, another driver testified that she saw the disabled vehicle and the victim in the other lane as she approached, and she was only one car in front of defendant. While it was dark out, there was evidence that the disabled vehicle had its hazard lights on. Several other vehicles passed by the disabled vehicle without striking it or the victim who was pushing it. And, the court was not required to accept as fact the testimony of defendant's accident reconstruction expert that striking the vehicle was unavoidable where that testimony was based on multiple unproven assumptions. The evidence here was sufficient to establish that defendant's driving was a proximate cause of the victim's death.

People v. Heinemen, 2021 IL App (2d) 190689 Defendant was charged with aggravated driving under the influence under sections 11-501(a)(1) and (a)(2), which required the State to prove a blood alcohol level of .08, and intoxication, respectively.

Blood test results showed 155 milligrams of alcohol per deciliter of serum. A police officer testified about his familiarity with section 1286.40 of Title 20 of the Administrative Code, which provides a mathematical formula for converting a blood serum alcohol concentration into a whole blood equivalent. Over defendant's objection, the officer was

allowed to apply the equation – divide the serum number by 1.18 – and provide the jury with the solution – a whole blood-alcohol level of .131.

The majority found this testimony proper, rejecting defendant's assertion that the State had to either call an expert or obtain judicial notice in order to prove the defendant's whole blood alcohol level. The equation provided in section 1286.40 has the force of law, and to arrive at the whole blood alcohol level requires application of a rudimentary mathematical equation. While caselaw has at times noted that the State may prove a whole blood alcohol level through expert testimony or judicial notice, no cases have held that these are the exclusive means by which to do so. A witness familiar with section 1286.40, like the officer in this case, may testify to the equation and provide the jury with the proper answer.

The dissent would have required expert testimony. According to the relevant scientific community, the precise conversion factor between blood serum and whole blood can vary based on the individual and the circumstances in which the blood sample is obtained and tested. A scientific consensus believes that the conversion factor can be anywhere from 1.09 to 1.22. Thus, testimony that purports to provide the exact whole blood alcohol level based on serum test results is not a matter of simply applying a rudimentary math equation, but requires expertise to explain why 1.18 gives an accurate conversion. The officer here was not admitted as an expert and should not have been allowed to testify to the conversion process.

People v. May, 2021 IL App (4th) 190893 Defendant was convicted of three counts of aggravated DUI. Each count alleged that defendant drove while under the influence of alcohol and each included a separate aggravating factor, specifically that: he had three prior DUI violations (Count I), his driving privileges were revoked for a prior DUI (Count II), and he knew or should have known that the vehicle he was driving was not covered by a liability insurance policy (Count III). He was convicted at a bench trial and was sentenced to concurrent terms of four years of imprisonment on each count.

On appeal, defendant argued that the aggravating factors were elements of the offense, not sentencing factors, and that the State failed to prove those factors for Counts I and II beyond a reasonable doubt. The Appellate Court disagreed. The elements of the offense of DUI are included in subsection (a). while the aggravating factors, all of which are included in subsection (d) of the DUI statute, relate only to the available sentence. Generally, the aggravating factors in subsection (d) still must be proven to the trier of fact to comply with **Apprendi**, but there is an exception for the factors that were charged in Counts I and II, here, because they are based on prior convictions.

Two of defendant's aggravated DUI convictions were vacated as a matter of second-prong plain error, however, because all three were based on the same physical act of driving while under the influence of alcohol.

People v. Guerra, 2020 IL App (1st) 171727 Defendant argued ineffective assistance of counsel based on trial counsel's failure to ask the trial court to take judicial notice of the NHTSA manual providing standards for HGN field sobriety testing. The arresting officer testified that she held her pen six inches from defendant's face during the HGN test, but the manual calls for the pen to be held 12-to-15 inches away. Defendant alleged that the arresting officer's testimony would have lost probative value had the manual been introduced, and would have led the court to reject the officer's opinion that defendant was intoxicated.

The Appellate Court first noted that because the NHTSA manual was not introduced at trial, it was not part of the record on appeal. Accordingly, defendant's claim was based on extrajudicial material and was inappropriate for review on direct appeal. The court went on to hold that defendant could not establish prejudice,

regardless, because there was ample additional evidence of intoxication, including that defendant smelled of alcohol, slurred his speech, and had urinated on himself. The trial court specifically found the State's witnesses more credible than defendant, and therefore there was no reasonable probability of a different outcome had the NHTSA manual been introduced.

People v. Petty, 2020 IL App (3d) 180011 Defendant was not proved guilty beyond a reasonable doubt of aggravated driving under the influence of methamphetamine despite stipulated evidence that amphetamine and benzodiazepine were present in his urine after he was involved in a car accident. As relevant here, section 11-501(a)(6) prohibits driving with any amount of a substance in the urine "resulting from the unlawful use or consumption" of methamphetamine. Evidence that amphetamine and benzodiazepine in a person's urine was the result of "unlawful use or consumption" of methamphetamine requires testimony from a person with specialized knowledge, even though methamphetamine was recovered from defendant's vehicle. That sort of scientific knowledge is beyond the understanding of an ordinary person.

The court also rejected the State's request to reduce defendant's conviction to driving under the influence of amphetamine. The State chose to charge the specific offense of aggravated driving under the influence of methamphetamine, making that the only charge of which defendant had notice. Substituting a different drug as the basis for conviction was beyond the court's authority under Rule 615(b)(3).

People v. Cox, 2020 IL App (2d) 171004 Defendant was proved guilty beyond a reasonable doubt of being in actual physical control of vehicle where he was standing outside of the open, driver's door, the vehicle had the keys in the ignition, and it was running. While another individual was also present next to the vehicle when the police arrived, proof that defendant had actually driven the vehicle was not required. "Actual physical control" is established by an individual's having the capability or potential of operating the vehicle and need not be exclusive to a single individual. Defendant's DUI conviction was affirmed.

People v. Lenz, 2019 IL App (2d) 180124 Defendant challenged whether urine sample collection satisfied applicable administrative regulations. Lab analyst testified that small amount of sample had leaked from the container into the sealed bag in which it was transported to lab, and defendant argued this created the potential for contamination and should render the urine test results inadmissible. The Appellate Court disagreed, concluding that defendant's argument was speculative. Defendant failed to present any evidence to rebut the lab analyst's testimony that there was no evidence of contamination, so defendant could not demonstrate that the test was unreliable or that he was in any way prejudiced by its admission.

A conviction for driving under the influence of any drug or combination of drugs under 625 ILCS 5/11-501(a)(4) does not require proof of the specific drug or drugs involved. Here, it was enough that a properly qualified drug recognition expert testified to her evaluation in this case and her conclusion that defendant was under the influence of a combination of central nervous system depressants and narcotic analgesics.

People v. Castino, 2019 IL App (2d) 170298 Circumstantial evidence may be used to prove the presence of a substance in defendant's blood, breath, or urine for purposes of establishing a DUI charge for driving with any amount of an unlawful substance in one's system under

625 ILCS 5/11-501(a)(4). Where defendant had fresh track marks on his arms, exhibited physical signs of drug use, and admitted recent use of heroin, the court could reasonably infer that he had heroin in his blood, breath, or urine. The inference was further supported by his impaired driving and the recovery of heroin and other drug paraphernalia from defendant and his passenger. Defendant's refusal to submit a blood or urine sample did not prevent a finding of guilt beyond a reasonable doubt. And, the fact that the arresting officer was not a drug recognition expert did not prevent the officer from testifying to his observations where he was experienced with the signs of drug use.

People v. Robledo, 2018 IL App (2d) 151142 The State proved DUI beyond a reasonable doubt where a breathalyzer result of 0.082 exceeded the minimum BAC of 0.08 under section 11-501(a)(1). Defendant argued on appeal that the breathalyzer's margin of error of 0.005 meant her BAC could have been as low as 0.077, but the Appellate Court rejected the argument, holding that the trier of fact heard this evidence and concluded that the results were sufficiently reliable. Defendant did not move to exclude the results below, while the State established that the procedures and equipment met the statutory requirements, rendering the results presumptively valid. Therefore a rational fact-finder could find that defendant's BAC exceeded 0.08.

People v. Turner, 2018 IL App (1st) 170204 The good faith exception to the exclusionary rule applied because the police relied on established precedent when they ordered a blood draw from a DUI suspect following a fatal car accident. The Appellate Court recognized that in **People v. Eubanks**, 2017 IL App (1st) 142837, it had found unconstitutional section 11-501.2(c)(2) of the Illinois Vehicle Code, which allowed warrantless blood or urine testing when police have probable cause to believe that a motorist involved in a fatal or harmful accident is under the influence. The **Eubanks** court rejected the good faith exception, but unlike **Eubanks**, where the defendant physically resisted the blood draw, defendant here did not. Therefore, the blood draw here comported with the Illinois Supreme Court's decision in **People v. Jones**, 214 Ill. 2d 187 (2005), which was the controlling precedent at the time and allowed for compliance with section 11-501.2, as long as defendant did not physically resist. As such, the police in this case properly followed the law at the time and the good faith exception applied.

Aggravated DUI is misdemeanor DUI with an aggravating factor. Here, the misdemeanor was driving with a BAC over .08, and the aggravating factor was involvement in a fatal car accident proximately caused by the misdemeanor. Contrary to defendant's argument, the statute does not require proof that defendant's *intoxication* proximately caused the death. This misdemeanor form of DUI is a strict liability offense, and in such cases, the State need only show that defendant's *driving* caused the death. Thus, the lack of evidence showing defendant's impairment caused the accident did not render the evidence insufficient.

People v. Harmon, 2012 IL App (3d) 110297 The DUI statute prohibits an individual from driving or being in actual physical control of a vehicle while the alcohol concentration in the person's blood is .08 or more. 626 ILCS 5/11-501(a)(1). "Alcohol concentration" means grams of alcohol per 100 milliliters of blood. 625 ILCS 5/11-501.2(a)(5).

A nurse at the hospital where defendant's blood was taken testified that records indicated his blood serum alcohol content was "221 on admission." The trial court took judicial notice of the Illinois Administrative Code, which divides the blood serum number by

1.18 to obtain the whole blood equivalent. 20 Ill. Adm. Code 1286.40. The court concluded it could draw the reasonable inference that the number 221 meant .221 grams per milliliter of blood, and, applying the conversion factor, found that defendant's blood alcohol level was .187.

Because the nurse's testimony did not indicate the hospital's base unit of measurement for the amount of "221," the trial court had no basis on which infer the hospital's unit of measurement. When the State's evidence is incomplete, the trier of fact may not fill in the gaps in the evidence to support a conviction. Therefore, the State did not present sufficient evidence of defendant's blood alcohol level to support his conviction for DUI under §501(a)(1). The Appellate Court also concluded that it must vacate defendant conviction for driving under the influence of alcohol, 625 ILCS 5/11-501(a)(2), because the court relied on the statutory presumption of §11-501(a)(1) to convict defendant of that count as well.

People v. Vente, 2012 IL App (3d) 100600 The Illinois Vehicle Code prohibits driving or being in actual physical control of any vehicle while there is any amount of drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of a controlled substance. 625 ILCS 5/11-501(a)(6). This section does not require proof of impairment, only that a driver unlawfully use or consume any amount of a controlled substance.

The Code also provides that it is not a defense to a charge of driving under the influence of drugs that the person is legally entitled to use drugs. 625 ILCS 5/11-501(b). But §11-501(b) does not bar a driver from lawfully using prescription medications where such use does not affect the ability of the driver to drive safely.

Defendant had morphine and codeine in her urine sample consistent with her use of prescription cough medicine. She had a valid prescription for such medicine and had taken it as prescribed. Therefore, the presence of the drugs in her system was not the result of unlawful use and consumption.

The court reversed defendant's conviction for a violation of §11-501(a)(6).

People v. Briseno, 343 Ill.App.3d 953, 799 N.E.2d 359 (1st Dist. 2003) After defendant was stopped at a DUI roadblock, he admitted to officers that he had smoked marijuana before driving. When performing field sobriety tests, defendant "sway[ed] moderately" and "extend[ed] his arms for balance." In addition, the arresting officer testified that he detected the odor of cannabis on defendant's breath and in defendant's vehicle, and that defendant exhibited dilated eyes, slurred speech and slow motor skills. The court rejected the argument that the evidence was insufficient to establish that defendant was driving under the influence of cannabis. Although the National Highway Traffic Safety Administration has recognized that persons who are more than 50 pounds overweight may not be physically capable of completing field sobriety tests even when sober, defendant's guilt was established beyond a reasonable doubt by his slurred speech, dilated pupils and impaired motor skills, the detection of the odor of cannabis in his vehicle and on his breath, and his admission that he had smoked marijuana. Under these circumstances, there was sufficient evidence to sustain the conviction even if the results of the field sobriety tests were excluded.

People v. Martin 2011 IL 109102 Unlike some subsections of the misdemeanor DUI statute that require proof of impairment, there is an absolute prohibition against driving with any amount of a controlled substance in one's system, without regard to physical impairment. 625 ILCS 5/11-501(a)(6). Because possession of a controlled substance is unlawful *per se*, to convict a defendant of a violation of §11-501(a)(6), the State need only establish that defendant used or consumed a controlled substance before driving. This is a reasonable

exercise of the State's police power, as there is no meaningful way to quantify impairment because of the dangers inherent in the drugs themselves and in the lack of predictability as to the drug's potency.

The State sustained its burden with respect to misdemeanor DUI under §11-501(a)(6). Defendant's blood tested negative for drugs or alcohol, but his urine tested positive for methamphetamine. This result was consistent with evidence that controlled substances enter the bloodstream first and are eliminated through the urinary tract. Defendant admitted that he had ingested methamphetamine at some unspecified time, but not on the date of the offense. A rational jury could conclude from this evidence that defendant's last use was sufficiently recent that some remnants of the drug remained in his urine on the night of the offense. The fact that other substances may give a positive result for the presence of amphetamine is irrelevant because there was no evidence defendant had used such a substance.

Aggravated DUI requires proof of misdemeanor DUI and an aggravating factor that elevates the offense to a felony. Where the aggravating factor is involvement in a motor vehicle accident resulting in death, the misdemeanor DUI must be "a proximate cause of the death." 625 ILCS 5/11-501(d)(1)(F). Whether proof of impairment is necessary to sustain a conviction for aggravated DUI under this subsection depends on whether impairment is an element of the underlying misdemeanor DUI. When the aggravated DUI is based on a violation of §11-501(a)(6), which requires no proof of impairment, §11-501(d)(1)(F) only requires a causal link between the physical act of driving and another person's death. There is no requirement of a causal connection between the presence of the controlled substance in the defendant's system and the death. A defendant who is involved in a fatal motor vehicle accident while violating §11-501(a)(6) is guilty of misdemeanor DUI only where his driving was not a proximate cause of the death.

In addition to proving the underlying misdemeanor DUI based on a violation of §11-501(a)(6), the State proved that defendant's driving was the proximate cause of the victims' deaths. Defendant's car crossed the center line at a curve on a two-lane highway and struck an oncoming car, killing the driver and passenger of that car.

People v. Foltz, 403 Ill.App.3d 419, 934 N.E.2d 719 (5th Dist. 2010) To sustain a charge of driving under the combined influence of drugs and alcohol, it is not sufficient to show that the defendant had enough drugs or enough alcohol in his system to render him incapable of driving safely. The State must prove that he had both some drugs and some alcohol in his system and that their combined effect rendered him incapable of driving safely, even if the alcohol or drugs alone would not.

The State's evidence failed to prove that defendant drove under the combined influence of drugs and alcohol because there was insufficient evidence that he had drugs in his system. Defendant was observed running a stop sign and he failed the walk-and-turn and one-leg-stand tests. Those tests were 68% and 65% accurate for determining alcohol impairment, respectively. But the only evidence offered related to drugs was the arresting officer's testimony was that he smelled burnt cannabis when defendant rolled down his car window. This evidence does not prove that defendant smoked cannabis that evening or that it was in his breath, blood or urine. Defendant could stand and walk without impairment, he successfully executed a left-hand turn, his speech was not slurred, and his eyes were not dilated, glassy or bloodshot. While the average adult is competent to testify to alcohol intoxication based on common experience, training or experience is necessary to qualify a witness to testify to drug intoxication. The arresting officer had no training in drug recognition and this was his first arrest for driving under the combined influence of drugs

and alcohol.

People v. Luth, 335 Ill.App.3d 175, 780 N.E.2d 740 (4th Dist. 2002) Under **People v. Thoman**, 321 Ill.App.3d 1216, 770 N.E.2d 228 (5th Dist. 2002), to establish the offense of driving with a blood alcohol content in excess of .08, the State must prove beyond a reasonable doubt that defendant's "whole-blood-alcohol" concentration was .08 or more. Although evidence of "blood-serum alcohol" levels may be admitted, the State must present evidence that the equivalent whole blood level exceeded 0.08. Where State and defense experts disagreed on whether defendant's serum blood alcohol level exceeded .08 when converted to a whole blood level, the jury was required to resolve the conflicting evidence and draw reasonable inferences. Because the State's expert provided a basis by which a reasonable jury could have concluded that the defendant's whole blood alcohol level exceeded 0.08, the jury was entitled to accept that testimony and reject the contrary testimony of the defense expert. Viewed in a light most favorable to the prosecution, therefore, the evidence was sufficient to permit a reasonable jury to find that the essential elements of driving with a blood-alcohol concentration of 0.08 or more had been proven beyond a reasonable doubt.

People v. Workman, 312 Ill.App.3d 305, 726 N.E.2d 759 (2d Dist. 2000) The evidence was insufficient to sustain a conviction for driving under the influence of a drug. There is no "generic" offense of driving under the influence. To establish guilt of driving under the influence of a drug, the State is required to prove beyond a reasonable doubt that a driver was under the influence of a drug to a degree that rendered him incapable of driving safely. A police officer's opinion that a person is under the influence of a drug may be sufficient to sustain a conviction - if the officer has sufficient skills, experience or training to qualify as an expert. Here, the arresting officer did not claim to have any significant experience or expertise in detecting whether a person was under the influence of drugs to the extent that his ability to drive was impaired, and was not knowledgeable about the nature or effects of lorazepam, the drug in question. Although a forensic chemist was called as a witness, she did not testify about the drug's side effects, the amount required to produce a significant effect, or any effect on a person's ability to drive and no medical tests were performed to determine whether defendant was in fact under the influence of a drug.

People v. Ernst, 311 Ill.App.3d 672, 725 N.E.2d 59 (2d Dist. 2000) As a matter of first impression, the Court held that the plain language of 625 ILCS 5/11-501.4-1 authorizes medical personnel to release the results of blood or urine tests directly to law enforcement officials. Although previous case law required a judicial order before police could obtain such evidence, those cases concerned the law before §11-501.4-1 was enacted in 1997. Authorities may consider BAC test results obtained under §11-501.4-1 in determining whether there is probable cause to arrest a defendant for DUI.

People v. Elliott, 308 Ill.App.3d 735, 721 N.E.2d 715 (2d Dist. 1999) Over objection at a jury trial for DUI, one of the arresting officers was allowed to testify that a document entitled "Warning to Motorist" is given to persons arrested for DUI. The officer testified that the document "explains the penalties if you do or don't take a breath test in regard to your driving privileges," including that the "penalties would be twice as much if you did not take a breath test as if you would take a breath test and fail it." The trial court found that a motorist's awareness of the penalties for refusing to take a breath test is relevant to his motivation in refusing the test. The Appellate Court held that §501.2(c)(1) authorizes the admission of evidence that a DUI suspect refused to submit to a breath test, but does not permit evidence

that defendant knew the civil penalties stemming from that refusal. The court concluded that the admission of such evidence "is an inappropriate expansion" of the statute. The court rejected the State's argument that a motorist's knowledge of the potential consequences of a refusal to take a breath test constitutes circumstantial evidence of consciousness of guilt. The court acknowledged that knowledge of the civil penalties for refusing to submit to a breath test has some probative value, but concluded that the prejudice of such evidence outweighs that probative value.

People v. Call, 176 Ill.App.3d 571, 531 N.E.2d 451 (4th Dist. 1989) A car owned by defendant's family was found in a ditch. A witness testified that the car had passed him at a high rate of speed and that he saw a person matching defendant's description exit the car in the ditch. Defendant was found walking along the highway about two miles from the car. Defendant admitted that he was the driver of the car. Defendant had mud on his pants and shoes. This evidence was sufficient to prove that defendant was intoxicated while driving the car. The officer who found defendant walking on the highway detected the odor of alcohol and noticed that defendant's speech was slurred. Defendant performed poorly on field-sobriety tests. A breathalyzer test administered two hours after the accident indicated defendant's blood-alcohol concentration was 0.15. Finally, defendant admitted to the officer that he had nothing to drink after the accident. See also, **People v. Cummings**, 176 Ill.App.3d 293, 530 N.E.2d 672 (2d Dist. 1988); **People v. Bentley**, 179 Ill.App.3d 347, 534 N.E.2d 654 (1st Dist. 1989).

