

Broken Justice

An Investigation of Civil Asset Forfeiture in Montgomery County



October 2015



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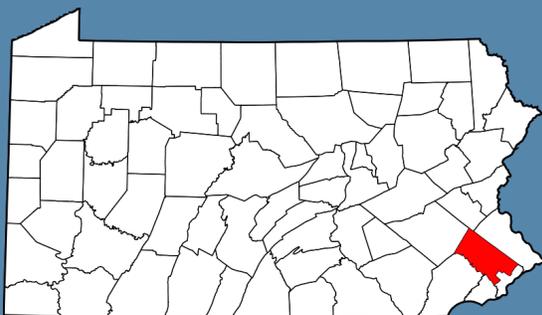
An Investigation of Civil Asset Forfeiture in Montgomery County



American Civil Liberties Union of Pennsylvania
www.aclupa.org

The cover photo depicts the Montgomery County Courthouse. *Source:* Douglas Muth — some rights reserved — <https://www.flickr.com/photos/30647744@N00/490606082> — cropped version.

Findings



This report is part of the ongoing investigation of civil forfeiture practices across the state by the American Civil Liberties Union of Pennsylvania (ACLU-PA). Civil forfeiture is a controversial legal process that permits law enforcement to seize and keep property that it claims was connected to a crime. Because the law is based on the legal fiction that the property itself is “guilty,” prosecutors can bring their cases directly against the property in civil court, instead of against the property owners in criminal court. This maneuver lets law enforcement get around the stronger constitutional protections that apply to criminal defendants and forfeit property without even *charging* property owners with crimes. State law then allows police and prosecutors to keep 100% of the revenue from these forfeitures for their own budgets, which gives law enforcement a powerful financial incentive to forfeit as much property as possible.

The ACLU-PA previously published a report examining the abuses of civil asset forfeiture by the Philadelphia District Attorney’s Office, including its disproportionate use against African-American residents. As this analysis of Montgomery County shows, the problems with civil forfeiture are not limited to Philadelphia and may be widespread under our state’s broken civil forfeiture laws. The following analysis is based on records acquired through the Administrative Office of Pennsylvania Courts compiling summary data from every civil forfeiture petition filed in Montgomery County from 2012 to 2014, as well as in-person review of 298 randomly selected forfeiture case files from that same period.

Montgomery County has one of the most active civil forfeiture operations in our state. With yearly forfeiture revenues recently topping \$1.2 million, the Office of the Montgomery County District Attorney (DA) ranks in the top ten in terms of both per capita and total forfeiture income.¹ Between fiscal years 2010-11 and 2012-13, these revenues equaled approximately 7.3% of the DA’s \$13.2 million budget, though a percentage of those forfeiture funds may have been shared with the police agencies that seized the property initially.²

One of the primary drivers behind these massive profits is the startlingly high rate at which the DA’s office wins forfeiture cases. From 2012 to 2014, 92% of the 1,502 forfeitures filed against individual property

FIGURE 1: Montgomery County has one of the state’s most aggressive forfeiture units

<i>County</i>	<i>Population*</i>	<i>Total Income Rank**</i>	<i>Per Capita Income Rank**</i>
Philadelphia	1,526,006	1	1
Allegheny	1,223,348	3	15
Montgomery	799,874	2	8
Bucks	625,249	7	12
Delaware	558,979	9	13
Lancaster	519,445	4	5
Chester	498,886	13	22
York	434,972	5	4
Berks	411,442	12	16
Westmoreland	365,169	24	46
Lehigh	354,746	8	7
Luzerne	349,497	18	32
Northampton	297,735	14	18
Erie	280,566	22	39
Dauphin	268,100	6	2
Cumberland	235,406	11	6
Lackawanna	214,437	10	3

*Population from 2010 Census; **Ranks for FY2010-13

owners in Montgomery County ended in the government’s favor, 7.7% ended in a settlement or partial forfeiture, and an infinitesimal 0.3% ended in favor of the property owner.³ In comparison to Philadelphia, which has drawn national criticism for its abusive civil forfeiture practices, property owners in Montgomery County were three times less likely to successfully defend their case.⁴