People v. McDermott, 141 Ill.App.3d 996, 490 N.E.2d 1293 (1st Dist. 1986) Defendant was found guilty of reckless homicide and driving under the influence. The Court held that the evidence was insufficient to prove defendant was driving under the influence of alcohol or drugs. A toxicologist testified that the concentration of alcohol in defendant's blood was .025; "[i]f there is an alcohol concentration in the blood of .05 or less, an individual is presumed not to be under the influence of alcohol." The toxicologist also testified that there was a "high level" of cannabis in defendant's urine, but he could not say how it affected defendant's ability to perform normal tasks. The Court stated,"the State must show that the defendant was under the influence so that he was less able, either mentally or physically, to operate an automobile with safety to himself and to the public. Here. there was no such testimony from [the toxicologist] or any other witness, and the State has not shouldered its burden."

People v. Foster, 138 Ill.App.3d 44, 485 N.E.2d 603 (3d Dist. 1985) A defendant need not be observed driving a vehicle to be convicted of DUI — the driving may be established by other evidence, direct or circumstantial. However, the corpus delicti of the charge cannot be proved by a defendant's admission alone — there must be some independent evidence to corroborate an admission. See also, **People v. Call**, 176 Ill.App.3d 571, 531 N.E.2d 451 (4th Dist. 1989).

People v. Vallero, 134 Ill.App.3d 919, 481 N.E.2d 297 (3d Dist. 1985) A police officer saw a vehicle lodged in a roadside ditch. The defendant, the only occupant, attempted to maneuver the car out of the ditch by driving it forward and backward. Finally the defendant exited the car. The officer observed that the defendant was staggering, his speech was slurred and he smelled of alcohol. Defendant was convicted of DUI and driving while his license was revoked but he contended that he was not in control of a "vehicle" because his car was lodged in a ditch. The Appellate Court rejected defendant's contention: "Merely because a vehicle is

temporarily disabled by weather, road conditions or 'ditch conditions' under the circumstances of a particular factual setting does not convert an otherwise operable automobile into a 'non-vehicle' for purposes of avoiding liability under the drunk driving laws of this State."

People v. Kappas, 120 Ill.App.3d 123, 458 N.E.2d 140 (4th Dist. 1983) The defendant was stopped after police observed his car weaving out of his traffic lane. After the stop, the officer detected the odor of alcohol and found open containers of alcohol in the car. In addition, defendant did poorly on various field sobriety tests. A blood alcohol test administered 38 minutes after his arrest showed defendant's blood alcohol concentration to be .1170%. Defendant admitted having three beers before he began driving. The court held that the jury could reasonably conclude that defendant's blood alcohol concentration was .10% or higher when he was driving. The fact that there was a 38-minute period between the time defendant was observed driving and the time the breathalyzer test was given "should not result in a jury's verdict being overturned." Delay, if not inordinate or involving further consumption of alcohol, does not render breathalyzer test results nonprobative of blood alcohol concentration at the time of driving; instead, "matters of delay between driving and testing are properly viewed as going to the weight of the breathalyzer test results, and as such must be viewed in light of the circumstances surrounding the arrest." The delay in this case was "slight and totally insufficient to render the breathalyzer results nonprobative."

People v. Jacquith, 129 Ill.App.3d 107, 472 N.E.2d 107 (1st Dist. 1984) The defendant was convicted of driving under the combined influence of alcohol and drugs (Ch. 95½, ¶11-501(a)(4)). The Court reversed the conviction because the evidence established only that defendant was under the influence of alcohol, and was insufficient to prove that he was also under the influence of drugs. The evidence would have been sufficient to convict defendant of driving under the influence of alcohol (Ch. 95½, ¶11-501(a)(2)), but defendant was charged only under ¶11-501(a)(4), which requires the State to prove "not only that at the time of his traffic stop defendant was under the influence of alcohol but that he was under the influence of another drug as well." The Court upheld the trial judge's determination that the police had probable cause to believe defendant was driving in a manner prohibited by ¶11-501 and that defendant refused to take a breathalyzer test. The Court noted, "the fact that defendant had been found not guilty does not preclude a subsequent finding of probable cause."

People v. Wells, 103 Ill.App.2d 128, 243 N.E.2d 427 (1st Dist. 1968) Where defendant testified that he walked home after accident and then drank, the fact that he was drunk two hours later failed to prove that he was intoxicated at the time of the accident.

§49-2(c)
Blood-Alcohol Tests – Implied Consent

United States Supreme Court

Mitchell v. Wisconsin, ____ U.S. ____ (No. 18-6210, 6/27/19) A four-justice plurality held that as a general rule, the exigent circumstances exception to the Fourth Amendment's warrant requirement will almost always allow a warrantless blood test of an unconscious motorist who cannot be given a breath test. Here, a portable breath test at the scene indicated defendant's BAC was three times the legal limit. He was transported to the police station for a more sophisticated breath test but was too lethargic to perform the test on arrival.

Defendant was then transported to the hospital and was unconscious by the time he got there. An officer requested that the hospital draw blood, and testing revealed that defendant's BAC was 0.222%.

The exigent circumstances exception applies where there is a "compelling need for official action and no time to secure a warrant." With regard to drunk driving, compelling circumstances include that highway safety is an important public interest, BAC limits help to advance that interest, enforcement of BAC limits requires testing which will be admissible in court, such testing must be prompt because alcohol naturally metabolizes in the human body, and blood testing is essential where breath testing is not an available option. As to whether there is enough time to secure a warrant, it is not enough that BAC evidence naturally dissipates; there must also be some other factor creating a "pressing health, safety, or law enforcement need" that would take priority over a warrant application. Where a drunk driving suspect is unconscious, thereby necessitating urgent medical care, both of these conditions are met.

While the Supreme Court upheld the validity of warrantless blood testing where exigent circumstances are shown, it remanded defendant's case to provide him the opportunity to show that a blood draw would not have been conducted if the officer hadn't requested it and that the police acted unreasonably in concluding that applying for a warrant would have interfered with more pressing duties.

Concurring in the judgment, Justice Thomas noted that he would adopt a *per se* rule that dissipation of alcohol in the blood stream, alone, satisfies the exigent circumstances exception where there is probable cause to believe an individual was driving under the influence.

In dissent, Justice Sotomayor, joined by Justices Ginsburg and Kagan, opined that police must get a warrant where there is time to do so. Because the State conceded below that the police had time to get a warrant and did not, there was no exigency and the results of the blood test should have been suppressed. Justice Gorsuch dissented because the Court decided the case on a ground which had not been the basis for the lower court's ruling or for the Court's granting of certiorari.

Missouri v. McNeely, 69 U.S. 141, 133 S.Ct. 155, 2185 L.Ed.2d 696 (2013) In **Schmerber v. California**, 384 U.S. 757 (1966), the Supreme Court upheld a warrantless blood test of a DUI arrestee after finding that the officer might reasonably have believed that he was confronted with an emergency in which the delay required to obtain a warrant might threaten to destroy evidence of the defendant's blood alcohol level. In **Schmerber**, the arrestee had been injured in an accident and was taken for medical treatment before he was arrested for DUI.

The court rejected the State's argument that due to the natural metabolization of alcohol in the bloodstream, there should be a *per se* rule that any person arrested for DUI may be subjected to a warrantless, nonconsensual blood test. The court stressed that a citizen clearly has a privacy interest which protects against forced physical intrusions of his or her body. In addition, warrantless searches are reasonable under the Fourth Amendment only if a recognized exception to the warrant requirement applies. One recognized exception allows a warrantless search where exigent circumstances make a warrant impractical, including where an immediate search is necessary to prevent the imminent destruction of evidence.

Whether exigent circumstances justify a warrantless search depends on whether, under the totality of the circumstances, it is reasonable to proceed without a warrant. Although the alcohol level of a person's blood begins to dissipate once the alcohol is fully

absorbed, and continues to decline until the alcohol is eliminated, that fact does not mean that the "totality of circumstances" test should be abandoned. Instead, "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Although in some cases it may be impractical to obtain a warrant, that "is a reason to decide each case on its facts, . . . not to accept the 'considerable overgeneralization' that a *per se* rule would reflect."

The court noted that some delay is inevitable in DUI cases where the arrestee refuses to submit to a breathalyzer, because the defendant must be transported to a medical facility in order for his blood to be drawn. It is possible that while one officer is transporting the defendant to such a facility, a second officer could start the warrant process.

Furthermore, since **Schmerber** was decided there have been technological advances which allow for a more expeditious process of applying for a warrant. In addition, once blood alcohol testing is eventually performed, expert testimony allows the State to calculate and present the blood alcohol level at the time of the offense.

Noting that a case-by-case approach is common in Fourth Amendment cases, a plurality of the court rejected the argument that a bright line rule is needed to provide adequate guidance to law enforcement officers. The court also found that although a motorist has a diminished expectation of privacy in the operation of a motor vehicle, that lesser expectation does not apply to a motorist's privacy interest in preventing a government agent from piercing his or her skin for the purpose of obtaining a blood sample.

The plurality also rejected the argument that the government's compelling interest in combating drunk driving justifies the use of warrantless blood tests. First, the general importance of the government's interest does not justify departing from the warrant requirement without showing sufficient exigent circumstances to make it impractical to obtain a warrant. Second, states have a broad range of legal tools to combat drug driving, including implied consent laws. Third, many states already place restrictions on the use of warrantless blood testing, indicating that warrantless testing is not essential for effective drunk-driving enforcement.

The State did not argue that there were exigent circumstances in this case, and no exigency was apparent from the record where the officer admitted that he knew a that a prosecutor was on call, he had no reason to suspect that a judge would have been unavailable, and he failed to request a warrant solely because he thought that no warrant was required. Under these circumstances, the court declined to specify all of the factors which might be relevant in determining whether a law enforcement officer acts reasonably by taking a blood test without first obtaining a warrant.

South Dakota v. Neville, 459 U.S. 553, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983) Evidence of a drunk driving suspect's refusal to submit to a blood-alcohol test may be introduced at his trial without violating his privilege against self-incrimination. Also, the admission of such evidence does not offend due process though the suspect was not warned that his refusal could be used against him. See also, **People v. Rolfingsmeyer**, 101 Ill.2d 137, 461 N.E.2d 410 (1984).

Illinois v. Batchelder, 463 U.S. 1112, 103 S.Ct. 3513, 77 L.Ed.2d 1267 (1983) Chapter 95½, ¶11-501.1(d)), which requires the police officer to file an affidavit stating he had reasonable cause to believe the suspect was intoxicated (where a DUI suspect refuses to submit to a breath test) does not violate the Fourth Amendment for failing to require that

the officer state the facts supporting his belief. See also, **People v. Gordon**, 115 Ill.App.3d 1036, 451 N.E.2d 1032 (5th Dist. 1983).

Illinois Supreme Court

People v. Heineman, 2023 IL 127854 Defendant was charged with two counts of aggravated DUI, one alleging that he operated a motor vehicle while the alcohol concentration in his blood was .08 g/dl or greater, and the other alleging that he operated a motor vehicle while under the influence of alcohol. At trial, there was evidence that a blood draw was done at the hospital, and it revealed that defendant's serum alcohol was 155 mg/dl. A police officer then testified that a serum alcohol level of 155 mg/dl equated to a whole blood alcohol level of .131 g/dl. The officer said he calculated the whole blood alcohol concentration by using a "conversion factor" of 1.18, which he based on Section 1286.40 of the Illinois Administrative Code. Defense counsel objected to this testimony on the ground that the officer was not an expert in toxicology, but the objection was overruled. Defendant was convicted of both counts.

Defendant argued on appeal that the State failed to introduce competent evidence to prove that his whole blood alcohol concentration was greater than .08 g/dl because the officer was not an expert. While the appellate court affirmed, the Illinois Supreme Court agreed with defendant. The conversion factor is a scientific fact, and is not a proper subject for lay witness testimony.

In reality, there is not a single conversion factor; instead there is a scientifically acceptable range of possible conversion factors (generally between 1.12 and 1.20). While Section 1286.40 of the Administrative Code purports to establish a conversion factor, expert testimony is required to establish the scientifically acceptable range of conversion factors and to establish that the 1.18 factor set forth in Section 1286.40 falls within that range. Here, the officer's testimony that he applied a mathematical formula to convert defendant's blood serum alcohol concentration to its whole blood equivalent, without any scientific basis, was insufficient to prove defendant's whole blood alcohol concentration. The court reversed defendant's conviction on the .08 g/dl count.

But, the court upheld defendant's other aggravated DUI conviction, which was predicated on his driving while under the influence of alcohol. While the jury was instructed it could presume that defendant was under the influence if it found that his blood alcohol concentration was 0.08 g/dl or greater, the jury was not required to make that presumption. And, there was ample other evidence from which a rational trier of fact could find that defendant was under the influence of alcohol, including testimony that defendant had consumed several alcoholic drinks before the accident, that he was intoxicated, and that his eyes were glassy and he was behaving out-of-character on the night in question. Additionally, the jury could consider the testimony of the emergency room doctor that defendant's serum alcohol level was "consistent with intoxication." Thus, the court concluded that the improper admission of the officer's testimony as to the conversion factor was harmless with regard to defendant's alternate conviction.

People v. Epstein, 2022 IL 127824 The supreme court held that the trial court erred when it barred admission of a blood test showing a blood alcohol level ("BAC") of 0.107 four hours after defendant's arrest for DUI.

At a pre-trial hearing, the defense called a pharmacology expert who reviewed the evidence, including the test results, the dashcam of the stop and field sobriety tests, and defendant's statement that she was drinking in the hour before driving. According to the expert, a BAC test taken four hours after the stop could not prove a BAC over 0.08 at the

time of driving, without knowing when the alcohol level peaked. The fact that defendant recently drank and did not exhibit signs of intoxication immediately after the stop, suggested she was still absorbing alcohol and that her BAC had not yet peaked. The expert concluded there wasn't sufficient information for a retrograde extrapolation, so there was no way to determine BAC at the time of the stop. The trial court found the results were inadmissible under Rule of Evidence 403, because, without retrograde extrapolation to show BAC at the time of driving, the risk of prejudice substantially outweighed any probative value.

The supreme court held the test results should have been admitted. It found the evidence was highly probative, as a BAC of 0.107 four hours after a traffic stop suggests defendant drank heavily before driving. And while defendant argued that prejudice could result if the jury believed the test constituted conclusive proof of a BAC over 0.08 at the time of driving, the court found the risk of substantial prejudice remote. Courts have previously held that evidence of a BAC greater than the legal limit does not require retrograde extrapolation, and that questions as to BAC at the time of driving go to weight rather than admissibility. The jury should be allowed to consider all of the evidence, including the test result and any expert opinion as to its meaning, and assign it the appropriate weight.

People v. Eubanks, 2019 IL 123525 Section 11-501.1 of the Vehicle Code, which allows police officers to forcibly withdraw defendant's blood or urine when there is probable cause of intoxication in a case involving an auto accident with death or injury to another, violated the Fourth Amendment in this case. Defendant made a facial challenge to the statute. While facial challenges under the Fourth Amendment are permissible, and are not foreclosed merely because the statute would not apply in cases where the officer has a warrant, exigent circumstances, or consent, this statute comports with the "general rule" that exigent circumstances exist when BAC evidence is dissipating, and some other factor, such as a death or injury, creates a pressing concern that takes priority over a warrant application.

After **Schmerber v. California**, 384 U.S. 757 (1966), **Missouri v. McNeely**, 569 U.S. 141 (2013), and **Mitchell v. Wisconsin**, 588 U.S. ___, 139 S. Ct. 2525 (2019), the courts must employ a totality-of-the-circumstances test when analyzing the constitutionality of warrantless blood or urine draws in DUI cases, but this test is guided by the "general rule" that, due to BAC dissipation, exigent circumstances will exist when there is a traffic accident causing personal injury or when the suspect is unconscious. Nevertheless, defendant can rebut application of the general rule by showing that the blood/urine draw was solely for law enforcement purposes, and that the "police could not have reasonably judged that a warrant application would interfere with other needs or duties."

Here, defendant established that no reasonable officer could have believed a warrant application would interfere with the investigation. The defendant was arrested around 9 p.m. and taken to the station where he was not interviewed until 10:30 p.m. The interviewing officer claimed defendant smelled like alcohol, and defendant refused a breath test, but he was not taken to the hospital for blood/urine samples until 3 a.m. The blood draw occurred at 4:10 a.m., and the urine sample was given at 5:20 a.m. Given that seven hours passed between the arrest and the blood draw, a warrant application would not have increased the delay. Thus, the general rule of exigent circumstances does not exist here, and the statute is unconstitutional as applied to defendant's case.

People v. Brooks, 2017 IL 121413 At a suppression hearing, the defendant bears the burden of making an initial *prima facie* showing that: (1) a search occurred, and (2) it violated the fourth amendment. The burden then shifts to the State to present evidence to counter

defendant's *prima facie* case.

Here, defendant, who was charged with driving under the influence, filed a motion to suppress the results of a blood draw taken at a hospital following his motorcycle accident. The evidence at the suppression hearing, however, never established that a blood draw occurred. Defendant testified only that the police seized him and forced him to go to the hospital, and that he never consented to a blood draw. No witnesses testified to participating in a blood draw. While the court received an envelope from the hospital that the parties and court assumed contained the results of defendant's blood work, it was never opened and the parties did not stipulate to its contents.

Even assuming a blood draw did take place, defendant failed to establish that it was conducted by State actors. The officer who brought defendant to the hospital did not order, seek, or participate in a blood draw. Even though the officer seized him in order to bring him to the hospital, defendant challenged only the search, not the seizure. To determine whether the private hospital employees who would have conducted the search acted as agents of the State, courts consider all of the circumstances of the case. While defendant argued that any draw would have been at the behest of the police, defendant failed to call any witnesses from the hospital to testify, and thus offered no evidence that any private individual who may have drawn defendant's blood acted as a State agent under these circumstances.

McElwain v. Secretary of State, 2015 IL 117170 625 ILCS 5/11-501.6(a), which provides that a driver who is arrested or ticketed relating to a serious injury in a traffic accident consents to blood, breath or urine testing to detect the presence of alcohol or drugs, qualifies for the "special needs" exception to the Fourth Amendment only where the testing is performed at the scene of the accident. Section 11-501.6(a) was applied unconstitutionally where police asked defendant to come to the police station some 48 hours after the accident, questioned him about his use of marijuana, issued a ticket for failure to yield, and asked him to take a chemical test.

People v. McKown, 236 Ill.2d 278, 924 N.E.2d 941 (2010) When performed in compliance with the protocol adopted by the National Highway Traffic Safety Administration, horizontal gaze nystagmus testing has gained general acceptance as a reliable indication of alcohol consumption. However, the results of HGN testing do not, in and of themselves, establish that a particular person is impaired by the consumption of alcohol. Instead, HGN test results are but one factor to be considered in determining impairment. (See **EVIDENCE**, §19-27(a)).

Defendant's conviction was reversed and the cause remanded for a new trial.

People v. Bonutti, 212 Ill.2d 182, 817 N.E.2d 489 (2004) 20 Ill.Admin. Code §1286.310(a), which requires that a person suspected of DUI must be observed for 20 minutes before blood alcohol tests and "shall not have regurgitated or vomited," was intended to ensure the reliability of breathalyzer tests by avoiding the "false positive" that may result from regurgitation or vomiting. The court rejected the State's argument that the purpose of §1286.310(a) is satisfied so long as the testing officer fails to observe any vomiting or regurgitation during the 20-minute observation period, finding that the results of a blood alcohol test must be excluded whenever the subject regurgitated or vomited, whether or not such actions were observed by an officer. Here, the trial court properly suppressed BAC test results based upon testimony that defendant suffered from gastroesophageal reflex disorder (GERD), which can cause the silent regurgitation of stomach contents. The court rejected the State's argument that permitting the suppression of blood alcohol test results based on unobserved regurgitation or vomiting will allow "every future DUI defendant to walk into

court with a manufactured GERD defense and walk out of court with an acquittal." In this case, the suppression motion was supported by defendant's personal physician, who testified about both the nature of GERD and defendant's 10-year bout with that condition. Concerning the State's claim that defendants could easily manufacture GERD defenses, the court stated, "Trial courts are smarter than that, and they appreciate the distinction between a family physician who has treated the accused for years and a hired gun who first met the accused last Tuesday."

People v. Hanna & Vaughn, et al., 207 Ill.2d 486, 800 N.E.2d 1201 (2003) Under the Illinois Administrative Code, the Department of Public Health may approve breathalyzer machines for use in Illinois where they have been "tested and approved by the Department in accordance with but not limited to the Standards for Devices to Measure Breath Alcohol promulgated by the National Highway Traffic Safety Administration." Among the standards promulgated by NHTSA are tests for input variation, ambient temperature stability, and vibrational stability. The court concluded that even if the plain language of the administrative regulation required the Department of Public Health to do such testing, that requirement would be absurd in light of testimony by the person in charge of the testing program that the three tests: (1) were irrelevant to the use of the devices in Illinois, and (2) had been performed by the NHTSA. Because requiring the testing would lead to an absurd result that could not have been intended by the drafters, the regulation should be construed to dispense with any requirement of such testing.

People v. Keith, 148 Ill.2d 32, 591 N.E.2d 449 (1992) The defendant was charged with reckless homicide, DUI, and driving with a blood-alcohol concentration of .10 or more. The trial judge granted defendant's motion in limine to bar admission of the result of a breath-alcohol test because the license of the machine operator had expired at the time of the test, although it was renewed approximately two weeks later. The trial court found that only one set of standards governs the admissibility of breath-alcohol tests, and that those standards (Department of Public Health) require that the operator be licensed. The Supreme Court held that although Ch. 95½, ¶11-501.2 requires that breath test results are admissible in prosecutions for DUI only if the test complied with Department of Public Health standards, that section does not apply to prosecutions for reckless homicide. To admit chemical tests of blood alcohol levels in reckless homicide cases, the State must show that the machine was properly calibrated and maintained, the officer had the requisite knowledge to operate the machine, and the test was properly performed. The State could not establish the above foundation in this case.

People v. Pine, 129 Ill.2d 88, 542 N.E.2d 711 (1989) The Secretary of State has standing to appeal an order directing his office to issue a judicial driving permit under Ch. 95½, ¶6-206.1.

People v. Murphy, 108 Ill.2d 228, 483 N.E.2d 1288 (1985) The results of an analysis of a defendant's blood are not admissible at a DUI trial when the hospital personnel do not take or preserve the blood in accordance with Department of Public Health standards, as required by Ch. 95½, ¶11-501.2(a). See also, **People v. Emrich**, 113 Ill.2d 343, 498 N.E.2d 1140 (1986).

People v. Rolfingsmeyer, 101 Ill.2d 137, 461 N.E.2d 410 (1984) The Supreme Court upheld the validity of the implied consent statute, which provides that evidence of a defendant's

refusal to submit to a breath test shall be admissible at a criminal trial (Ch. 95½, ¶11-501.2(c)). The court rejected defendant's contention that the statute offends the separation of powers clause of the Illinois Constitution; "it is clear that the legislature of a State has the power to prescribe new and alter existing rules of evidence or to prescribe methods of proof."

Illinois Appellate Court

People v. Carlson, 2023 IL App (2d) 210782 On appeal from a conviction of aggravated DUI, defendant argued that the State's evidence was insufficient to establish that his BAC was 0.08 or greater at the time of his driving. Specifically, defendant argued that while the blood test revealed a BAC of 0.16, his blood was not drawn until two and a half hours after his arrest. The appellate court held that the delay went to the weight of the BAC evidence, but did not necessarily render it insufficient. Extrapolation evidence is not necessary where the tested level is above the statutory limit.

Instead, when there is a delay, BAC results should be viewed in light of the circumstances surrounding the arrest. Here, that evidence included defendant's statement that he had not consumed any alcohol since 10 p.m., nearly four hours before his arrest. Given defendant's statement, it was reasonable to infer that, by the time of his driving, defendant would have fully absorbed the alcohol he had consumed and his BAC would no longer be rising. And, by the time his blood was drawn and tested more than two hours later, his BAC would have been even lower than it had been at the time of the traffic stop. Thus, the evidence was sufficient to establish his guilt of DUI with a BAC over 0.08.

Further, the trial court did not err in relying on a delinquency DUI adjudication to find defendant guilty of aggravated DUI under 625 ILCS 5/11-501(d)(1)(A). That statute provides that a person is guilty of aggravated DUI if "the person committed a [DUI] violation...for the third or subsequent time." The statutory language is not dependent on whether the violation was committed when the person was a minor or an adult in that it does not require a "conviction." Thus, defendant's delinquency adjudication for DUI qualified as a predicate DUI violation.

People v. Schantz, 2022 IL App (5th) 200045 Defendant was convicted of DUI/involving death and reckless homicide, and sentenced to six years in prison. She challenged the denial of her motion to suppress a blood draw, and the appellate court affirmed.

Defendant was arrested after striking and killing a motorcyclist. She smelled of alcohol, failed a series of field sobriety tests, and blew a 0.16 in her breathalyzer test. Once at the hospital, the arresting officer told the nurses to wait before drawing blood, while he retrieved his reports and his "Warning to Motorist" from his car. The warning informs the arrestee of their right to refuse blood-alcohol testing, but that doing so would result in a statutory summary suspension. The officer had not read the warning to defendant. By the time he got back, the nurses had already started drawing the blood. The results showed a BAL of 0.156. The officer obtained a warrant for a second draw, and that result showed a 0.078 six hours after the accident.

The appellate court first agreed with defendant that the nurses acted on behalf of the State and therefore the State had the burden to prove the search was reasonable. And the second draw was reasonable because it was issued pursuant to a search warrant, which was based on several signs of impairment.

The first draw, however, was done without a warrant, and therefore required proof of an exception to the warrant requirement. The State did not allege exigent circumstances,

and any such argument would be rebutted by the fact that the officer quickly obtained a warrant for the second draw. Nor did defendant give express consent.

Two statutes, however – 625 ILCS 5/11-501.1(a), and 501.6(a) – require Illinois motorists to give implied consent whenever arrested for DUI or involved in an accident involving death or injury. Also, section 11-501.2(c)(2) mandates testing when officers have probable cause of intoxication following an accident involving death or injury, though that statute is unconstitutional in cases without exigent circumstances. **People v. Eubanks**, 2019 IL 123525. Although section 11-501.1(a) and 501.6(a) also face unresolved constitutional attacks, such as claims that implied consent laws are unconstitutional unless a defendant is warned about the ability to withdraw consent, the appellate court did not have to resolve those questions. Whatever the status of those laws, at the time of the blood draw here, the officer and nurses could have reasonably believed that defendant impliedly consented under these statutes, and therefore acted in good faith when drawing the blood. Under these circumstances, the exclusionary rule does not apply.

In any event, the error would have been harmless beyond a reasonable doubt given the other evidence of intoxication.

People v. Deroo, 2020 IL App (3d) 170163 Section 11-501.4 of the Vehicle Code specifically allows hospital blood test results to be admitted at defendant's DUI trial as long as the blood was drawn in the normal course of medical treatment. The statute specifies that such results are admitted as part of the business record exception to the hearsay rule. Illinois Rule of Evidence 803(6), however, generally prohibits the use of the business records exception to admit "medical records in criminal cases," as does Section 115-5(c) of the Code of Criminal Procedure.

The Appellate Court, following **People v. Hutchison**, 2013 IL App (1st) 102332, held that section 501.4 evincese the legislature's intent to make an exception to the general rule in DUI cases. That section therefore controls, and the trial court properly admitted the defendant's hospital blood test results at his DUI trial.

City of McHenry v. Kleven, 2019 IL App (2d) 180758 The Illinois Administrative Code requires that defendant be subject to a 20-minute observation period before a breathalyzer is administered. 20 Ill. Adm. Code 1286.310(a). Substantial compliance will satisfy that regulation. Here, the police officer left the booking room for more than two minutes during the observation period, and could not see or hear defendant during his absence. Accordingly, the trial court found that the 20-minute observation period was not satisfied and ordered the breath-test results suppressed.

The Appellate Court disagreed, finding there had been substantial compliance. Defendant was recorded on audio and video during the entire observation period, and the officer testified that defendant said he did not burp or vomit during the officer's absence. While the officer's absence was a serious problem, his failure to personally observe defendant did not render the test results unreliable. Continuous visual observation of the individual is not required if there are other ways to ensure the test was not compromised. Here, the video satisfied that requirement. The trial court's order suppressing the breath-test result was reversed, and the matter was remanded.

People v. Maas, 2019 IL App (2d) 160766 Defendant's BAC and toxicology test results, conducted as part of routine emergency room care, were admissible at his trial for aggravated DUI, pursuant to 625 ILCS 5/11-501.4. Section 11-501.4 creates a business record exception to the hearsay rule which authorizes the admission of lab results in DUI prosecutions where:

(1) the tests were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities, and (2) the analysis was performed by the laboratory routinely used by the hospital. The Appellate Court rejected the defendant's argument that the results were inadmissible under section 11-501.2. That provision, requiring proof the testing procedures complied with certain state police guidelines, applies only when the testing is done at the behest of the State or police.

People v. Relwani, 2019 IL 123385 Where defendant sought to rescind the statutory summary suspension of his driver's license on the basis that he was not on a "public highway" while in control of a motor vehicle, it was his burden to make a *prima facie* showing in support of that claim. Defendant's rescission hearing testimony that he was in "the Walgreen's parking lot" at the time of his DUI arrest was insufficient to satisfy his burden. A private parking lot may still constitute a public highway if it is publicly maintained and open to use by the public. Because defendant offered no evidence to show whether the Walgreen's lot was publicly maintained or open for public use, he failed to make a *prima facie* case for rescission.

People v Caraballo, 2019 IL App (1st) 171993 The results of a breathalyzer test should have been excluded at defendant's DUI trial because the officer who administered the test was not licensed at the time. Although the officer's license had lapsed a few days prior, and was renewed a the day after, the statute [625 ILCS 5/11-501.2(a)] requires that the individual have a valid license at the time of the test for the results to be admissible at trial. Defendant's conviction for DUI based on his having a BAC greater than .08 was reversed outright, but a separate conviction of DUI was sustained because there was ample evidence to support that conviction apart from the results of the breathalyzer.

People v. Pratt, 2018 IL App (5th) 170427 The Appellate Court upheld the suppression of a warrantless blood draw. Defendant was involved in a car accident resulting in the death of his passenger. He was taken to the hospital where his blood was drawn pursuant to police request. Based on the results, he was charged with aggravated DUI. The defense moved to suppress, citing the lack of a warrant. The State argued that the implied consent provisions in section 11-501.2(c)(2) applied. The trial court disagreed and the Appellate Court affirmed. Although this section doesn't say so explicitly, reading the statute as a whole makes clear that the implied consent provisions of the DUI statutes apply only after arrest. Even if an arrest is not required, probable cause is. Here, the officers did not have probable cause because the officer who requested the blood draw did not observe sufficient indicia of intoxication, such as bloodshot eyes or the smell of alcohol. The fact that defendant was semi-conscious and had difficulty walking could have been the result of the accident, not alcohol, and there was no evidence defendant drank from the open bottle of liquor found in the car.

People v. Quigley, 2018 IL App (1st) 172560 As a matter of first impression, the Court held that the results of a defendant's emergency room blood test, following a motor vehicle accident, were properly disclosed to a police officer by the emergency room doctor under 625 ILCS 5/11-501.4-1. The police officer could consider those results in determining whether there were reasonable grounds to believe defendant had been driving under the influence of alcohol, and the trial court could consider the results in reviewing the officer's decision at a hearing on defendant's petition to revoke the resulting statutory summary suspension.

People v. Turner, 2018 IL App (1st) 170204 The good faith exception to the exclusionary rule applied because the police relied on established precedent when they ordered a blood

draw from a DUI suspect following a fatal car accident. The Appellate Court recognized that in **People v. Eubanks**, 2017 IL App (1st) 142837, it had found unconstitutional section 11-501.2(c)(2) of the Illinois Vehicle Code, which allowed warrantless blood or urine testing when police have probable cause to believe that a motorist involved in a fatal or harmful accident is under the influence. The **Eubanks** court rejected the good faith exception, but unlike **Eubanks**, where the defendant physically resisted the blood draw, defendant here did not. Therefore, the blood draw here comported with the Illinois Supreme Court's decision in **People v. Jones**, 214 Ill. 2d 187 (2005), which was the controlling precedent at the time and allowed for compliance with section 11-501.2, as long as defendant did not physically resist. As such, the police in this case properly followed the law at the time and the good faith exception applied.

Aggravated DUI is misdemeanor DUI with an aggravating factor. Here, the misdemeanor was driving with a BAC over .08, and the aggravating factor was involvement in a fatal car accident proximately caused by the misdemeanor. Contrary to defendant's argument, the statute does not require proof that defendant's *intoxication* proximately caused the death. This misdemeanor form of DUI is a strict liability offense, and in such cases, the State need only show that defendant's *driving* caused the death. Thus, the lack of evidence showing defendant's impairment caused the accident did not render the evidence insufficient.

People v. Ernsting, 2018 IL App (5th) 160330 In a State appeal, the Appellate Court affirmed the trial court's decision to suppress the results of a breathalyzer test. After her involvement in a single-car accident, the police arrested defendant for DUI and administered a breathalyzer test which showed a .214 BAC. Before trial, defendant moved to suppress the results as unreliable. Defendant testified that she cut her mouth when the airbag deployed, and that she had blood in her mouth when she took the test. The defense presented unrebutted expert testimony that the blood in her mouth was a contaminant that affected the reliability of her test results. The trial court credited these claims and suppressed the evidence. Where the State offered no expert in rebuttal, the Appellate Court saw no reason to find the trial court's decision at odds with the manifest weight of the evidence and affirmed.

People v. Hayes, 2018 IL App (5th) 140223 A young boy on a bicycle rode out from between two parked cars directly in front of defendant's moving vehicle. Defendant struck the boy, resulting in his death. Defendant said he had been momentarily distracted by his own child's request for assistance opening a piece of candy. An eyewitness reported there was nothing defendant could have done to avoid the accident. After the police arrived, defendant was transported to the hospital where blood and urine samples were taken without a warrant. Initial results showed the presence of THC and amphetamines, and defendant was then arrested for DUI. Defendant sought to exclude the test results.

The natural dissipation of alcohol or drugs in a person's body does not give rise to a *per se* exigency. Further, for the exigent circumstances exception to apply, there must be probable cause for the search. Here, there was no showing of probable cause where the officer did not say that he disbelieved defendant's version of the incident and there was no evidence that defendant appeared to be under the influence of any substance.

While defendant did not object to the testing, his mere acquiescence did not constitute consent. Even assuming defendant had consented to blood and urine testing, his consent was not voluntary where a police officer drove defendant to the hospital from the accident scene, remained with defendant at all times including while he was providing a urine sample, and

had defendant's car towed and stored as part of the police investigation of the accident. Likewise, the implied consent statute could not validate the testing where no traffic citation was issued until two days after the testing, and defendant was not otherwise under arrest for a violation of the Illinois Vehicle Code at the time of the testing. Implied consent, by its express terms, requires that defendant has been arrested for a vehicle code violation prior to being asked to submit to testing.

The blood and urine testing was an unreasonable search, and the results should have been excluded. Defendant's conviction of aggravated DUI was reversed outright because without the test results, there was insufficient evidence to convict.

People v. Eubanks, 2017 IL App (1st) 142837 Following a deadly accident, the police took defendant, the driver, into custody and forced him to provide urine and blood samples without a warrant or his consent. On appeal, defendant challenged the constitutionality of section 11-501.2(c)(2) of the Illinois Vehicle Code, which allows the police to obtain blood and urine samples without a warrant whenever they have probable cause to believe that a motorist involved in an accident resulting in death or injury to another, is under the influence. The Appellate Court held that the statute is unconstitutional. Although the fact that chemicals dissipate in the human body can create exigency, the United States Supreme Court rejected a *per se* exigency exception for warrantless blood and urine tests in **Missouri v. McNeely**, 569 U.S. 141 (2013). Whether the exigency exception to the warrant requirement exists has always been analyzed on a case-by-case basis. In some situations the police will be able to obtain a warrant in time, and therefore a *per se* rule would be a considerable over-generalization.

Here, the State did not show exigent circumstances, because the police took defendant into custody immediately after the offense, and kept him in an interview room for the next 4.5 hours without even trying to seek a warrant. Nor did the good faith exception apply where, although the Illinois Supreme Court in **People v. Jones**, 214 Ill. 2d 187 (2005) had previously upheld testing under the warrantless testing statute, that decision made clear that officers could not use physical force to obtain a sample, as was the case here. The results of the test would be inadmissible in defendant's retrial for murder, and his aggravated DUI conviction is reversed outright.

The dissent expressed skepticism of the statute's unconstitutionality, noting that a motorist engages in a privilege, not a right, to drive a car, and thereby subjects himself to the regulation of that privilege by the legislature. Regardless, the court would find that the police clearly could have obtained a warrant in this case, rendering the test results inadmissible. The court noted that suppression of the test results would have no effect on defendant's murder conviction given that whether intoxicated or not, defendant drove a van at a high rate of speed down a residential street and killed and maimed two pedestrians.

People v. Beck, 2017 IL App (4th) 160654 Section 11-501.4(a) of the Illinois Vehicle Code provides that the results of hospital blood alcohol testing are admissible in evidence under the business records exception where the testing was performed in the regular course of emergency medical treatment and not at the request of law enforcement authorities, and the testing was performed at the lab routinely used by the hospital. It is not required that the blood draw be part of an established hospital protocol, nor is the severity of the defendant's injuries dispositive. It is enough that the treating physician ordered the testing while providing treatment in the emergency room.

Beck had been in a head-on collision with another driver. His physical injuries did not appear particularly severe to the paramedic on the scene, but the nature of the accident was

such that there could have been internal injuries. The emergency room doctor ordered the blood alcohol testing during treatment, so the results were admissible under 11-501.4(a).

Over defendant's objection, the State was permitted to present expert testimony on retrograde extrapolation to provide evidence of defendant's blood alcohol level at the time of the accident. The court distinguished this case from **People v. Barnham**, 337 Ill. App. 3d 1121 (5th Dist. 2003), because the expert here had the qualifications and experience that were lacking in **Barnham** and understood the process of alcohol absorption and elimination.

As a matter of first impression in Illinois, retrograde extrapolation was found to be generally accepted in the relevant scientific community as a method of estimating blood alcohol content, thereby satisfying **Frye**. In reaching this conclusion, the court noted that the toxicologist testified that retrograde extrapolation was generally accepted in the field, it had been admitted in several cases previously, other jurisdictions admit and rely on it, and defendant did not direct the court to any case excluding it for lack of general acceptance.

Also, the court found adequate foundation for the retrograde extrapolation evidence offered here. Here, there had been a second blood draw approximately 5.5 hours after the first, and therefore there was an actual elimination rate established. Likewise, defendant's gender, height, and weight were known factors. While some assumptions had to be made in the retrograde extrapolation calculations, they were not so flawed as to be inadmissible.

People v. Taylor, 2016 IL App (2d) 150634 Under section 11-501.5(a) of the Illinois Vehicle Code, a police officer who has reasonable suspicion to believe that a defendant was driving under the influence of alcohol may request the defendant to provide a breath sample for a preliminary breath screening test. The defendant may refuse to take the test. The results of the preliminary breath screening test may be used to decide whether further blood alcohol tests are required. 625 ILCS 5/11-501.5(a).

The court held that the police officer did not comply with the statute when he stopped defendant and ordered him to take a preliminary breath test. The statute allows the test only if the officer requests and defendant consents to the test, although the consent does not need to be informed. The court held that the preliminary breath test results were properly suppressed and that there was no probable cause to arrest defendant without the test results.

People v. Smith, 2015 IL App (1st) 122306 (modified upon denial of rehearing 11/13/15) For breathalyzer test results to be admissible, the State must show, among other things, that the breathalyzer machine passed an accuracy test within 62 days of the breath test.

Here the State introduced a letter and report from the Illinois State Police stating that the breathalyzer machine used to test defendant's breath for alcohol had been tested for accuracy within 62 days of defendant's test. The report provided numerical results of the testing, but did not provide any interpretation of those results and did not state whether the machine had passed the accuracy tests.

The court held that the State failed to properly establish that the breathalyzer machine was certified as accurate within 62 days of defendant's test. The letter and report contained raw data but no interpretation of that data, leaving the court with no basis to discern whether the machine performed accurately. In the absence of such evidence, the breathalyzer test results (showing that defendant's alcohol concentration exceeded .08) were improperly admitted.

The court reversed defendant's conviction for driving with an alcohol concentration of .08 or more and remanded for a new trial.

People v. Weidner, 2014 IL App (5th) 130022 Blood-alcohol test results are admissible in

DUI prosecutions only if the analysis was performed in accordance with standards promulgated by the State Police. (625 ILCS 5/11-501.2) Such standards are established by 20 Illinois Administrative Code 1286.320, which requires that: (1) the blood sample is drawn by a certified professional in the presence of the arresting officer or another officer, and (2) where possible, the sample is collected by using a DUI kit provided by the State Police.

The version of §1286.320 in effect on the date of the offense states that the blood sample "should be drawn using proper medical technique." A prior version of the rule stated that the site of the blood draw should be cleaned with an alcohol-free disinfectant. However, that provision was removed because State Police testing showed that: (1) all disinfectant wipes contain trace amounts of alcohol, and (2) the use of disinfectants containing minute amounts of alcohol has no effect on BAC analysis.

The court concluded that the State laid an adequate foundation to establish that defendant's blood sample was drawn using "proper medical technique" where it showed that the blood sample was drawn by a certified paramedic while the arresting officer was present, a State Police DUI kit was used, and the instructions which accompanied the kit were followed. The trial court did not err by admitting the blood alcohol test results although the test kit used to draw defendant's sample had been discarded and was not available for testing and a similar kit was shown to use disinfectant which contained a trace amount of alcohol.

People v. Armer, 2014 IL App (5th) 130342 The act of drawing blood from a DUI suspect constitutes a "seizure" under the Fourth Amendment, and requires a warrant unless there are exigent circumstances which make it impractical to obtain a warrant. Exigent circumstances have been found where the time needed to obtain a warrant would result in the destruction of evidence. Whether exigent circumstances justify a warrantless search in a particular situation is evaluated on a case-by-case basis.