At first glance, the explanation for the extraordinarily low odds of success for property owners in Montgomery County seems unclear, because the civil forfeiture system there does not suffer from some of the procedural abuses that occur in Philadelphia. For example, while Philadelphia property owners often have to attend five or more court dates before they reach a hearing before a judge, many contested forfeiture cases in Montgomery County reach a

hearing after only one or two dates.⁵ And while Montgomery County routinely seeks the forfeiture of small sums of money—a median of \$307—this amount is actually *higher* than the median sum that Philadelphia County pursues.⁶

In theory, having slightly larger sums at stake and fewer court appearances than in Philadelphia should increase the likelihood that Montgomery County property owners contest their cases, but our data review showed the opposite to be true. In fact, property owners in Montgomery County lose forfeitures without filing a written response or disputing their case at a hearing 90% of the time, whereas the default forfeiture rate in Philadelphia is nearer to 87%.⁷ The fact that default rates in both counties are so high strongly suggests that no matter how “fairly” civil forfeiture is administered, the current law is heavily tilted against the property rights of private citizens.

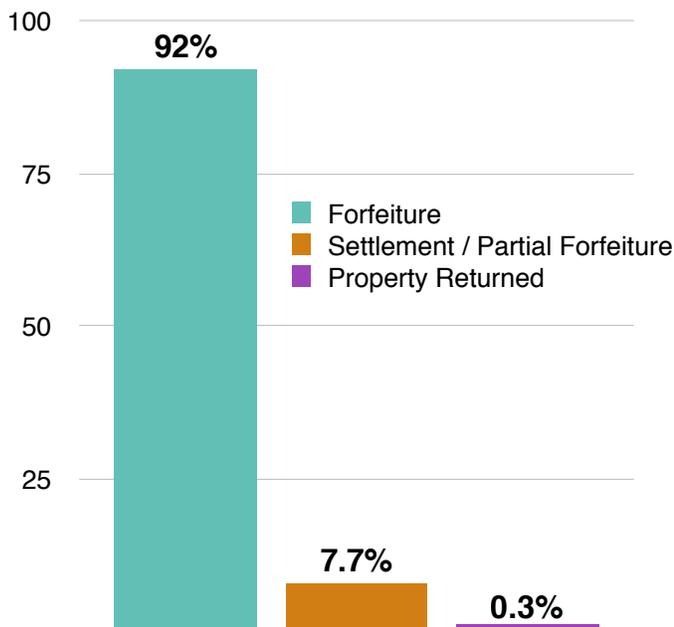


FIGURE 2: In civil forfeiture cases, the odds are against Montgomery County property owners

AUTOMATIC FORFEITURE

A close review of the papers filed by the Montgomery County DA’s Office in forfeiture actions points to an additional reason for the county’s high default rate: In some cases, prosecutors fail to even notify property owners that the government is trying to forfeit their property. And despite this complete lack of notice, prosecutors will *still* ask a judge to forfeit the property by default. In court filings, the DA’s office justifies preventing owners from disputing their case in this way by citing an obscure state court decision from 1978.⁸ In that case, a judge ruled that criminal defendants *automatically* waived their right to property seized for the purposes of civil forfeiture when they didn’t

file a motion for its return during or shortly after their criminal case—even when the case ended in acquittal or dismissal.⁹ Since most defendants are understandably focused on dealing with the charges against them during their criminal case, the small window to petition for the return of their property often closes without them realizing it. Making matters worse, attorneys appointed or hired to represent defendants in a criminal case are unlikely to handle legal issues outside of the case, including the possible loss of property in a civil forfeiture. The end result is that the Montgomery County DA's Office can—and often does—win forfeiture cases simply by holding seized property until defendants unwittingly waive their right to it by not proactively filing a motion for its return.