The natural dissipation of alcohol over time does not create a *per se* exigency which categorically justifies an exception to the warrant requirement for nonconsensual blood testing in DUI cases. **Missouri v. McNeely**, 133 S. Ct. 1552, 185 L.Ed.2d 696 (2013). However, the natural dissipation of alcohol may support a finding of exigency in a specific case where other factors, such as the procedures in place for obtaining a warrant and the availability of a judge, affect whether the police can obtain a warrant within a time period that preserves the opportunity to obtain reliable evidence.

There were not sufficient exigent circumstances to justify a warrantless draw of defendant's blood. Defendant was involved in a single vehicle accident, and was taken to the hospital for evaluation of his injuries. One deputy followed the ambulance to the hospital, while a second officer remained at the scene of the accident. A third deputy also came to the hospital. The court found that because three officers were available, the investigation would not have been jeopardized had one of the officers attempted to contact the State's Attorney to secure a search warrant. The court noted that the officer did not testify that a fear of losing relevant evidence caused him to order the warrantless draw, and that he decided not to seek a warrant only because he thought he had probable cause and did not need the State's Attorney's assistance.

Under these circumstances, a reasonable officer would not have believed that sufficient exigent circumstances were present to justify the warrantless blood draw. The trial court's suppression order was affirmed.

People v. Chiaravalle, 2014 IL App (4th) 140445 To lay a proper foundation for the admission of breath test results, the State must show that the test was performed in accordance with regulations promulgated by the Illinois State Police. Section 1286.310(a) of

the Illinois Administrative Code requires that before obtaining a breath test, the officer shall continuously observe the defendant for at least 20 minutes to ensure that the defendant has not ingested any alcohol or vomited. Substantial rather than strict compliance is required for the 20-minute observation period.

Here the officer was in a room alone with defendant during the 20-minute observation period. The officer told defendant that he was not allowed to do anything, such as belching or vomiting, that would bring alcohol to his mouth. The officer completed paperwork while defendant sat on a bench behind him. The paperwork took approximately 10 minutes. During the 20-minute period, the officer turned around to look at defendant every few minutes. He never heard any noise and saw no evidence that defendant had vomited or regurgitated.

The Appellate Court held that the officer substantially complied with the continuous-observation rule. Although he did not always have defendant in his line of sight, the rule does not require continuous visual observation. Section 1286.310(a) does not specifically define "observation," and the plain and ordinary meaning of the word is not limited to visual observation. Instead it includes the use of all the senses.

The purpose of the rule is to enure that a defendant does not do anything to compromise the accuracy of the test, such as ingesting alcohol or vomiting. But it does not require continuous visual observation to detect these types of activities. Here the officer periodically turned around to visually observe defendant and never heard any sounds that might have indicated defendant had vomited, belched or consumed alcohol. The officer thus maintained continuous observation through the full use of his senses and substantially complied with the rule.

The trial court's order excluding the breath test was reversed.

People v. Hutchinson, 2013 IL App (1st) 102332 In Illinois criminal cases, medical records are generally inadmissible as business records. However, 625 ILCS 5/11-501.4 creates a business record exception to the hearsay rule which authorizes the admission of some blood alcohol test results in DUI prosecutions. Under §11-501.4, results from blood tests conducted on persons who are receiving medical treatment in a hospital emergency room are admissible in DUI prosecutions as a business record exception where: (1) the tests were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities, and (2) the analysis was performed by the laboratory routinely used by the hospital. Under §501.4(a)(3), the results of such testing are admissible "regardless of the time that the records were prepared."

Thus, §11-501.4 creates a special exception to the general rule where the defendant is tried for DUI and the testing was performed as part of emergency medical treatment.

The court rejected the argument that at a trial for DUI, the State failed to satisfy the foundation requirements of §11-501.4 before introducing defendant's blood alcohol test results. Admission of test results under §11-501.4 requires a foundation that the defendant was receiving medical treatment in a hospital emergency room, the testing was ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities, and the analysis was performed by the laboratory routinely used by the hospital.

A trauma center nurse testified that it was standard procedure to draw blood from motor vehicle accident victims, that the testing was ordered as part of providing emergency treatment, and that she drew the blood sample, checked defendant's ID band, and labeled the sample. In accordance with hospital procedure, a second nurse confirmed that the blood was being drawn from the correct patient and initialed the sample. The nurse testified that the blood was sent to the hospital lab immediately, that the lab was wholly contained within

the hospital, and that the lab was routinely used to process blood tests. The nurse also identified a hospital report which stated defendant's "Alcohol, Serum" level.

The court concluded that under these circumstances, the foundation requirements for the admissibility of the blood tests under §11-501.4 were satisfied.

The court rejected defendant's argument that the nurse's testimony could not satisfy the foundation requirements because she lacked knowledge of the hospital's blood testing and record keeping procedures. Under §11-501.4, there is no requirement that the foundational witness be familiar with the actual making of the business record. Furthermore, even under the general business record exception to the hearsay rule, the maker or custodian of the record need not testify to satisfy the foundation requirements for the exception. Instead, anyone who is familiar with the business and its procedures may testify to the foundation for the business record exception.

The court also rejected defendant's argument that §11-501.4 did not survive the enactment of Illinois Rule of Evidence 803(6), which provides that medical records are not admissible in criminal cases under the business record exception. The Illinois Rules of Evidence were intended only to codify existing evidentiary law, and not to modify that law.

People v. Olson, 2013 IL App (2d) 121308 To lay a proper foundation for the admission of a breath test, the State must establish that the test was performed in accordance with the requirements of §11-501.2(a) of the Vehicle Code as well as regulations promulgated by the Illinois Department of State Police. Those regulations require that an accuracy check be performed on the breath-testing machine at least once every 62 days.

If the check is not performed, the results of the tests performed during that period are presumptively inadmissible as unreliable. The State may rebut that presumption with proof that the test result is valid despite the lack of strict compliance with the regulation. Substantial compliance will be found where the deviation from the regulation neither affects the reliability of the test nor prejudices the defendant.

People v. Miranda, 2012 IL App (2d) 100769 The compelled extraction of a person's blood or urine for alcohol or controlled substance testing is a "search" under the Fourth Amendment, and is subject to the warrant and probable cause requirements unless a recognized exception applies. In reviewing the sufficiency of an affidavit for a search warrant, a reviewing court determines whether the magistrate had a substantial basis to conclude that probable cause existed.

An affidavit which contained no factual allegations concerning controlled substances, but which stated that defendant exhibited signs that he was under the influence of alcohol during a traffic stop, provided probable cause for a warrant to test defendant's blood sample for alcohol but did not afford probable cause to test a urine sample for controlled substances. The affidavit stated that defendant's eyes were glassy and bloodshot and that he admitted having consumed alcohol. There was a strong odor of alcohol inside the car, and defendant failed three field sobriety tests. Furthermore, at the time of the stop a front-seat passenger was holding two bottles of what appeared to be beer.

There was no mention of controlled substances in the affidavit except in the concluding paragraph, which stated the officer's opinion defendant was under the influence of alcohol and/or drugs. Under these circumstances, there was no probable cause for a warrant to test defendant's urine sample for the presence of controlled substances.

The court rejected the argument that even absent probable cause, the good faith exception permitted the admission of the result of the analysis of defendant's urine sample. The good faith exception does not apply if a warrant is based on an affidavit that is so lacking

in indicia of probable cause as to render a belief to the contrary entirely unreasonable. Here, the good-faith doctrine did not apply because it was entirely unreasonable to rely on an affidavit which contained no allegations which would have supported a finding of probable cause concerning the presence of controlled substances.

The court also rejected the argument that the statutory implied consent provision (625 ILCS 5/11-501.1) authorized testing for controlled substances in the absence of a showing of probable cause. Under §5/11-501.1(a), a driver impliedly consents to testing for prohibited substances. However, implied consent is revoked where the driver refuses to consent to such a test. When a motorist revokes implied consent to testing, the police must find some other basis, such as a warrant supported by probable cause, to justify the testing.

The trial court's order granting defendant's motion to suppress was affirmed.

People v. Farris, 2012 IL App (3d) 100199 The Illinois Vehicle Code provides that "if a law enforcement officer has probable cause to believe that a motor vehicle driven by or in actual physical possession of a person under the influence of alcohol, other drug or drugs, or intoxicating compound or compounds . . . has caused the death or personal injury to another, that person shall submit, upon the request of a law enforcement officer, to a chemical test of his or her blood, breath or urine." 626 ILCS 5/11-501.2(c)(2).

Although the statute is silent on the question of whether testing without consent is authorized in situations not involving death or personal injury to another, the Illinois Supreme Court in **People v. Jones**, 214 Ill. 2d 187, 824 N.E.2d 239 (2005), held that the statute did not create a right to refuse testing in the absence of death or injury. An arrestee's lack of a right to refuse testing did not, however, authorize law enforcement officers to use physical force to collect a sample for testing.

The court reasoned that there was no practical need for the use of force as the statute eliminates any advantage a DUI arrestee might hope to gain from refusing testing. Refusal to submit to testing results in summary suspension of the arrestee's driving privileges, the same penalty that would result from testing indicating a blood-alcohol concentration over the legal limit. The use of force to collect a sample thus adds nothing to the protection of the public, while the inference of guilt from defendant's refusal to comply is sufficient to protect the public interest in the prosecution of DUI tickets.

Defendant was involved in an accident not involving death or personal injury to another, only injury to herself. The police detected the odor of alcohol on her breath. Defendant refused consent for a blood draw after she was transported to a hospital emergency room. Medical personnel took a blood sample from defendant by the use of force as officers held her down.

The circuit court correctly concluded based on **Jones** that the police lacked statutory authority to use force to obtain a blood sample. The Appellate Court therefore affirmed the order granting defendant's motion to suppress evidence from a blood-alcohol test using the blood sample.

People v. Hall, 2011 IL App (2d) 100262 Under 625 ILCS 5/11-501.2(a)(1), blood alcohol test results are admissible in DUI prosecutions only if the tests were performed according to standards promulgated by the State Police. The requirements of those standards include that: (1) the blood sample is collected in the presence of the arresting officer or an agency employee who can authenticate the sample, and (2) samples are stored in tubes containing both an anticoagulant and preservative. (20 IL. Admin. Code 1286.320 (2011)). The failure to comply with §11-501.2 and the applicable regulations renders the testing results inadmissible in DUI prosecutions.

At defendant's trial for DUI, the trial court properly excluded the results of blood testing. There was no evidence that the arresting officer or some other agency employee was present when defendant's blood was drawn; the blood was drawn by a hospital nurse for medical purposes, and was subsequently tested when police discovered that the hospital had kept the samples. Furthermore, at least one of the tubes in which the blood was placed contained only an anticoagulant and not a preservative. The court noted that §11-51.2 was intended to insure the reliability of evidence in DUI prosecutions, and that the failure to comply with the regulations requires the exclusion of the results from trial.

The State argued that strict compliance with the provisions of the Administrative Code is not required so long as there is "substantial compliance." The court found that where the tube contained only an anticoagulant, there was no "substantial compliance" with the requirement that blood be stored in vials containing a preservative. Instead, the failure to use a preservative constitutes "zero compliance" with the administrative regulation.

The court also noted that neither it nor the trial court possessed the competence necessary to determine whether the failure to store the blood with a preservative compromised the integrity of the testing process. "We will not second-guess the reasoning behind the regulations by considering conflicting testimony regarding scientific matters that are within the purview of the Department of State Police."

The court noted, however, that the standards promulgated under §11-51.2 apply only to DUI offenses. In trials for other offenses, blood alcohol test results are to be received in evidence under the usual standards governing the admission of evidence.

However, the court refused to overrule the trial court's order excluding the evidence on the non-DUI counts against the defendant. The court concluded that the issue was forfeited because the State failed to raise it until appeal.

People v. Clairmont, 2011 IL App (2d) 100924 When a motorist files a motion *in limine* to bar breath test results, the State must establish a sufficient foundation for the admission of the evidence by establishing that the test was performed in accordance with 625 ILCS 5/11-501.2(a) as well as the regulations promulgated by the Illinois Department of State Police.

Those regulations create a rebuttable presumption that an instrument was accurate at the particular time a subject test was performed when four conditions are met, one of which is that "[a]ccuracy checks have been done in a timely manner, meaning not more than 62 days have passed since the last accuracy check prior to the subject test." 20 Ill. Adm. Code 1286.200. The regulations also require that accuracy tests be performed every 62 days, to ensure the continued accuracy of approved evidentiary instruments. 20 Ill. Adm. Code 12686.230.

If checks could be performed only as required by §1286.200, a defendant could be convicted with evidence from an instrument that had not been tested for 62 days. So as not to render §1286.230 superfluous, and to read the two sections in harmony, evidentiary instruments must be tested for accuracy once every 62 days to ensure the reliability of test results. Noncompliance with this regulation invalidates test results and renders them inadmissible, unless the State rebuts the presumption of unreliability with proof that a test result is valid despite the lack of strict compliance with the regulation.

In these consolidated cases, the breath test machine used for Clairmont was checked and certified 60 days before he was tested and not again for 11 days after he was tested. The machine used for Fernandez was checked and certified three days before he was tested and not again until 62 days after he was tested. The State expressly disclaimed reliance on any theory of substantial compliance at the hearing below. Because accuracy tests were not performed every 62 days, the trial court correctly held the test results inadmissible in both

cases.

Bowman, J., dissented. Failure to check the accuracy of the machine every 62 days did not automatically rebut the presumption of accuracy. That failure is merely a factor for the court to consider along with other relevant evidence in determining whether the defendant presented sufficient evidence to rebut the presumption of accuracy.

People v. Clairmont, 2011 IL App (2d) 100924 The trial court barred the results of defendant's breath test because an accuracy check was not performed until after 63 days had elapsed. Because the trial court misinterpreted **Clairmont** as establishing an irrebuttable presumption of unreliability, the Appellate Court vacated the trial court's order and remanded for an evidentiary hearing to allow the State an opportunity to demonstrate substantial compliance.

People v. Wright, 2011 IL App (4th) 100047 The court rejected defendant's argument that the toxicology test results of blood and urine samples which defendant provided should have been excluded because the officer failed to tell defendant that he could refuse to give the samples. A defendant who has been arrested for DUI has no constitutional right to refuse chemical testing. Furthermore, police inquiry into whether a suspect will submit to a blood alcohol test does not constitute "interrogation" within the meaning of **Miranda**.

People v. Bauer, 402 Ill.App.3d 1149, 931 N.E.2d 1283 (5th Dist. 2010) The State does not violate the Health Insurance Portability and Accountability Act (HIPAA) in gaining access to the results of a blood alcohol test performed in an emergency room. HIPAA does not create a privilege for patients' medical information. It provides for a procedure for disclosure of that information from a "covered entity." Law enforcement is not a covered entity. HIPAA also contains a law enforcement exception. Even if the State had obtained the records in violation of HIPAA, HIPAA does not provide for suppression of evidence as a remedy for its violation.

People v. Severson, 379 Ill.App.3d 699, 885 N.E.2d 411 (2d Dist. 2008) 625 ILCS 5/11-501.1 authorizes summary suspension of driving privileges for a driver who refuses to submit to chemical testing of blood alcohol levels. The Appellate Court found that the defendant did not refuse to submit to testing where he initially declined to be tested, but relented after being told that he had no right to refuse and that his blood could be drawn without his consent. Although defendant continued to insist that he wanted the officers to indicate that he refused testing, that "statement simply reflects that he was submitting to testing under protest." The court stated, "Where . . . a motorist actually complies with a request for testing and the testing is completed without incident, the form of words he or she uses in responding to the officer's request should not be controlling."

People v. Boshears, 228 Ill.App.3d 667, 592 N.E.2d 1187 (5th Dist. 1992) While a witness may testify to his opinion that an individual is intoxicated, only chemical analysis of blood, urine, breath or other bodily substances is admissible to show one's blood-alcohol concentration. Although two officers should not have testified about their belief that defendant's blood-alcohol content exceeded .10, any prejudice was cured when the trial court sustained defense objections and ordered the jury to disregard the testimony.

People v. Sides, 199 Ill.App.3d 203, 556 N.E.2d 778 (4th Dist. 1990) The results of field-sobriety tests (i.e., "walk the line," "one leg stand," and "finger to nose") are admissible

without a foundational showing of their scientific reliability. Such tests are "not so abstruse as to require a foundation other than the experience of the officer administering them."

People v. Randle, 183 Ill.App.3d 146, 538 N.E.2d 1253 (5th Dist. 1989) Blood must be drawn from a defendant "under the direction of a licensed physician," but the physician is not required to actually be present.

People v. Znaniecki, 181 Ill.App.3d 389, 537 N.E.2d 16 (3d Dist. 1989) A person asked to submit to a blood-alcohol test must be given the complete warnings set out in Ch. 95½, ¶11-501.1(c). The warning must include both the consequences of refusing the test and the consequences of submitting to a test which discloses a blood alcohol content of 0.10 or greater.

People v. Kern, 182 Ill.App.3d 414, 538 N.E.2d 184 (3d Dist. 1989) The Court held a request to consult counsel before taking a breath test did not constitute a refusal. Ordinarily, a defendant has no right to consult with counsel before taking the test. Here, however, the arresting officer allowed the defendant to contact an Iowa attorney, without considering this to be a refusal. The Iowa attorney then suggested that defendant contact an Illinois attorney because he was not familiar with Illinois law. When defendant requested to call an Illinois attorney, the officers said that he had to take the test first. Since the arresting officer testified that he honors suspects' requests to consult with counsel, and he permitted defendant to contact an Iowa attorney, it was improper to find that defendant refused the test "merely because he pressed a request to consult an Illinois attorney."

People v. Hedeen, 181 Ill.App.3d 664, 537 N.E.2d 346 (5th Dist. 1989) Defendant refused to take a breathalyzer where he failed to blow a sufficient breath sample into the machine to obtain a result. See also, **People v. Bentley**, 179 Ill.App.3d 347, 534 N.E.2d 654 (1st Dist. 1989); **People v. Bates**, 165 Ill.App.3d 80, 518 N.E.2d 628 (4th Dist. 1987).

People v. Miller, 166 Ill.App.3d 155, 519 N.E.2d 717 (3d Dist. 1988) Following a jury trial, the defendant was convicted of driving under the influence of alcohol. The Appellate Court held that the results of blood alcohol tests should not have been admitted. The defendant was driving on the wrong side of the highway and was involved in an accident. She was transported to a hospital for treatment. While defendant was at the hospital, blood samples were taken with her consent. Before and during the taking of the blood samples, defendant had a tube in her nose and intravenous tubes in her arms. In addition, she had been given medication. An expert testified that the blood samples disclosed a blood alcohol level of 0.125. The Appellate Court held that the State had failed to establish a proper foundation for admission of the blood test results because ' there was testimony the defendant had medication prior to the blood test. When a defendant is administered medication or treatment during or shortly before a blood test, the State shall prove the prescribed treatment or medication did not affect the accuracy of a subsequent blood test. It is not defendant's obligation to prove the test inaccurate."

People v. Dakuras, 172 Ill.App.3d 865, 527 N.E.2d 163 (2d Dist. 1988) Prior to his trial for DUI (Ch. 95½, ¶11-501(a)(2)), the defendant filed a motion in limine to exclude evidence of a horizontal gaze nystagmus (HGN) test that had been administered to defendant by a police officer. (The HGN test purportedly shows, based on involuntary movements of the subject's eyes, whether the blood-alcohol concentration is greater than .10.) The trial judge

found that the HGN test was not generally accepted by the scientific community, and granted the defendant's motion. The State appealed. The Appellate Court upheld the exclusion order on another ground.

People v. Capporelli, 148 Ill.App.3d 1048, 502 N.E.2d 11 (1st Dist. 1986) Chapter 95½, ¶11-501.2(a)(5), which provides that alcohol concentration is to be measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath (a relationship of 2100 to 1), has a rational basis and is valid. Even though some studies dispute whether the ratio of 2100 to 1 is constant in all persons at all times, there is substantial support for the scientific principles and methods approved by the legislature. Thus, "it cannot be said that the legislature's provisions are irrational."

People v. Elledge, 144 Ill.App.3d 281, 494 N.E.2d 911 (3d Dist. 1986) Defendant was arrested for DUI and was asked to submit to a chemical test for blood-alcohol content. The defendant refused to take a breath test, but asked the officer to take him to obtain a blood test. The reason for this request was that defendant believed a blood test to be more accurate than a breath test. The officer advised defendant that he could take a blood test at his own expense, and defendant agreed. "For no apparent reason, however, the officer never arranged for the blood test." Under these facts no refusal occurred.

Village v. Ford, 145 Ill.App.3d 19, 495 N.E.2d 595 (2d Dist. 1986) A police officer saw an automobile in a parking lot (not on a public highway) with its motor running and lights on. He saw the defendant slumped forward in the driver's seat. The officer had defendant leave the car and submit to field sobriety tests. At the police station, the defendant "consented" to a breath alcohol test. The defendant claimed that the officer told her that her license would be suspended unless she took the breath alcohol test. The officer claimed that he advised her that the rules of implied consent did not apply because she had been on private property and not on a public street. The trial court suppressed the breath test results on the basis that defendant's "consent" was not voluntary. The trial court also noted that defendant was not given **Miranda** warnings until after she took the test. The Appellate Court reversed. The results of a breath alcohol test constitute physical evidence, not evidence of a testimonial nature. Thus, the procedural protections encompassed by the **Miranda** warnings do not apply, because "**Miranda** warnings are required only when the evidence obtained is of a testimonial nature." The Court also held that consent is not necessary to admit breath alcohol test results into evidence in a DUI case — "a compulsory blood test, taken without the consent of the donor, does not violate any constitutional right . . . [and this] reasoning applies to the taking of a breath sample."

People v. Okun, 144 Ill.App.3d 310, 495 N.E.2d 115 (4th Dist. 1986) The Court held that there is no constitutional or statutory right to confer with counsel before submitting to a breathalyzer test. See also, **Cary v. Jakubek**, 121 Ill.App.3d 341, 459 N.E.2d 651 (2d Dist. 1984).

People v. Johnson, 148 Ill.App.3d 4, 499 N.E.2d 66 (3d Dist. 1986) Department of Public Health Rule 6.01(a) — which requires "continuous observation of the subject for at least twenty (20) minutes prior to collection of the breath specimen, during which period the subject must not have ingested alcohol, food, drink, regurgitated, vomited or smoked" does not proscribe the aggregation of observations by two officers to satisfy the 20-minute period.

People v. Vega, 145 Ill.App.3d 996, 496 N.E.2d 501 (4th Dist. 1986) Testimony relating to a horizontal gaze nystagmus (HGN) test was improperly admitted. The State failed to lay a sufficient foundation, through expert testimony, showing the validity of such test. The testimony of the police officer who administered the test was not sufficient to establish the necessary foundation. See also, **People v. Smith**, 182 Ill.App.3d 1062, 538 N.E.2d 1268 (2d Dist. 1989).

People v. Kirby, 145 Ill.App.3d 144, 495 N.E.2d 656 (4th Dist. 1986) Defendant was arrested at the scene of an accident and refused to submit to a breath test. At a hearing to determine whether defendant's license should be suspended he testified that he did not remember anything that occurred for two days after his accident. His father corroborated this testimony. The trial judge ruled that defendant did not knowingly refuse the breath test. The Appellate Court reversed, holding that the implied consent law does not have an exception for unknowing refusals. See also, **People v. Goodman**, 173 Ill.App.3d 559, 527 N.E.2d 1065 (3d Dist. 1988); **People v. Solzak**, 126 Ill.App.3d 119, 466 N.E.2d 1201 (1st Dist. 1984).

People v. Carlyle, 130 Ill.App.3d 205, 474 N.E.2d 9 (2d Dist. 1985) A defendant is deemed to have refused a breathalyzer test where the required admonitions are given and the defendant is conscious, though due to the confusion or disorientation caused by his intoxication defendant at no time expressly refuses to take the test.

People v. Marks, 139 Ill.App.3d 388, 487 N.E.2d 636 (3d Dist. 1985) Police officer did not have probable cause for a DUI arrest. Though at 12:02 a.m. the officer saw defendant drive over a center line, stop at a traffic light, turn right from the left-turn lane, and drive in the center and left-hand lane of a two-lane street without lane markings, there was no "weaving or similar out-of-control driving." In addition, defendant's manner of driving could have been due to the "nature of the street and the absence of other traffic."

People v. Duensing, 138 Ill.App.3d 587, 486 N.E.2d 938 (3d Dist. 1985) The trial court granted defendant's in limine motion to exclude breathalyzer test results on the ground that the State failed to show that proper test procedures were followed. The Appellate Court reversed. The officer who administered the test testified that he was unaware whether his usual test procedures followed the manufacturer's recommendations or were approved by the Illinois Department of Public Health. However, the officer also testified that the breath analysis here was performed according to his department's test procedures checklist, and those procedures were based on Department of Public Health standards. See also, **People v. Clark**, 178 Ill.App.3d 848, 533 N.E.2d 974 (2d Dist. 1989).

People v. Gupton, 139 Ill.App.3d 530, 487 N.E.2d 1060 (1st Dist. 1985) A police officer who made a valid "citizen's arrest" (outside his normal jurisdiction) for DUI was authorized to ask the defendant to submit to chemical tests under Ch. 95½, ¶11-501.1.

People v. Kiss, 122 Ill.App.3d 1056, 462 N.E.2d 546 (5th Dist. 1984) The defendant was arrested for driving under the influence. The arresting officer filed an affidavit, pursuant to Ch. 95½, ¶11-501.1, stating that defendant had refused to submit to chemical tests. At the implied consent hearing, the officer testified that defendant was asked to submit to a

breathalyzer test and refused. The officer further testified that defendant was not asked to submit to a blood or urine analysis. The trial judge found that defendant's refusal to take a breath test was not sufficient to suspend his license. The judge noted that the statute provides for three tests: blood, breath or urine. The defendant was not asked to take and did not refuse to take a blood or urine test. Thus, the judge found that defendant did not refuse to take the test set forth in the statute. The State appealed. The Court held that "a refusal to submit to any one of these tests upon request constitutes a refusal for purposes of the statute." See also, **People v. Greenspon**, 129 Ill.App.3d 849, 473 N.E.2d 331 (1st Dist. 1984).

People v. Naseef, 127 Ill.App.3d 70, 468 N.E.2d 466 (3d Dist. 1984) The defendant was arrested for driving under the influence. He was asked to take a breath analysis test and refused. He was later asked again to take the test, and agreed to do so. The test showed a breath alcohol level greater than 0.10%. The defendant moved to exclude evidence of his initial refusal to take the test. The trial court ordered the evidence excluded, and the State appealed. The Appellate Court discussed Ch. 95½, ¶11-501.2(c) and held that the legislature intended to allow evidence of a defendant's refusal to submit to a test only where the defendant both refuses to take the test and does not complete the test. Because the defendant in this case did submit to the test and complete it, evidence of his initial refusal was properly excluded.

People v. Frazier, 123 Ill.App.3d 563, 463 N.E.2d 165 (4th Dist. 1984) Chapter 95½, ¶501.1(c), which provides that if a driver refuses to take a test "none shall be given," does not bar a test after an initial refusal. The Court held that it could "see no reason to prohibit the police from allowing the driver to take a test if he has reconsidered his refusal." See also, **People v. Duensing**, 138 Ill.App.3d 587, 486 N.E.2d 938 (3d Dist. 1985).

People v. Roberts, 115 Ill.App.3d 384, 450 N.E.2d 451 (2d Dist. 1983) The defendant was convicted of driving under the influence, and contended that it was error to introduce evidence of his refusal to perform sobriety tests. The defendant did not contend that his refusal was constitutionally protected (see **South Dakota v. Neville**, supra) but that the evidence of his refusal was "irrelevant" and allowed "the jury to improperly infer that his refusal was evidence that he was intoxicated." The Court stated, "evidence of a refusal to take a potentially incriminating test is similar to other circumstantial evidence of consciousness of guilt which may be inferred from a defendant's conduct. The evidence of refusal is not only probative; its admission operates to induce suspects to cooperate with law enforcement officials."

People v. Miller, 113 Ill.App.3d 845, 447 N.E.2d 1060 (4th Dist. 1983) The trial court properly admitted evidence of defendant's refusal to perform a "field sobriety test" and take a breath analysis test, though defendant was not warned that a refusal could be used against him.

People v. Wierman, 107 Ill.App.3d 7, 436 N.E.2d 1081 (4th Dist. 1981) An officer is not required to issue a traffic ticket before asking the arrested person to submit to a breath test.

§49-2(d)
Aggravated DUI

Illinois Supreme Court

People v. Way, 2017 IL 120023 A person commits driving under the influence when she drives a vehicle and there is any amount of cannabis in her system. 625 ILCS 5/11-501(a)(6). A person commits aggravated DUI when she violates the DUI statute, is involved in a motor vehicle accident that causes great bodily harm to another, and "the violation was a proximate cause of the injuries." 625 ILCS 5/11-501(d)(1)(c). Aggravated DUI is a strict liability offense and does not require any proof of impairment; it only requires a causal link between the physical act of driving and the injuries to another person.

Defendant was driving her car while she had cannabis in her system. She started to fall asleep at the wheel and drove her car into oncoming traffic, striking another car and causing great bodily harm to the passengers. There was no evidence that she was impaired. The trial court found her guilty of aggravated DUI and would not allow her to present the testimony of her physician that defendant had low blood pressure and it was possible that the loss of consciousness was caused by this condition and not by any drug.

The Supreme Court held that nothing in the framework of the DUI statute prevents a defendant from raising as an affirmative defense that the collision resulting in serious bodily injury was caused solely and exclusively by a sudden unforeseeable medical condition that rendered the defendant incapable of controlling the vehicle. A defendant who raises this affirmative defense bears the burden of showing that the unforseen condition constituted the sole proximate cause of the accident and the injuries.

Here defendant's physician could not have testified that defendant's low blood pressure was the sole cause of her falling asleep or losing consciousness, only that it was a possibility. Defendant was thus unable to show that her medical condition was the sole proximate cause of the collision.

Defendant's conviction was affirmed.

People ex rel Glasgow v. Carlson, 2016 IL 120544 The State filed a *mandamus* petition seeking to compel the trial court to vacate its sentencing order, classify defendant's aggravated DUI based on a third DUI as a Class 2 felony, and impose a Class X sentence under 730 ILCS 5/5-4.5-95(b). Section 5-4.5-95(b) requires a Class X sentence in specified circumstances where the defendant is convicted of a Class 1 or Class 2 felony after having been twice convicted of Class 2 or greater felonies arising from separate series of acts.

The court concluded that the legislature intended to classify a third DUI conviction as a Class 2 felony. The court found that 625 ILCS 5/11-501(d)(1)(A) and (d)(2)(B) provide that a third DUI constitutes aggravated DUI and is a Class 2 felony, and that each subsequent DUI either increases the classification of the offense or eliminates probation as a possible disposition. The court acknowledged that the sentencing provisions of §11-501 are complex, especially for aggravated DUI, but found that the legislature intended to create a Class 2 offense for aggravated DUI based upon a third commission of DUI. The court stressed that §11-501(2)(A), which provides that aggravated DUI is a Class 4 felony, applies only if no other provision of §11-501(2) is applicable.

In the process of its opinion, the court noted that the trial judge relied on the "DUI Traffic Illinois Judicial Bench Book" in concluding that there was an ambiguity in §11-501 concerning the sentencing classification of a third DUI. The court noted that the Bench Book is merely a practical legal reference guide and should not be viewed as precedential.

A writ of *mandamus* was awarded directing the trial court to vacate its sentencing order and impose a new sentence.

People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 (2010) Where the defendant was convicted of one count of aggravated driving under the influence of a drug or combination of drugs while his driver's license was suspended or revoked and one count of driving while his license was suspended or revoked, the court rejected the argument that the conviction for driving while license revoked must be vacated on one-act, one-crime principles or as a lesser included offense. (See **VERDICTS**, §§55-3(a), (b)).

People v. Lavallier, 187 Ill.2d 464, 719 N.E.2d 658 (1999) Under the plain language of 625 ILCS 5/11-501(d)(1)(C), which enhances DUI to aggravated DUI when a driver causes physical injury in an accident, only one aggravated DUI conviction is authorized even if several persons suffer severe bodily injury. "[T]he focus of section 11-501(d)(1)(C) is on punishing those who both drive under the influence of alcohol in violation of paragraph (a) and have an accident resulting in injuries to another, rather than on punishing the offender for each individual injured in the accident."

Illinois Appellate Court

People v. Bishop, 2024 IL App (2d) 230106 Defendant argued that section 11-501(a)(7) of the Vehicle Code violates the equal protection clause of the Illinois and United States Constitutions because it treated registered users of marijuana differently than other legal users. Under subsection (a)(7), users without a valid registry card are presumed intoxicated if, within two hours of driving or being in actual physical control of a motor vehicle, they have meet the statutory threshold of blood/THC level. 625 ILCS 5/11-501.2(a)(6). For users with a valid registry card, however, the State must prove actual intoxication, regardless of THC level.

The appellate court affirmed the trial court's rejection of this argument. The trial court correctly concluded that defendant's argument fails at its inception, as he cannot establish that he is similarly situated to the comparison group. As in **People v. Lee**, 2023 IL App (4th) 220779, the court held that card-holding medical cannabis users are not similarly situated to non card-holders because, in order to obtain a valid registry card, an individual must suffer from certain debilitating medical conditions and have a physician's certification. Moreover, even if they were similarly situated, the rational basis test would apply, and it's rational to treat those with registry cards differently than other legal users.

People v. Carlson, 2023 IL App (2d) 210782 On appeal from a conviction of aggravated DUI, defendant argued that the State's evidence was insufficient to establish that his BAC was 0.08 or greater at the time of his driving. Specifically, defendant argued that while the blood test revealed a BAC of 0.16, his blood was not drawn until two and a half hours after his arrest. The appellate court held that the delay went to the weight of the BAC evidence, but did not necessarily render it insufficient. Extrapolation evidence is not necessary where the tested level is above the statutory limit.

Instead, when there is a delay, BAC results should be viewed in light of the circumstances surrounding the arrest. Here, that evidence included defendant's statement that he had not consumed any alcohol since 10 p.m., nearly four hours before his arrest. Given defendant's statement, it was reasonable to infer that, by the time of his driving, defendant would have fully absorbed the alcohol he had consumed and his BAC would no longer be

rising. And, by the time his blood was drawn and tested more than two hours later, his BAC would have been even lower than it had been at the time of the traffic stop. Thus, the evidence was sufficient to establish his guilt of DUI with a BAC over 0.08.

Further, the trial court did not err in relying on a delinquency DUI adjudication to find defendant guilty of aggravated DUI under 625 ILCS 5/11-501(d)(1)(A). That statute provides that a person is guilty of aggravated DUI if "the person committed a [DUI] violation...for the third or subsequent time." The statutory language is not dependent on whether the violation was committed when the person was a minor or an adult in that it does not require a "conviction." Thus, defendant's delinquency adjudication for DUI qualified as a predicate DUI violation.

People v. Petty, 2020 IL App (3d) 180011 Defendant was not proved guilty beyond a reasonable doubt of aggravated driving under the influence of methamphetamine despite stipulated evidence that amphetamine and benzodiazepine were present in his urine after he was involved in a car accident. As relevant here, section 11-501(a)(6) prohibits driving with any amount of a substance in the urine "resulting from the unlawful use or consumption" of methamphetamine. Evidence that amphetamine and benzodiazepine in a person's urine was the result of "unlawful use or consumption" of methamphetamine requires testimony from a person with specialized knowledge, even though methamphetamine was recovered from defendant's vehicle. That sort of scientific knowledge is beyond the understanding of an ordinary person.

The court also rejected the State's request to reduce defendant's conviction to driving under the influence of amphetamine. The State chose to charge the specific offense of aggravated driving under the influence of methamphetamine, making that the only charge of which defendant had notice. Substituting a different drug as the basis for conviction was beyond the court's authority under Rule 615(b)(3).

People v. Paranto, 2020 IL App (3d) 160719 In assessing defendant's challenge to the constitutionality of the 2014 version of 625 ILCS 5/11-501(a)(6), the Appellate Court was bound to follow **People v. Fate**, 159 Ill. 2d 267 (1994), where the Illinois Supreme Court found the statute facially constitutional. The Appellate Court rejected defendant's argument that advances in scientific testing rendered her challenge a distinct issue from the challenge brought in 1994 in **Fate**.

The Appellate Court also held that even if **Fate** did not control, the record was inadequately developed to consider defendant's facial challenge here. While normally only an as-applied challenge requires that a factually-developed record be made below, the facial challenge here was dependent on evolutions in scientific testing which lacked evidentiary support in the record. On appeal, defendant could not rely on secondary sources as substantive evidence of necessary scientific facts to support her constitutional challenge.

People v. Minor, 2019 IL App (3d) 180171 Version of aggravated DUI statute making it illegal to drive with any amount of THC in the driver's blood, breath, or urine was not rendered unconstitutional by subsequent statutory amendments removing cannabis from the "any amount" section of the statute. The flat prohibition reflected the scientific limitations of the time and was reasonably related to the legitimate goal of preventing cannabis-impaired driving. By removing cannabis from the "any amount" section, the legislature signaled its recognition of technical advances and changing societal attitudes, but defendant's conviction under the prior version of the statute could stand.

People v. Mumaugh, 2018 IL App (3d) 140961 The offense of DUI is elevated to aggravated DUI where the defendant is involved in a motor vehicle accident resulting in great bodily harm to another if the DUI violation "was a proximate cause of the injuries." Proximate cause consists of two parts: cause in fact and legal cause. Cause in fact is established where the injury would not have occurred absent defendant's conduct. Legal cause is shown where the injury is of a type that a reasonable person would see as a likely result of his conduct, i.e., the injury is foreseeable.

Driving home from work, defendant struck a pedestrian who was wearing dark clothing and was walking in his lane of traffic on a dark, unlit, rural, two-lane highway. Shortly before the accident, another motorist had called 911 and reported the pedestrian and her friend walking in the road, stating, "they're goin' to get hit." At the time of the accident, defendant was driving five miles per hour below the speed limit, in his own lane of traffic, with working headlights. Defendant passed all field sobriety tests, but admitted to having smoked cannabis five days prior to the accident. A chemical analysis revealed an undetermined quantity of THC metabolite in his urine. The pedestrian sustained serious, lasting injuries.

The Appellate Court held that defendant's driving was the cause in fact of the pedestrian's injuries but was not the legal cause. The pedestrian was not in an area where defendant should have known or expected a person to be. The fact that "accidents occur all the time" did not render this accident foreseeable. The sole proximate cause of the pedestrian's injuries was her own conduct of walking in the middle of a lane of traffic on a dark highway while wearing dark clothing.

People v. Turner, 2018 IL App (1st) 170204 The good faith exception to the exclusionary rule applied because the police relied on established precedent when they ordered a blood draw from a DUI suspect following a fatal car accident. The Appellate Court recognized that in **People v. Eubanks**, 2017 IL App (1st) 142837, it had found unconstitutional section 11-501.2(c)(2) of the Illinois Vehicle Code, which allowed warrantless blood or urine testing when police have probable cause to believe that a motorist involved in a fatal or harmful accident is under the influence. The **Eubanks** court rejected the good faith exception, but unlike **Eubanks**, where the defendant physically resisted the blood draw, defendant here did not. Therefore, the blood draw here comported with the Illinois Supreme Court's decision in **People v. Jones**, 214 Ill. 2d 187 (2005), which was the controlling precedent at the time and allowed for compliance with section 11-501.2, as long as defendant did not physically resist. As such, the police in this case properly followed the law at the time and the good faith exception applied.

Aggravated DUI is misdemeanor DUI with an aggravating factor. Here, the misdemeanor was driving with a BAC over .08, and the aggravating factor was involvement in a fatal car accident proximately caused by the misdemeanor. Contrary to defendant's argument, the statute does not require proof that defendant's *intoxication* proximately caused the death. This misdemeanor form of DUI is a strict liability offense, and in such cases, the State need only show that defendant's *driving* caused the death. Thus, the lack of evidence showing defendant's impairment caused the accident did not render the evidence insufficient.

People v. Mischke, 2014 IL App (2d) 130318 Under 625 ILCS 5/11-501(d)(2)(A), a person convicted of aggravated driving while under the influence (DUI) is guilty of a Class 4 felony. But under subsection (d)(2)(B), a third violation of "this Section" is a Class 2 felony. The trial

court sentenced defendant for aggravated DUI as a Class 2 felony. Defendant argued on appeal that he should have been sentenced as a Class 4 felony since he had two prior convictions for non-aggravated DUI, and the statute requires two prior convictions for aggravated DUI.

The Appellate Court held that the language of subsection (d)(2)(B), "this Section," refers to all of section 11-501, not simply to subsection (d)(2)(B). Section 11-501 includes non-aggravated as well as aggravated DUI, while subsection (d)(2)(B) only includes aggravated DUI. The enhancement to a Class 2 felony thus occurs whenever a defendant has two prior convictions for any form of DUI, not just aggravated DUI. The trial court therefore properly sentenced defendant to a Class 2 felony.

People v. Hill, 2012 IL App (5th) 100536 Aggravated driving under the influence requires a prison term of not less than three but not more than 14 years, "unless the court determines that extraordinary circumstances exist and require probation." (625 ILCS 5/11-501(d)(2)(G)). Adopting the analysis of **People v. Winningham**, 391 Ill. App. 3d 476, 909 N.E.2d 363 (4th Dist. 2009), the Appellate Court found that the phrase "extraordinary circumstances" is not unconstitutionally vague. The court found that the legislature intended to grant deference to trial courts to determine when probation was appropriate, and that the defendant failed to overcome the presumption that the statute was constitutional.

The court also rejected the argument that "extraordinary circumstances" were present here, and that the trial court should have imposed a term of probation. Whether probation is justified by extraordinary circumstances is left to the trial court's discretion, whose judgment is reviewed only for abuse of discretion. The trial court did not abuse its discretion here; although defendant lacked a serious criminal history, the court found that there was no merit to the argument that probation was justified because the decedent had induced defendant to drink alcohol and drive while intoxicated. Defendant's four-year-sentence was affirmed.