Prosecutors sometimes don't even bother filing individual motions to forfeit this property and instead ask a judge to forfeit massive amounts of property from dozens or even hundreds of these kinds of property owners *all at once*.¹⁰ Troublingly, in the largest of these mass default forfeitures that we examined, totaling over \$100,000 confiscated from some 400 claimants, the DA's office only listed the last name and first initial of the property owners from whom property was seized.¹¹ Because of this, there is no way to independently verify that, as the DA's office claims, these forfeitures involved criminal defendants who had waived their rights.

And when the ACLU-PA filed a public records request asking for this information, the DA's office conceded that they couldn't find records for this case.¹² Even if such records did exist and showed that every

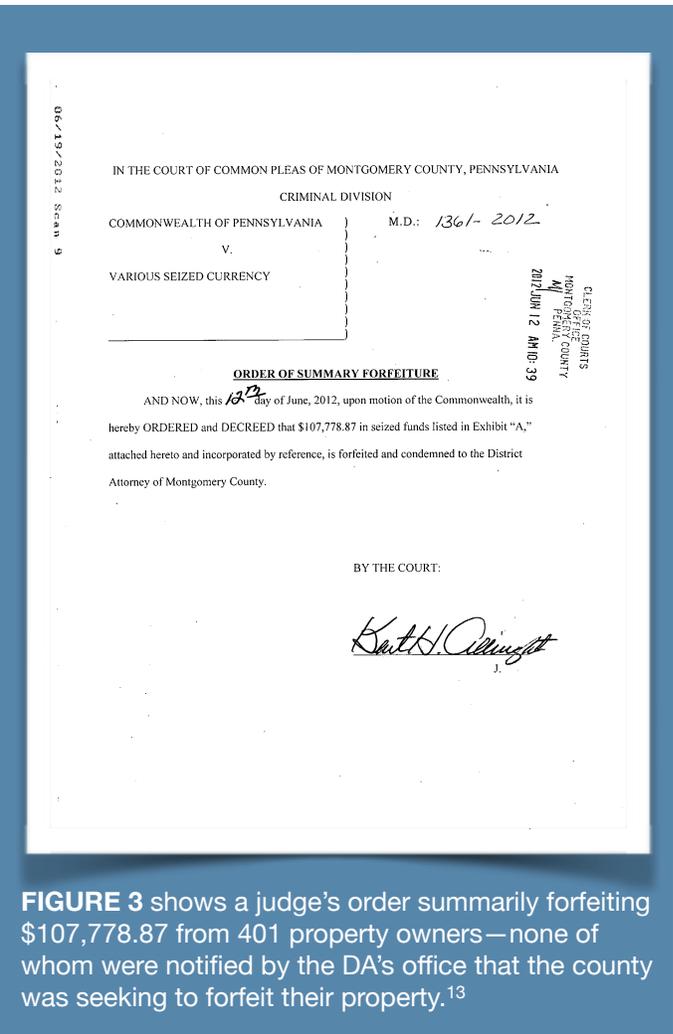


FIGURE 3 shows a judge's order summarily forfeiting \$107,778.87 from 401 property owners—none of whom were notified by the DA's office that the county was seeking to forfeit their property.¹³

property owner was once a criminal defendant in a related case, the use of this obscure legal maneuver to automatically acquire property from private citizens seems fundamentally contrary to basic notions of fairness and due process.

MISSING THE TARGET

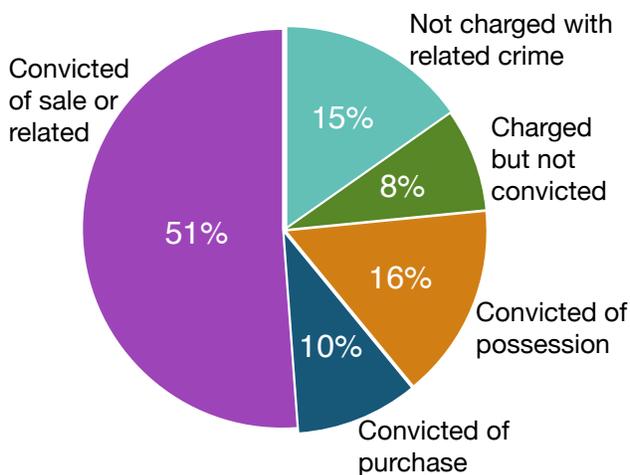
In a recent radio interview, Montgomery County District Attorney Risa Vetri Ferman defended her office's use of civil forfeiture by arguing that the law was needed to target "drug dealers" and "disrupt [them] from their business."¹⁴ But our review of a random