People v. Martin 2011 IL 109102 Unlike some subsections of the misdemeanor DUI statute that require proof of impairment, there is an absolute prohibition against driving with any amount of a controlled substance in one's system, without regard to physical impairment. 625 ILCS 5/11-501(a)(6). Because possession of a controlled substance is unlawful *per se*, to convict a defendant of a violation of §11-501(a)(6), the State need only establish that defendant used or consumed a controlled substance before driving. This is a reasonable exercise of the State's police power, as there is no meaningful way to quantify impairment because of the dangers inherent in the drugs themselves and in the lack of predictability as to the drug's potency.

The State sustained its burden with respect to misdemeanor DUI under §11-501(a)(6). Defendant's blood tested negative for drugs or alcohol, but his urine tested positive for methamphetamine. This result was consistent with evidence that controlled substances enter the bloodstream first and are eliminated through the urinary tract. Defendant admitted that he had ingested methamphetamine at some unspecified time, but not on the date of the offense. A rational jury could conclude from this evidence that defendant's last use was sufficiently recent that some remnants of the drug remained in his urine on the night of the offense. The fact that other substances may give a positive result for the presence of amphetamine is irrelevant because there was no evidence defendant had used such a substance.

Aggravated DUI requires proof of misdemeanor DUI and an aggravating factor that elevates the offense to a felony. Where the aggravating factor is involvement in a motor vehicle accident resulting in death, the misdemeanor DUI must be "a proximate cause of the

death." 625 ILCS 5/11-501(d)(1)(F). Whether proof of impairment is necessary to sustain a conviction for aggravated DUI under this subsection depends on whether impairment is an element of the underlying misdemeanor DUI. When the aggravated DUI is based on a violation of §11-501(a)(6), which requires no proof of impairment, §11-501(d)(1)(F) only requires a causal link between the physical act of driving and another person's death. There is no requirement of a causal connection between the presence of the controlled substance in the defendant's system and the death. A defendant who is involved in a fatal motor vehicle accident while violating §11-501(a)(6) is guilty of misdemeanor DUI only where his driving was not a proximate cause of the death.

In addition to proving the underlying misdemeanor DUI based on a violation of §11-501(a)(6), the State proved that defendant's driving was the proximate cause of the victims' deaths. Defendant's car crossed the center line at a curve on a two-lane highway and struck an oncoming car, killing the driver and passenger of that car.

People v. Barwan, Sandkam, & Klicko, 2011 IL App (2d) 100689 The court declined to decide whether ILCS 5/11-501(d)(2)(B), which imposes a Class 2 felony sentence for aggravated DUI based on three DUI "violations," applies if at sentencing, one of the violations used as a predicate offense is a pending charge which has not been resolved. The court noted, however, that under Supreme Court precedent, a charge on which the defendant received supervision is a prior "violation" for purposes of the Class 2 enhancement. (**People v. Sheehan**, 168 Ill.2d 298, 659 N.E.2d 1339 (1995)).

The trial court's pretrial orders dismissing the charges as insufficient were reversed, and the causes were remanded for further proceedings.

People v. Cook, 2011 IL App (4th) 090875 A person commits aggravated DUI when, in committing a DUI offense, he is involved in an accident that results in the death of another person, when the DUI violation was a proximate cause of the death. "Proximate cause" is a cause that directly produces an event without which the event would not have occurred. Proximate cause is established if an injury was foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his or her conduct. Although the foreseeability of an injury will establish proximate cause, the extent of the injury or the exact way in which it occurs need not be foreseeable.

Defendant's car was fourth in a line of five cars traveling northbound at 2:40 a.m. on a two-lane highway from a bar where all of the drivers had been patrons. A state trooper was traveling southbound on the highway almost 40 mph over the 55 mph speed limit, responding to a police call for backup at the bar. The first two cars drove onto the shoulder when they saw the activated overhead lights of the trooper's car. The third driver steered his entire car into the southbound lane, causing the trooper's car to skid into the northbound lane when the third car and the trooper's car made contact. Defendant's car then hit the driver's side of the trooper's car, killing the trooper on impact. Before the accident, defendant had been traveling 45 mph, and slowed to 38 mph before the impact. A defense expert concluded that only 1.23 seconds elapsed between the first collision and the second. Defendant's BAC was between .109 and .119 at the time of the accident, and controlled substances were detected in his blood and urine. The driver behind defendant steered his car onto an adjoining field in anticipation of the second collision. He had noticed the trooper's lights five to ten seconds before the accident.

The court concluded that a rational jury could find that defendant's DUI violation was the proximate cause of the trooper's death. The jurors "were entitled to conclude that a reasonable person in defendant's position should have anticipated danger stemming from the

intoxication of defendant and the other drivers leaving [the bar] at the same time, amplified by the time of day, the undivided, two-way traffic of the road on which defendant traveled, and the road's 55-miles-per-hour speed limit. These conditions warranted an increased awareness while driving; instead of driving with extraordinary caution, defendant drove while impaired by the effects of drugs and alcohol on his perception, coordination, and reflexes." The court gave no weight to the evidence that defendant had only 1.23 seconds to react, because in its view, the defendant should have been alerted to the danger posed by the trooper's approaching vehicle before the first collision occurred.

The court also rejected the argument that the third driver's act of crossing into the oncoming lane was an intervening or superceding cause of the trooper's death. The trooper was killed by his collision of his car with defendant's, while defendant's DUI violation was ongoing. The fact that the driver's swerving into the southbound lane was unexpected did not eliminate defendant's responsibility because a sober driver could have reacted more appropriately to the trooper's emergency lights before the third driver crossed into the southbound lane.

People v. Winningham, 391 Ill.App.3d 476, 909 N.E.2d 363 (4th Dist. 2009) 625 ILCS 5/11-501(d)(2), which requires a sentence of 3 to 14 years imprisonment for aggravated driving under the influence which results in death unless the court determines that "extraordinary circumstances exist and require probation," is neither unconstitutionally vague on its face nor unconstitutionally vague because it is susceptible to arbitrary and discriminatory application.

People v. Maldonado, Vasquez, & Mongue, 386 Ill.App.3d 964, 897 N.E.2d 854 (2d Dist. 2008) The court rejected the argument that there were irreconcilable conflicts between Public Acts 94-329, which amended 625 ILCS 5/11-501(d) to elevate the Class A misdemeanor of DUI to the Class 4 felony of aggravated DUI where the driver did not have a driver's license, P.A. 94-609, which was passed two days later and changed when the trial court could grant probation, and P.A. 94-329, which passed approximately one year later and which expanded the purposes for which DUI fines and fees could be used. The court also rejected the argument that there were numerous conflicts among seven public acts amending the Vehicle Code (Public Acts 94-329, 94-609, 94-963, 94-110, 94-113, 94-114, and 94-116).

People v. Robinson, 368 Ill.App.3d 963, 859 N.E.2d 232 (1st Dist. 2006) Defendant was charged with aggravated DUI based on having been twice previously convicted of DUI (625 ILCS 5/11-501(d)(2)). Aggravated DUI based upon prior DUI convictions is a Class 4 felony, while DUI is a Class A misdemeanor. The Appellate Court held that the trial court erred by admitting evidence of defendant's two prior DUI violations at the bench trial. 725 ILCS 5/111-3(c) provides that where the State seeks an enhanced sentence due to a prior conviction, neither the prior conviction nor the intention to seek an enhanced sentence are elements of the offense.

People v. Matthews, 304 Ill.App.3d 514, 711 N.E.2d 435 (5th Dist. 1999) Illinois law does not authorize an extended term for aggravated DUI. The court concluded that the plain language of 625 ILCS 5/11-501(d)(2), which provides that aggravated driving under the influence of alcohol "is a Class 4 felony for which a person, if sentenced to a term of imprisonment, shall be sentenced to not less than one year and not more than 3 years," precludes an extended term.

§49-3
Statutory Summary Suspensions

Illinois Supreme Court

People v. Elliott, 2014 IL 115308 The subsequent rescission of a statutory summary suspension does not render invalid a conviction for driving on a suspended license where the conduct of driving on the suspended license occurs after the license has been suspended but before the suspension has been rescinded.

Here, defendant's license was suspended on October 11. Two days later, defendant was arrested and charged with driving on a suspended license. Six days after that, the circuit court rescinded the suspension. The Illinois Supreme Court held that the rescission only applied prospectively; it did not apply retroactively to render the charge of driving on a suspended license invalid.

Under 625 ILCS 5/2-118.1(b), a trial court has the authority to "rescind" a statutory summary suspension. The term "rescind" has numerous meanings, both legal and non-legal, and depending on the particular definition and context, can have either prospective or retroactive meaning. Similarly, the Illinois legislature uses the term "rescind" inconsistently, sometimes intending a retroactive meaning while other times a prospective meaning. But for a number of reasons, the legislature intended the term "rescind" to be prospective in the summary suspension statute.

First, a prospective reading best comports with the public policy behind the statutory summary suspension statute. That policy is to remove offending drivers from the road swiftly and certainly, not hopefully or eventually, and a prospective reading accomplishes this far better than a retroactive reading which would make the suspension contingent on future court proceedings.

Second, a prospective reading best comports with other provisions of the Illinois Vehicle Code relating to statutory summary suspensions. For example, some provisions state that a pending petition to rescind shall not stay or delay the summary suspension. Others make it a crime to drive at a time when a license is suspended. The provisions therefore suggest that the suspension remains in effect until proven to be invalid, supporting a prospective reading.

Third, a prospective reading makes the legislative scheme easy and convenient to enforce since courts only need to determine the status of the driver's license at the time of the arrest. A retrospective reading by contrast introduces uncertainty and inefficiency into the system.

Finally, a prospective reading is consistent with the way prior decisions have characterized the statutory summary suspension scheme by, for example, stating that a defendant must file a petition to determine whether the suspension should be lifted.

For these reasons, in relation to the crime of driving on a suspended license, the recision of a statutory summary suspension is of prospective effect only.

People v. Wear, 229 Ill.2d 545, 893 N.E.2d 631 (2008) In reviewing a trial court's ruling on a motion to rescind a summary suspension of a driver's license, a reviewing court should apply the two-part standard of review outlined **in Ornelas v. United States**, 517 U.S. 690 (1996). Thus, findings of historical fact will be upheld unless clear error is demonstrated, but the lower court's "ultimate legal ruling" is reviewed de novo. The court noted that it has never specifically decided whether the Fourth Amendment exclusionary rule applies to implied-consent proceedings, and that the State waived the issue by failing to argue that the

exclusionary rule does not apply to summary suspension. "We do, however, acknowledge that the use of the phrase 'exclusionary rule' is a misnomer in this context," because a "prevailing petitioner would not gain the exclusion of anything from a rescission hearing." Instead, if the court finds "no reasonable grounds" for an arrest, the license suspension is simply rescinded.

People v. Bywater, 223 Ill.2d 477, 861 N.E.2d 989 (2006) 625 ILCS 5/2-118.1(b) provides that a hearing on a petition to rescind a summary suspension of a driver's license must be held "[w]ithin 30 days after receipt of the written request." The Supreme Court found that the plain language of the statute requires a hearing within 30 days after the petition is filed with the circuit clerk, not within 30 days of the effective date of service on the State.

People v. Cosenza, 215 Ill.2d 308, 830 N.E.2d 522 (2005) 625 ILCS 5/2-118.1(b), which provides that a hearing on a petition to rescind a statutory summary suspension "shall be conducted" within 30 days after receipt of defendant's request for a hearing, is satisfied where the hearing begins within 30 days after the defendant's written request. The court rejected the Appellate Court's holding that the hearing must be completed within 30 days of the request.

People v. Martinez & Salazar, 184 Ill.2d 547, 705 N.E.2d 65 (1998) Under the Illinois Vehicle Code, a summary suspension of driving privileges continues until "all appropriate fees have been paid" (625 ILCS 5/203.1), including the $60 reinstatement fee. Thus, where the summary suspension periods had elapsed several months earlier, but neither defendant had paid the reinstatement fee, the trial court did not err by entering convictions for driving with suspended licenses.

People v. Smith, 172 Ill.2d 289, 665 N.E.2d 1215 (1996) Defendant was arrested for DUI, and was served with notice of a statutory summary suspension for refusing to take a breathalyzer. Defendant filed a petition to rescind the statutory summary suspension and a motion for substitution of the judge. Defendant also asked that the rescission petition be heard within 30 days, as is required by 625 ILCS 5/2-118.1(b). The trial judge scheduled a hearing on the motion to substitute for 15 days after the date the petition and motion were filed. At the hearing, the motion to substitute was summarily granted without argument by the parties or objection by the State. The case was transferred to a new judge, who scheduled the rescission hearing beyond 30 days after the date defendant had filed his petition and motion, but within 30 days after the motion to substitute was granted. At the hearing, defendant argued that the statutory summary suspension should be automatically rescinded because the hearing had not been conducted within 30 days after the petition had been filed. The Supreme Court held that although a hearing on a petition to rescind must be held within 30 days after the petition is filed or defendant's first appearance on the DUI charge, the period is extended where delay is caused by the defendant. Where the defendant requests a substitution of the judge, the 30-day requirement begin to run after the new judge has received a request for the rescission hearing. Because it is to be presumed that the trial judge heard the motion for substitution "at the first available date," the trial court was justified in attributing the 15-day delay to the defense.

People v. Schaefer, 154 Ill.2d 250, 609 N.E.2d 329 (1993) Chapter 95½, ¶2-118.1(b) (625 ILCS 5/2-118.1) provides that where a motorist seeks to rescind a summary suspension of his driver's license due to his refusal to take a blood alcohol test, a hearing must be provided

within "30 days after receipt of the written request." The Supreme Court held the 30-day period begins to run when the petition to rescind is filed with the circuit clerk with service on the State. Because the State bears the burden of obtaining a hearing, rescission is required where no hearing is held within 30 days.

People v. Wegielnik, 152 Ill.2d 418, 605 N.E.2d 487 (1992) After defendant was arrested for DUI, he received the statutorily required warning that his driver's license would be suspended for six months if he refused to take a breathalyzer test (Ch. 95½, ¶11-501.1(c)). Although defendant refused to take the test, he signed a statement acknowledging the warnings. At the hearing to rescind the six-month license suspension, the evidence showed that defendant was a native of Poland who could not read or write English (though he could speak the language "just a little"). The trial court found that defendant had a "basic inability" to understand the English language, and rescinded the suspension. The Appellate Court affirmed the rescission because defendant did not understand English well enough to comprehend that he had been asked to take a blood-alcohol test. The Supreme Court reinstated the license suspension. The implied-consent statute requires only that a motorist be warned that his license will be suspended for six months if he refuses to take a breathalyzer, and does not require that he understand the consequences of refusing to take the test. The purpose of the license-suspension procedure is to allow the State to obtain objective evidence about whether a driver is intoxicated, and the purpose of the warnings is not to advise drivers of their right to refuse the test, but to encourage them to provide the evidence. Delaying the test until an interpreter becomes available would vitiate the intent of the statute, because evidence of intoxication dissipates with time. The legislature did not intend that non-English speaking motorists be exempted from implied-consent laws.

Palatine v. Regard, 136 Ill.2d 503, 557 N.E.2d 898 (1990) Villages have the authority under Ch. 95½, ¶20-204 to adopt by reference the provisions of the Illinois Vehicle Code pertaining to the summary suspension of drivers' licenses. Also, a village attorney has authority to oppose a driver's petition to rescind the Secretary of State's summary suspension of his driver's license.

People v. McClain, 128 Ill.2d 500, 539 N.E.2d 1247 (1989) The verification procedures in the Code of Civil Procedure (Ch. 110, ¶1-109) apply to a report filed by an arresting officer under the summary suspension of driver's license provisions (Ch. 95½, ¶11-501.1(d)). Thus, the provision in ¶11-501.1(d) (that the arresting officer file a "sworn report"), does not require that the report be sworn under oath; instead, "a verification pursuant to section 1-109 of the Code of Civil Procedure satisfies the requirements of section 11-501 of the [Vehicle] Code that a report be sworn."The Court also held that the arresting officer's failure to include the time and place of the defendant's breathalyzer test in his report was not a ground for rescission of the summary suspension. Compare, **People v. Badoud**, 122 Ill.2d 50, 521 N.E.2d 884 (1988) (arresting officers may swear to the reports at the hearing).

People v. Orth, 124 Ill.2d 326, 530 N.E.2d 210 (1989) The Court held that a driver whose license is summarily suspended bears the burden of proving that the suspension should be rescinded under Ch. 95½, ¶2-118.1(b). Placing the burden of proof on the suspended motorist does not violate due process. Once a motorist makes a prima facie case that a breath test result did not disclose a blood-alcohol concentration of 0.10 or more or that the test result did not accurately reflect the blood-alcohol concentration, the State can avoid rescission under ¶2-118.1(b) by moving for the admission of the test into evidence with the required

foundation. The State may not prove the results of a breathalyzer test by relying on the arresting officer's reports, without establishing the foundation needed for the admission of the results in a criminal DUI proceeding. The required foundation for the admission of the breath test includes evidence that (a) the tests must have been performed according to the uniform standard adopted by the Department of Public Health (Department), (b) the operator administering the tests must have been certified by the Department, (c) the machine used must have been a model approved by the Department, must have been tested regularly for accuracy and must have been working properly, (d) The motorist must have been observed for 20 minutes before the first test and 15 minutes between the first and second tests, and during these periods he must not have smoked, regurgitated, or drank, and (e) the results appearing on the printout sheet must be identified as the tests given to the motorist. To establish a prima facie case based upon the claim that the test results were unreliable, the motorist may present evidence: "of any circumstances which tend to cast doubt on the test's accuracy, including, but not limited to, credible testimony by the motorist that he was not in fact under the influence of alcohol. We emphasize that this is not an invitation to commit perjury. Only if the trial judge finds such testimony credible will the burden shift to the State to lay a proper foundation for the admission of the test results."

People v. Gerke, 123 Ill.2d 85, 525 N.E.2d 68 (1988) A circuit court does not have discretion to rescind a statutory summary suspension issued by the Secretary of State pursuant to ¶11-501.1 solely on the basis of the disposition of the underlying criminal charges.

Illinois Appellate Court

People v. Kotlinski, 2024 IL App (4th) 230526 Defendant filed a petition to rescind his statutory summary suspension pursuant to 625 ILCS 5/2-118.1(b), which the circuit court allowed, entering what it called a "**Madden** order" **(People v. Madden**, 273 Ill. App. 3d 114 (1995)). Under **Madden**, where a delay in confirming a summary suspension precludes a timely hearing on a defendant's petition to rescind the suspension, the delay is attributable to the State and requires rescission of the suspension. The State appealed, arguing that **Madden** was incorrect in its holding that a trial court cannot rescind a suspension until the Secretary of State (SoS) confirms it. The appellate court agreed.

Statutory summary suspensions are governed by 625 ILCS 5/11-501.1. That statute provides, generally, that where a driver refuses to submit to chemical testing or tests above the legal limit, his or her license is subject to suspension. To effect the suspension, the officer must submit a sworn report to the circuit court and the SoS, stating the reason for the suspension. Pursuant to 11-501.1(f), the officer must also "serve immediate notice" of the suspension on the driver, and the suspension "shall be effective as provided in paragraph (g)." Paragraph (g) provides that the suspension "shall take effect on the 46th day" following the date notice was given to the defendant. Subsection (e) states that the SoS "shall enter" the suspension on receipt of the officer's sworn report, and, subsection (h) provides that upon receipt of that report, the SoS "shall confirm" the suspension by mailing notice of its effective date to the defendant and the court. Subsection (h) goes on to provide that "should the sworn report be defective by not containing sufficient information or be completed in error, the confirmation...shall not be mailed to the person or entered to the record; instead, the sworn report shall be forwarded to the court of venue with a copy returned to the issuing agency identifying any defect." Relatedly, Section 2-118.1(b) provides that a defendant may file a petition to rescind the suspension within 90 days after notice of the suspension is served and that a hearing on the petition to rescind shall be conducted within 30 days.

Here, at the time defendant refused a breath test, he was issued the "Warning to Motorist" which informed him that his license would be summarily suspended. Less than a week later, he filed a petition to rescind the suspension. Before the hearing date, the SoS sent notice to the court and the police department that it could not suspend or revoke defendant's license because of a defect in the officer's sworn report – specifically the citation number was illegible. Ultimately, the circuit court granted rescission on the basis that the SoS had not confirmed the suspension by the date of the hearing.

The appellate court held that confirmation is not a prerequisite to a summary suspension taking effect. Instead, under the plain language of subsections 11-501.1(e)-(g), a suspension is effective 46 days after the law enforcement officer serves the driver with notice of the suspension. The court concluded that the SoS confirmation process provided for in subsection (h) was intended to "run parallel" to the rescission process set forth in Section 2-118.1(b). Accordingly, the court vacated the **Madden**-based rescission order and remanded the matter for a hearing on the merits of defendant's petition to rescind.

The dissenting justice would have vacated the rescission order for lack of jurisdiction. More specifically, because the SoS had not yet confirmed the summary suspension at the time of the hearing, the dissenting justice would have found that there was no suspension entered. That is, confirmation of the suspension by the SoS is more than a formality; it is a required component for the suspension to take effect. Because there was no confirmation, the circuit court lacked jurisdiction to adjudicate the petition to rescind.

People v. Whiles, 2024 IL App (4th) 231086 The trial court rescinded defendant's statutory summary suspension. The court found that at the time of the request, the police lacked reasonable grounds to believe that he was under the influence. 625 ILCS 5/2-118.1(b)(2). The appellate court reversed.

Defendant argued on appeal that the officer lacked reasonable suspicion to stop the car, because the officer who conducted the stop did not witness any evidence of impaired driving. The appellate court disagreed, citing the principle of imputed collective knowledge. The officer had received a call that a nearby "red Jeep" was "possibly intoxicated" and when he observed a red Jeep, a Michigan police cruiser trailing the jeep flashed its lights at him. The Illinois officer took this to mean that the Michigan officer identified the red Jeep as the potentially intoxicated driver but, because he lacked jurisdiction, the Illinois officer should pull over the car. It later turned out that the Michigan officer had witnessed several acts of reckless driving that amounted to reasonable suspicion of drunk driving. Because the Michigan officer's knowledge could be imputed to the Illinois officer, the stop was made with reasonable reasonable suspicion.

Defendant argued that the knowledge of an officer with no jurisdiction could not be imputed to the officer who conducted the stop. This claim failed in light of **United States v. Hensley**, 469 U.S. 221 (1985), which held that the Kentucky police could rely on a flyer issued by the Ohio police and stop a suspect, as long as the Ohio police had reasonable suspicion. Applying this principle to the instant case, the Michigan officer's reasonable suspicion was imputable to the Illinois officer at the time of the stop.

People v. Boyd, 2023 IL App (2d) 220053 A hearing on a petition to rescind a statutory summary suspension must be held within 30 days of the filing date. 625 ILCS 5/2-118.1(b). Delays attributable to the defense toll the 30-day deadline, as is the case in the speedy-trial context.

Here, defendant agreed that the court could set the hearing date on November 2, 2021, beyond the 30-day window, because only 20 days or so had been attributable to the State. At

the hearing, however, the defense moved to rescind based on a violation of the 30-day rule, arguing that more than 30 days of delay was attributable to the State. The trial court agreed, and rescinded the SSS.

The appellate court reversed. The defendant invited the error by not only agreeing to the date, but by representing to the trial court that this date would not violate the 30-day rule.

People v. Sandoval, 2023 IL App (2d) 220155 At the hearing on defendant's petition to rescind his statutory summary suspension, the trial court erred in refusing to consider the arresting officer's official reports which were offered by the State. Defendant testified at the hearing and told the court that he had been obeying all laws and had not consumed any alcohol on the date in question. The arresting officer did not testify at the hearing, but the State sought to rely on statements in the officer's official reports which indicated that defendant was stopped for speeding, that he did not pull over right away, that he hit the curb when he did pull over, and that he had glassy, bloodshot eyes and slurred speech. The court declined to consider the reports and granted rescission.

Section 2-118.1(b) of the Illinois Vehicle Code provides that the hearing on a petition to rescind may be conducted on the arresting officer's official reports. It does not give defendant the right to choose whether the court considers those reports. The State need only file the reports in the circuit court to have them considered at the hearing. Here, the State filed the DUI citation, the officer's sworn report, and the warning to motorist, which was all that was required. Thus, the court should have considered them in ruling on defendant's petition to rescind. The matter was vacated and remanded for a new hearing.

People v. Darguzis, 2022 IL App (3d) 200325 A statutory summary suspension proceeding is a civil action where the defendant motorist, as the petitioner, requests the judicial rescission of a license suspension, and the State is placed in the position of a civil defendant. In a civil proceeding, a party may serve a written request for the admission of facts on any other party, pursuant to Illinois Supreme Court Rule 216. Here, defendant served a request to admit on the Will County State's Attorney's Office, asking that the State admit that at the time of arrest, defendant was located within a private cemetery, and that the police only observed defendant within the cemetery property and did not observe defendant driving upon any public highway. The State's Attorney refused to respond to the request to admit, arguing that it lacked the authority to do so.

The Appellate Court held that the State's Attorney's office has the authority to respond to a request to admit pursuant to the executive authority vested in that office. The court rejected the State's argument that defendant must serve the Governor with such a request, noting that the State acknowledged that the Governor would lack the knowledge to be able to respond and would have to refer the request back to the State's Attorney's office, regardless.

Here, the State's Attorney was in possession of the information necessary to respond to defendant's request to admit. Thus, there was no merit to the State's contention that it could not legally respond. And, there is no prohibition against the use of requests to admit in statutory summary suspension proceedings. Accordingly, the Appellate Court affirmed the circuit court's decision deeming the facts admitted by virtue of the State's failure to respond and granting defendant's motion for summary judgment rescinding the statutory summary suspension of his driver's license.

People v. Howard, 2022 IL App (3d) 210134 The circuit court's decision to grant a petition to rescind statutory summary suspension was against the manifest weight of the evidence. Defendant, whom police discovered passed out in his car in a Speedway gas station parking lot, sought rescission on the basis that the officer had no reasonable grounds to believe that he was driving or in actual physical control of a motor vehicle "upon a highway" while under the influence of alcohol. The Vehicle Code defines "highway" as a publicly maintained way. Here, defendant elicited testimony from the officers that they were not aware of any public maintenance of the Speedway parking lot, but this was insufficient to establish a *prima facie* case that the lot was not publicly maintained and therefore not a highway.

People v. McNally, 2022 IL App (2d) 180270 Defendant challenged his statutory summary suspension on appeal, and the State argued that the challenge was moot because the suspension had terminated before the appeal was heard. The Appellate Court found that review was warranted under the "collateral consequences exception" to the mootness doctrine which applies when the order appealed has collateral consequences such that it could return to plague the complainant in some future proceeding. Defendant's summary suspension fit within that exception because if he was charged with another DUI within five years, it would keep him from being considered a "first offender" for purposes of obtaining certain driving privileges. Further, the appearance of a suspension on an individual's driving record can impact insurance rates and employment, both of which are collateral consequences.

On the merits, the court rejected defendant's argument that the Secretary of State should not have confirmed the officer's sworn report because it was defective on its face. The record showed that the State had been given leave to amend the report, and the court had relied on the properly amended report in upholding the suspension of defendant's driving privileges.

Further, defendant's right to a hearing within 30 days on his petition to rescind statutory summary suspension was not violated. When defendant's petition was called for hearing, his attorney was not in the courtroom because he was delayed in another court proceeding. The court subsequently struck the petition, which counsel later re-filed that same date. A hearing was held within 30 days of the re-filing, but more than 30 days after the original petition was filed. Because the delay in hearing the petition was due to defense counsel's absence, it was attributable to defendant and thus defendant was not entitled to have his suspension rescinded.

Finally, defendant received proper service of the amended sworn report where it was tendered to him in open court. While the rules of civil procedure generally apply to statutory summary suspension proceedings, a sworn report is not a pleading or a complaint requiring formal service but rather it is "the action which begins the administrative process of a driver's license suspension."

People v. Araiza, 2020 IL App (3d) 170735 Trial court properly granted petition to rescind statutory summary suspension on the basis that there was no valid reason for the underlying traffic stop. The fact that defendant did not immediately turn her vehicle when she had a green turn light did not constitute the failure to obey a traffic-control device under 625 ILCS 5/11-305. With regard to green traffic arrows, that statute provides only that a motorist "may" enter the intersection and turn but does not require that a motorist do so within a specified amount of time. Here, a four-second delay did not violate the statute. Likewise, while defendant's driver's side tires went over the rumble strip portion of the median when she did make the turn, there was no marking prohibiting defendant from doing so and therefore the

trial court's conclusion that defendant had not driven erratically was not against the manifest weight of the evidence.

People v. Stoffle, 2020 IL App (2d) 190431 Defendant filed a petition to rescind her statutory summary suspension and sought discovery of certain items from the State. The State did not provide defendant with names of relevant and discoverable witnesses until the last day on which a timely hearing could have been held on her petition. This effectively prevented defendant from calling those witnesses and denied her a timely hearing. The State's earlier filing of an objection to defendant's discovery request did not automatically toll the 30-day period for such a hearing, and defendant was not responsible for the delay in proceedings on her petition to rescind. The trial court granted the petition, and the Appellate Court affirmed.

People v. Norris, 2018 IL App (3d) 170436 A **Miranda** violation requires exclusion of defendant's statements at his criminal trial, which serves to deter police officers from not complying with **Miranda**. But, exclusion of those same statements at a statutory summary suspension hearing is not required because there is no additional deterrent effect. Statutory summary suspension proceedings protect the public from unsafe drivers. The liberty interests at stake in those proceedings are not so great as to require exclusion.

People v Durden, 2017 IL App (3d) 160409 Following his arrest for DUI, the defendant was read the Warning to Motorist and given a breath test. The test produced a result of 0.035 (below the 0.05 level for presuming that an individual is *not* under the influence of alcohol). The police then requested he take a blood or urine test, he refused, and his driver's license was summarily suspended.

The request for further testing was permissible because the defendant's actions and behavior were inconsistent with the breath test result. It was reasonable for the police to request additional testing to determine if the defendant was under the influence of drugs.

As a matter of first impression in Illinois, the court also determined that the police are not required to provide a second Warning to Motorist when requesting further testing, particularly where the subsequent testing was requested within an hour after the initial warnings were given.

People v. Webber, 2014 IL App (2d) 130101 Defendant's license was originally revoked for driving a damaged vehicle. Following this revocation, defendant never renewed his license. Defendant's license was revoked a second time for driving under the influence (DUI). In the present case, defendant was charged with driving while his license was revoked (DWLR) which was enhanced to felony because the prior revocation was for DUI.

Defendant argued that the second revocation could be of no effect because he had no license that could have been revoked at the time he committed the DUI offense. His DWLR conviction thus could not be enhanced to a felony.

The Appellate Court held that defendant's license was properly and effectively revoked a second time for the DUI offense. In reaching this decision, the court agreed with **People v. Smith**, 2013 IL App (2d) 121164 (holding that a license may be revoked a second time even if it has not been renewed) and disagreed with **People v. Heritsch**, 2012 IL App (2d) 090719 (holding that a license cannot be revoked a second time unless it has been renewed).

The word "revocation" is a term of art that refers to a formal act and its attendant legal consequences, and there is no limitation on the number of times a license may be

revoked. Accordingly, defendant's second revocation was effective and could be used to enhance his DWLR conviction to a felony.

The dissent would hold that the word "revocation" is not a term of art, and given its plain and ordinary meaning, cannot apply where a license has never been renewed.

People v. Smith, 2013 IL App (2d) 121164 A statutory summary suspension of one's driving privileges under the implied consent law is valid even where the driver's license in question has already been suspended or revoked and has not been restored. The court declined to follow **People v. Heritsch**, 2012 IL App (2d) 090719, which held that a statutory summary suspension is a nullity where the driver's license in question is under a previous suspension or revocation.

Thus, defendant was eligible for an enhanced sentence under 625 ILCS 5/6-303(d-5) for driving while a summary suspension was in effect, although his driver's license had already been revoked when the actions which gave rise to the summary suspension occurred. At the time of the offense, §5/6-303(d-5) provided an enhanced penalty for subsequent offenses of driving with a revoked or suspended license if the previous revocation or suspension was for specified reasons. Defendant claimed that under **Heritsch**, the summary suspension was a nullity because his license was still under the previous suspension.

People v. Johnson, 379 Ill.App.3d 710, 885 N.E.2d 358 (2d Dist. 2008) Under 625 ILCS 5/6-205, a driver whose license has been summarily suspended may obtain a restricted driving permit in order to drive to and from work, to receive medical care, and to attend alcohol rehabilitation or other classes. The Appellate Court found that the act of operating a vehicle at 4:30 p.m. on a Sunday afternoon did not provide a reasonable suspicion of criminal activity sufficient to authorize a traffic stop, even if the officer knew that the driver had a restricted driving permit.

People v. Fint, 183 Ill.App.3d 284, 538 N.E.2d 1348 (4th Dist. 1989) Defendant was entitled to have her summary suspension rescinded where the arresting officer's report stated that defendant was arrested at 11:47 p.m. on 9/3/88 and submitted to a chemical test at 12:21 a.m. on 9/3/88. See also, **People v. Cooper**, 174 Ill.App.3d 500, 528 N.E.2d 1011 (2d Dist. 1988).

People v. Hutchinson, 141 Ill.App.3d 1086, 491 N.E.2d 173 (1st Dist. 1986) An implied-consent hearing is civil in nature and the State has the burden to prove the issues by a preponderance of the evidence. The issues at an implied-consent hearing are whether: (1) defendant was lawfully arrested, (2) the officer had reasonable cause to believe defendant was driving or in physical control of a vehicle while under the influence, and (3) defendant refused to submit and complete a blood-alcohol test upon the request of an officer. Whether the defendant was informed his license would be suspended if he refused to submit is not an issue at an implied-consent hearing.

People v. Lazzara, 145 Ill.App.3d 677, 495 N.E.2d 1144 (1st Dist. 1986) A defendant's plea of guilty to driving while under the influence of alcohol is admissible at an implied-consent hearing on the issue of probable cause.

§49-4
License Violations

Illinois Supreme Court

People v. Elliott, 2014 IL 115308 The subsequent rescission of a statutory summary suspension does not render invalid a conviction for driving on a suspended license where the conduct of driving on the suspended license occurs after the license has been suspended but before the suspension has been rescinded.

Here, defendant's license was suspended on October 11. Two days later, defendant was arrested and charged with driving on a suspended license. Six days after that, the circuit court rescinded the suspension. The Illinois Supreme Court held that the rescission only applied prospectively; it did not apply retroactively to render the charge of driving on a suspended license invalid.

Under 625 ILCS 5/2-118.1(b), a trial court has the authority to "rescind" a statutory summary suspension. The term "rescind" has numerous meanings, both legal and non-legal, and depending on the particular definition and context, can have either prospective or retroactive meaning. Similarly, the Illinois legislature uses the term "rescind" inconsistently, sometimes intending a retroactive meaning while other times a prospective meaning. But for a number of reasons, the legislature intended the term "rescind" to be prospective in the summary suspension statute.

First, a prospective reading best comports with the public policy behind the statutory summary suspension statute. That policy is to remove offending drivers from the road swiftly and certainly, not hopefully or eventually, and a prospective reading accomplishes this far better than a retroactive reading which would make the suspension contingent on future court proceedings.

Second, a prospective reading best comports with other provisions of the Illinois Vehicle Code relating to statutory summary suspensions. For example, some provisions state that a pending petition to rescind shall not stay or delay the summary suspension. Others make it a crime to drive at a time when a license is suspended. The provisions therefore suggest that the suspension remains in effect until proven to be invalid, supporting a prospective reading.

Third, a prospective reading makes the legislative scheme easy and convenient to enforce since courts only need to determine the status of the driver's license at the time of the arrest. A retrospective reading by contrast introduces uncertainty and inefficiency into the system.

Finally, a prospective reading is consistent with the way prior decisions have characterized the statutory summary suspension scheme by, for example, stating that a defendant must file a petition to determine whether the suspension should be lifted.

For these reasons, in relation to the crime of driving on a suspended license, the recision of a statutory summary suspension is of prospective effect only.

People v. Jackson, 2013 IL 113986 When defendant was 15, he was charged with the offense of driving under the influence of alcohol. Although he had never applied for a driver's license, the Secretary of State created a driver's license in his name and then suspended it. Approximately 18 months later, defendant was convicted of driving while license suspended.

Several years later, defendant applied for an Illinois driver's license under his correct social security number and name, but without the middle initial which had been used by the Secretary of State in creating the license nine years earlier. When applying for this license,

defendant answered in the negative when asked whether his driver's license was suspended, revoked, cancelled or refused.

The Secretary of State issued a new license. Two years later, defendant renewed the license without any objection by the Secretary of State.

Defendant was subsequently charged with driving on a suspended license. The trial court found that 625 ILCS 5/6-303(a) and (d) (driving with a suspended license) was unconstitutional as applied to this defendant. The trial judge concluded that the statute denied due process in that it created an absolute liability offense and precluded defendant from introducing evidence that he had not committed fraud in obtaining the second license.

The Supreme Court found that because the issue could have been decided on nonconstitutional grounds, the trial court erred by finding the statute unconstitutional. The elements of the offense of driving while license suspended are: (1) an act of driving a motor vehicle on a highway, and (2) the fact that the defendant's driver's license has been revoked or suspended. The parties agreed that once the State presents evidence to show that the defendant's license was suspended or revoked, defendant may present evidence of the second license to support his defense that his driving privileges were not suspended or revoked. In response, the State could assert that defendant's license was not restored in compliance with the provisions of the Code, but was instead obtained through fraud. Should the trier of fact find that defendant restored his license in compliance with the relevant procedures in the Vehicle Code and did not do so by fraud, the State would have failed to prove the second element of the offense.

Because defendant would be entitled to present evidence concerning his application for a second license, and the trier of fact would be required to determine whether the defendant misled authorities into reinstating his driving privileges, the due process violation identified by the trial court did not exist. Thus, defendant's motion to declare §6-303(a) and (d) unconstitutional was improperly granted. The trial court's order was vacated and cause remanded for further proceedings.

People v. Boeckmann & Maschhoff, 238 Ill.2d 1, 932 N.E.2d 998 (2010) Due process is not violated by 625 ILCS 5/6-206(a)(43), which requires suspension of driving privileges for three months where an underage person receives supervision for the offense of unlawful consumption of alcohol while under the age of 21. (See **STATUTES**, §48-3(a)).

The court rejected the defendant's argument that the Secretary of State has discretion whether to suspend a person's driving privileges for underage consumption of alcohol. Because 625 ILCS 5/6-206 contains a specific suspension period for the driving privileges of a person who receives court supervision for underage drinking, the court concluded that the legislature intended to make revocation mandatory.

People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 (2010) Where the defendant was convicted of one count of aggravated driving under the influence of a drug or combination of drugs while his driver's license was suspended or revoked and one count of driving while his license was suspended or revoked, the court rejected the argument that the conviction for driving while license revoked must be vacated on one-act, one-crime principles or as a lesser included offense. (See **VERDICTS**, §§55-3(a), (b)).

People v. Close, 238 Ill.2d 497, 939 N.E.2d 463 (2010) The elements of driving with a revoked license (625 ILCS 5/6-303) include: (1) the act of driving on a highway, (2) while the driver's license is revoked. Although §6-303 excepts from the definition of the offense driving that is "specifically allowed by a judicial driving permit, family financial responsibility

driving permit, probationary license to drive, or a restricted driving permit," an exception which withdraws specified acts from the operation of a statute is not an element of the offense but a matter of defense.

Thus, the possible application of a restricted driving permit is not an element of driving with a revoked license, but a matter of defense which the accused may raise.

Illinois Appellate Court

People v. Brown, 2023 IL App (3d) 210460 Defendant was convicted of driving while license revoked. 625 ILCS 5/6-303(a). The trial court rejected a State motion *in limine* that would have barred an affirmative defense of necessity. At trial, defendant testified that his decision to drive the car was under a threat of force. The trial court denied his request for a jury instruction on necessity, relying primarily on language from **People v. Jackson**, 2013 IL 113986, which suggests that DWLR is a "strict liability" offense to which affirmative defenses do not apply. Defendant was found guilty.

On appeal, defendant argued that the court's reliance on **Jackson** was erroneous, as the cited language was *dicta*, and many other authorities have held that affirmative defenses apply to strict liability offenses. While the appellate court granted this might be true, the trial court had another, adequate justification for denying the instruction – defendant failed to plead the elements of the defense. The trial court's assessment was correct. Defendant testified he was a passenger in a woman's car when his girlfriend pulled up and blocked them in. Believing himself to be a superior driver than the woman, he told her to switch seats so that he could evade his girlfriend and escape the "drama." This is not the type of forced decision between a lesser of two evils contemplated by the necessity defense.

Finally, any error occasioned by the trial court's reversal of its initial ruling, which induced defendant to testify and admit to driving the vehicle, was harmless error. Notably, the judge had pronounced that it would reserve a decision on the jury instruction until after hearing the evidence. While a dissenting justice found this inducement to be structural error that impinged on defendant's fundamental right not to testify, the majority disagreed because it could assess the prejudice resulting from the error. It found no prejudice, given that the record overwhelmingly established that defendant drove the vehicle, including dashcam footage of him admitting to driving.

People v. Brown, 2023 IL App (3d) 210460 To prove the Class 2 felony version of driving while license revoked, the State must establish that defendant's underlying revocation was due to a DUI conviction or that 15 or more of his prior DWLR convictions occurred when his driver's license was suspended or revoked based on a DUI. 625 ILCS 5/6-303(d-5). Here, the driving abstract showed defendant's license was revoked, but it did not state the basis for the revocation. The appellate court remanded for a new sentencing hearing.

People v. Grandadam, 2015 IL App (3d) 150111 The offenses of driving while license revoked, operating an uninsured motor vehicle, and operating a motor vehicle without valid registration all require that the State prove that the defendant was operating a "motor vehicle." A "motor vehicle" is defined as a vehicle which is self-propelled or propelled by electric power obtained from overhead wires, "except for vehicles moved solely by human power, motorized wheelchairs, low-speed electric bicycles, and low-speed gas bicycles." 625 ILCS 5/1-146. A "low-speed gas bicycle" is a two or three-wheeled device with "fully operable pedals and a gasoline motor of less than one horsepower, whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 miles per hour." 625 ILCS 5/1-140.15.

The court concluded that the State failed to prove beyond a reasonable doubt that defendant was operating a "motor vehicle." Defendant was riding a gas-powered bicycle which used both a gasoline motor and pedal power. Officers testified that they estimated defendant to be traveling at approximately 15 miles an hour, and that he was stopped for failing to obey a stop sign and for making an illegal left turn. After he was stopped, defendant stated that the bicycle could travel between 25 and 30 miles an hour and that he had once gotten it up to 41 miles per hour. The officers did not know whether the latter speed was reached while riding downhill.

Defendant testified that the gas motor provided .75 horsepower, that the bicycle must be pedaled to eight to 10 miles an hour before the motor can be activated, and that when using just the motor the bicycle's top speed was 17 miles per hour. The State presented no evidence concerning the bicycle's capabilities except for the statements defendant made to the officers after he was stopped.

The court concluded that the State presented insufficient evidence to allow a reasonable trier of fact to conclude beyond a reasonable doubt that the bicycle was a "motor vehicle" rather than a "low-speed gas bicycle." The court stressed that defendant's statements to police did not distinguish between the bicycle's capabilities when using only the motor and when using the pedals to assist. In addition, defendant's unrebutted testimony stated that when using only the motor, the maximum speed was 17 miles per hour, which was three miles below the maximum speed for "low-speed gas bicycles." Under these circumstances, the evidence was insufficient to prove beyond a reasonable doubt that defendant's bicycle was a "motor vehicle."

The court rejected the argument that the trial court could infer that defendant's statements after the stop meant that the bicycle could reach speeds of 25 to 30 miles per hour using only the motor. While a reviewing court will allow all reasonable inferences, the only evidence concerning the bicycle's speed when powered solely by the motor was defendant's testimony at trial. Defendant's general statements to the officers are "simply not probative of the method by which the bicycle" reached speeds in excess of 20 miles per hour.

The convictions for driving while license revoked, driving an uninsured motor vehicle, and driving without valid registration were reversed.

People v. Scarbrough, 2015 IL App (3d) 130426 Under 730 ILCS 5/5-6-1(j), a defendant who has been charged with driving while his license is revoked (625 ILCS 6-303(a)) is ineligible for supervision if: (1) his license was revoked because of a violation of 625 ILCS 11-501 (driving under the influence); and (2) he has a prior conviction under section 6-303 within the last 10 years.

Defendant entered a blind guilty plea to driving on a revoked license. The trial court sentenced him to 12 months of conditional discharge with 30 days in jail, finding that he was ineligible for supervision. On appeal, defendant argued that he was eligible for supervision for two reasons: (1) his license had not been revoked because of a section 11-501 violation; and (2) his prior conviction under section 6-303 had not occurred within the last 10 years. The Appellate Court upheld defendant's sentence, rejecting both of his arguments.

Defendant's license had been revoked because of a bond forfeiture conviction based on an underlying DUI case. The Court held that for purposes of the Illinois Driver Licensing Law (625 ILCS 5/6-100 to 6-1013) bond forfeitures constitute convictions. Defendant's bond forfeiture in a DUI case was thus the equivalent of a conviction for DUI. Accordingly, his license had been revoked because of a violation of section 11-501.

The Court also rejected defendant's argument that the prior conviction must have occurred within 10 years of the time defendant pled guilty in the present case. Instead, the

prior conviction must have occurred within 10 years of the time defendant was charged with the present offense. Here, defendant was charged with the current offense within 10 years from the date he was convicted of the previous 6-303 offense, and thus was not eligible for supervision.

People v. McPeak, 2012 IL App (2d) 110557 The State bears the burden of proving all elements of the offense beyond a reasonable doubt. Where a statutory exception to an offense is "part of the body of the substantive offense," the State's burden includes disproving the exception beyond a reasonable doubt. Even where an exception appears within the statutory definition of an offense, however, it is "part of the body" of the offense only if it is "so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception."

By contrast, a statutory exception which merely withdraws certain acts or persons from the operation of the statute is not part of the body of the offense. The defense has the burden of proof concerning such exceptions.

625 ILCS 5/6-303(a) defines the offense of driving with a suspended or revoked license as driving or being in actual physical control over a motor vehicle while one's license is revoked or suspended, "except as may be specifically allowed by" statutes authorizing a "monitoring device driving permit," which authorizes the offender to drive upon installation of a device which prevents the vehicle from starting if the driver's breath alcohol exceeds a specified level. The Secretary of State must issue such a permit to first offenders unless the offender declines.

The court concluded that the MDDP provision merely withdraws drivers who receive an MDDP from the scope of the statute defining the offense of driving with a revoked or suspended license, and that the provision is therefore not part of the body of the offense. Thus, the State need not present evidence affirmatively showing that the defendant was not granted an MDDP. Because the defendant did not raise as a defense that she had been issued and was driving in compliance with an MDDP, the State met its burden of proof concerning the offense despite its failure to present evidence whether defendant had been granted an MDDP.

People v. Isaacson, 409 Ill.App.3d 1079, 950 N.E.2d 1183 (4th Dist. 2011) The punishment for driving on a suspended license is increased to a Class 4 felony when a person is convicted of a violation of the driving-while-license-suspended statute "during a period of summary suspension imposed pursuant to Section 11-501.1 when the person was eligible for a MDDP [monitoring device driving permit]." 625 ILCS 5/6-303(c-3). This provision applies to individuals who are convicted of driving on a suspended license when the individual was eligible for an MDDP at the time that the suspension was imposed, rather than at the time of the violation.

This interpretation is consistent with the purpose of MDDPs, which is to provide driving privileges in a manner consistent with public safety. 625 ILCS 5/6-206.1. The statute punishes those who had the opportunity to get an MDDP and drive in a manner consistent with public safety, but drove anyway during the period of suspension without one. It would be absurd to exempt from this punishment those who lost the ability to obtain an MDDP by the time of the violation, allowing them to receive a less severe punishment than those who did not lose the privilege.

People v. Rodgers, 322 Ill.App.3d 199, 748 N.E.2d 849 (2d Dist. 2001) The State is not required to prove that the defendant did not have a restricted driving permit from another

state in order to prove the offense of driving while license revoked under 625 ILCS 5/6-303(a). The defense bears the burden of proof on exceptions to liability which merely withdraw "certain acts or certain persons from the operation of the statute."

People v. Dodd, 173 Ill.App.3d 460, 527 N.E.2d 1079 (2d Dist. 1988) Where documents from the Secretary of State's office were conflicting as to the date on which defendant's driver's license was suspended, the trial court erred by altering the date of suspension on the documents. The Court stated that it could find no authority for a trial judge to resolve conflicts in certified copies of the Secretary of State's records against a criminal defendant. "The fact that the two documents reflected different dates for the termination of defendant's driver's license merely presented conflicting evidence for the jury, to resolve. . . In this case, the jury's function was invaded by alteration of the certificate, a document introduced in its original certified form by the prosecution."

People v. Martinez, 296 Ill.App.3d 330, 694 N.E.2d 1084 (2d Dist. 1988) An all-terrain vehicle is a "motor vehicle" for purposes of the Illinois Vehicle Code. Therefore, a defendant who drove an A.T.V. on a public street could be prosecuted for driving with a suspended license.

People v. Sass, 144 Ill.App.3d 163, 494 N.E.2d 745 (4th Dist. 1986) The defendant, a resident of Illinois, had his driver's license revoked in 1982. In 1984, defendant moved to Wisconsin, where he was issued a valid Wisconsin driver's license. In 1985 defendant was arrested in Illinois and convicted of driving while his driver's license was revoked. The Court upheld the conviction. Compare, **People v. Klaub**, 130 Ill.App.3d 704, 474 N.E.2d 851 (3d Dist. 1985) (defendant's valid license from Indiana, which is a party to the Driver License Compact, was sufficient to preclude Illinois conviction for driving while his Illinois license was revoked).

People v. Eberhardt, 138 Ill.App.3d 148, 485 N.E.2d 876 (3d Dist. 1985) Defendant previously resided in Illinois and had an Illinois driver's license. In 1982 he moved to Texas, acquired a Texas driver's license, and allowed his Illinois license to expire. While visiting Illinois in 1984, defendant was convicted of DUI. He was notified that his expired Illinois license was revoked. Defendant still possessed a valid Texas license, however, and Illinois authorities did not report defendant's conviction to Texas authorities (as is required by Ch. 95½, ¶6-202(c)). On a subsequent visit to Illinois, the defendant was arrested and convicted of driving while his license was revoked. The Court held that the Texas driver's license gave the defendant a right to drive in Illinois. "Because neither the Texas license nor defendant's privilege thereunder to drive as a nonresident in Illinois were affected by the revocation of the previously expired Illinois license, defendant had a perfect right to drive in Illinois. The State knew at all times relevant to this case that defendant had a valid Texas license. By failing to either properly take action against defendant's nonresident driving privilege or to notify Texas of defendant's conviction, the State invited the defendant's conduct and abandoned any right to claim that he could not operate as a nonresident under a valid foreign license."

People v. Stevens, 125 Ill.App.3d 854, 466 N.E.2d 1321 (3d Dist. 1984) The offense of driving while suspended involves absolute liability. A conviction requires only proof that defendant drove while his license was suspended; defendant's receipt of notice or knowledge of the suspension is immaterial. See also, **People v. Johnson**, 170 Ill.App.3d 828, 525

N.E.2d 546 (4th Dist. 1988).

§49-5
Accidents

Illinois Supreme Court

People v. Galarza, 2023 IL 127678 The court upheld defendant's conviction for failure to reduce speed to avoid an accident. At a stipulated bench trial, the evidence showed that at 5 a.m. on the day in question, paramedics found a single vehicle crashed head-on into a tree. Defendant's girlfriend was in the driver's seat, but stated that the defendant was driving when he jerked the wheel and crashed the car. Defendant, who was outside of the car, showed signs of intoxication and had a BAC of .203. He admitted he was driving, though at trial his defense was that his girlfriend was driving. The trial court found defendant guilty, and the appellate court affirmed.

In the supreme court, defendant argued the evidence was insufficient to prove failure to reduce speed to avoid an accident. Defendant argued that while the evidence suggested he was intoxicated and jerked the wheel, nothing indicated that he was driving too fast for the conditions.

Under 625 ILCS 5/11-601(a), "[n]o vehicle may be driven upon any highway of this State at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or endangers the safety of any person or property. . . . Speed must be decreased as may be necessary to avoid colliding with any person or vehicle on or entering the highway in compliance with legal requirements and the duty of all persons to use due care." Thus, to prove defendant guilty of failure to reduce speed to avoid an accident, the State had to show that defendant drove carelessly and failed to reduce speed to avoid colliding with the tree.

Although evidence of intoxication alone is insufficient to show carelessness, in this case the combination of intoxication plus defendant's act of jerking the wheel and striking a tree was sufficient. And while the appellate court has held that evidence of an accident alone is insufficient to show failure to reduce speed, the State presented enough circumstantial evidence in addition to the accident, including the force with which the tree was struck, to establish a failure to reduce speed.

People v. Eubanks, 2019 IL 123525 Section 11-401 of the Illinois Vehicle Code requires the driver of a vehicle involved in an accident resulting in injury or death to remain at the scene and if the driver does not remain at the scene, report, within 30 minutes, the details of the incident to the police. Here, defendant did not remain at the scene, but was apprehended within 10 minutes of the accident. He was convicted of leaving the scene and failing to report the incident within 30 minutes. The Supreme Court affirmed, finding the evidence sufficient where defendant was subjected to police questioning upon his arrest and denied any involvement in the accident. While the Appellate Court held that such a holding would burden defendant's right against self-incrimination, defendant did not advance this argument before the Supreme Court. The Supreme Court noted that the evidence of defendant's fail to report stemmed from his post-arrest statements, not his silence.

McElwain v. Secretary of State, 2015 IL 117170 625 ILCS 5/11-501.6(a), which provides that a driver who is arrested or ticketed relating to a serious injury in a traffic accident consents to blood, breath or urine testing to detect the presence of alcohol or drugs, qualifies

for the “special needs” exception to the Fourth Amendment only where the testing is performed at the scene of the accident. Section 11-501.6(a) was applied unconstitutionally where police asked defendant to come to the police station some 48 hours after the accident, questioned him about his use of marijuana, issued a ticket for failure to yield, and asked him to take a chemical test.

People v. Hasprey, 194 Ill.2d 84, 740 N.E.2d 780 (2000) 730 ILCS 5/5-5-6, which authorizes restitution for offenses under the Criminal Code which resulted in any injury to a person or damage to real or personal property, does not authorize restitution for offenses created under the Illinois Vehicle Code. The Vehicle Code has a restitution provision for vehicle theft, but does not authorize restitution for reckless driving. Based on the plain language of 625 ILCS 5/11-503, the Supreme Court rejected defendant's argument that to be convicted of reckless driving a defendant must have acted both willfully and wantonly. Section 11-503 provides that a person commits reckless driving by driving a vehicle with "willful or wanton disregard for the safety of persons or property."

Cesena v. DuPage County, 145 Ill.2d 32, 582 N.E.2d 177 (1991) An unidentified motorist (John Doe) struck and killed a pedestrian, and fled the scene. About two hours later, John Doe contacted an attorney (Fawell) who advised him that he was required to file an accident report within three hours of the accident. John Doe related to Fawell the information required and Fawell prepared a written report. Fawell and John Doe went to the Sheriff's Office within the three-hour period and attempted to file the report. The deputy on duty refused to accept the report, claiming that it was to be filed with the State Police. Fawell unsuccessfully (and correctly) urged that the report had to be made within three hours and could be filed at the sheriff's office. However, Fawell and John Doe eventually left without filing the report. Fawell later called the police and informed them of the accident. Fawell subsequently asserted the attorney-client privilege and refused to disclose the client's name when deposed as part of a civil suit against the sheriff's office by the estate of the victim. Fawell was eventually held in contempt for refusing to disclose the name.
The Supreme Court found that the "equities of this case demand resolution on equitable grounds." The accident report could have been filed with the sheriff's office. However, the deputy's ministerial error in refusing to accept the report caused harm both to John Doe and to the accident victim's estate. "Therefore we deem the accident report timely filed and order Fawell to submit this report to the circuit court. We hold that John Doe has timely complied with the reporting statute."

People v. Janik, 127 Ill.2d 390, 537 N.E.2d 756 (1989) Defendant was convicted of leaving the scene of an accident involving a death and contended that the trial judge erred in refusing an instruction on the defense of necessity. The evidence showed that the defendant's car hit and killed a person walking on a highway. The impact caused the windshield to shatter. In support of his alleged necessity defense, defendant testified that he thought a mailbox had been thrown at his car, and that he left the scene to call the police because he feared for his safety. The Court noted that the necessity defense involves the choice "between two admitted evils where other optional courses of action are unavailable, and the conduct chosen must promote some higher value than the value of literal compliance with the law." Since the defendant claimed he was unaware of the accident, he could not have been balancing between the lesser of two evils. Thus, the defendant's testimony would not rise to a necessity defense. Rather, the defendant's testimony, if believed, would have refuted one of the elements of the crime of leaving the scene of an accident, (i.e., that he knew he was involved in an accident.)

Chicago v. Hertz, 71 Ill.2d 333, 375 N.E.2d 1285 (1978) To establish a parking violation case a municipality must prove (1) the existence of an illegally parked vehicle, and (2) the registration of that vehicle in the name of the defendant. To absolve himself of responsibility defendant must show that the vehicle was not parked illegally or that he was not the registered owner. Proof that the vehicle was in the possession of another at the time of the violation is irrelevant.

People v. Murphy, 108 Ill.2d 228, 483 N.E.2d 1288 (1985) Defendant was charged with reckless homicide arising out of a traffic accident in which defendant's passenger was killed. Following the accident, defendant was taken to a hospital where a doctor, in the course of emergency treatment, ordered a blood sample taken. The sample was taken and analyzed by a medical technician at the hospital laboratory. The sample was suppressed at trial because neither the laboratory nor the technician had been certified by the Department of Public Health, as required by Ch. 95½, ¶11-501.2. The Court held that under the clear language of ¶11-501.2, the certification requirements for admissibility apply only to proceedings arising out of an arrest for driving under the influence. In other situations (as here), the "ordinary standards of admissibility will be applied."

People v. Wawczak, 109 Ill.2d 244, 486 N.E.2d 911 (1985) Ch. 95½, ¶11-1003.1 states: "Notwithstanding other provisions of this Code or the provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian, or any person operating a bicycle or other device propelled by human power and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person." The Court upheld the statute: "When the statute is read with reference to the judicial definition of 'due care' it is clear that the statute is not impermissibly vague. The statute makes it clear that drivers must attempt to avoid colliding with bicyclists and pedestrians, employing that degree of care which a reasonable person would have in the same situation. The fact that judges and juries might differ to some degree as to what care a reasonable person might employ does not make the standard a subjective one. A statute is not vague merely because it requires the trier of fact to determine a question of reasonableness."

People v. Nunn, 77 Ill.2d 243, 396 N.E.2d 27 (1979) To sustain a conviction for leaving the scene of accident, the prosecutor must prove that the defendant had knowledge that the vehicle he was driving was involved in an accident or collision. It is not necessary, however, for the prosecution to also prove that the accused knew that injury or death resulted from the collision.

Illinois Appellate Court

People v. Maas, 2019 IL App (2d) 160766 Defendant led police on a high-speed chase before the officers shot him in the face and he crashed into oncoming traffic, injuring other drivers. He fled the car and hid, but was eventually arrested and transported to the hospital for treatment. The jury found him guilty of, *inter alia*, failure to report a car accident involving personal injury under 625 ILCS 5/11-401(b).

The Appellate Court affirmed, rejecting defendant's argument that his injury and hospitalization extended the statute's 30-minute reporting time. The evidence showed that more than 30 minutes passed between the accident and the arrest, and, viewed in the light most favorable to the State, the evidence did not support the defendant's argument that his

gunshot wound to the face prevented him from reporting. Defendant's failure to report within those 30 minutes constituted a violation of section 11-401(b).

People v. Eubanks, 2017 IL App (1st) 142837 The State cannot use defendant's post-arrest silence to prove him guilty of failing to report an accident under section 11-401 of the Illinois Vehicle Code. The State had the burden of proving that defendant did not inform the police of the accident within a half-hour of its occurrence, and in this case, defendant was taken into custody within seven minutes of the accident. Because post-arrest silence is inadmissible for any purposes, the State cannot allege that defendant remained silent for the following 23 minutes in order to prove his violation of the statute.

The dissent would have deferred to the jury's finding of guilt as a reasonable inference from the defendant's testimony denying that he was even involved in the accident.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010) A conviction for failing to report an accident within one-half hour of the accident requires the State to prove: (1) defendant was the driver of a vehicle involved in an accident; (2) the accident resulted in death or personal injury; (3) defendant knew the accident occurred; (4) defendant knew the accident involved another person; (5) defendant failed to immediately stop and remain at the scene until he performed his duty to give information and render aid; and (6) defendant failed to report the accident within one-half hour after the accident at a nearby police station or sheriff's office. 625 ILCS 5/11-401(b).

At defendant's trial for failing to report an accident within one-half hour of the accident, the State offered no evidence of, and the jury was not instructed that it needed to find, the sixth element that defendant had failed to report the accident within a half hour. Therefore the court reduced defendant's convictions to the lesser-included offense of leaving the scene of an accident. 625 ILCS 5/11-401(a).

People v. Thomas, 277 Ill.App.3d 214, 660 N.E.2d 184 (1st Dist. 1995) The Court held sua sponte that the evidence was insufficient to prove reckless homicide. Defendant agreed to perform an act of oral sex on the decedent for $20. However, the decedent demanded that defendant return $10 because she had insisted on using a condom. The decedent grabbed defendant's collar, displayed an open knife, and insisted that she return his money. Defendant escaped the decedent's grasp, got into the decedent's car and locked the doors. The decedent jumped on the hood, with the knife still in his hand. Defendant drove the car a short distance, until it struck something and turned over. The decedent was crushed by the weight of the auto. Because defendant reasonably feared for her life after she was threatened, it was reasonable for her to try to escape. Thus, "her actions did not constitute reckless homicide."

People v. Brant, 82 Ill.App.3d 847, 403 N.E.2d 282 (4th Dist. 1980) The evidence was not sufficient to prove defendant guilty of failure to reduce speed to avoid an accident. To sustain this charge, the State must prove that defendant drove "carelessly" and "failed to reduce speed to avoid the accident." Here, there was no evidence that the defendant drove carelessly, and the Court refused to infer carelessness based upon the defendant's intoxication. Additionally, there was no evidence that defendant failed to reduce speed to avoid the accident. The Court rejected the State's argument that since defendant hit the car he must not have reduced his speed because this would mean that "anyone involved in an accident could properly be convicted for failure to reduce speed to avoid an accident."

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