sampling of nearly 300 forfeitures filed between 2012 and 2014 revealed that almost half of the cases pursued by the Montgomery County DA's office involved property owners who were never convicted of drug dealing in a related case.¹⁵

Indeed, as illustrated in **Figure 4**, the ACLU-PA found no records showing that property owners were even *charged* with a crime in connection with 15% of forfeitures. An additional 8% of property owners were never convicted of a related crime. Even where the DA's office secured a conviction, many of these were for drug possession (16%) or purchase (10%), rather than drug dealing.¹⁶

That county prosecutors are using civil forfeiture primarily to target drug dealers is further undermined by the fact that the DA's office admitted to the ACLU-PA that it does not track the outcome of criminal cases related to forfeitures.¹⁷ Once property is seized, forfeiture cases in Montgomery County apparently move ahead irrespective

FIGURE 4: Many Montgomery County forfeitures don't involve convictions for drug dealing



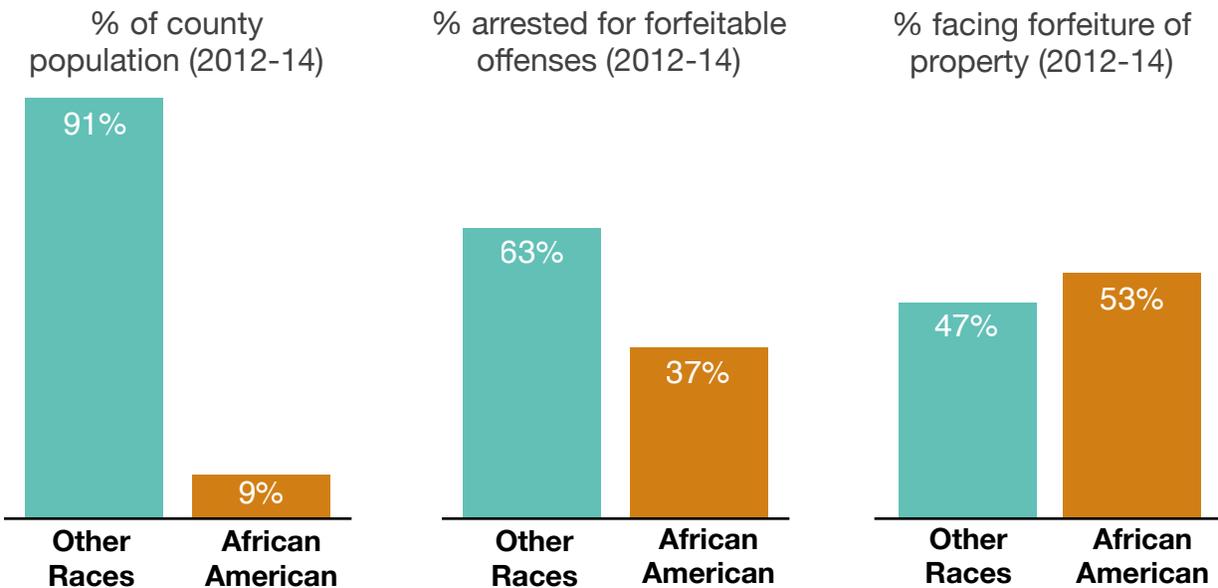
of what happens on the criminal side. This admission undercuts DA Ferman's claim that civil forfeiture is an important tool for stopping drug dealers. If anything, the available evidence demonstrates that many civil forfeitures are directed against low level drug *users* and property owners who haven't been proven guilty of any related crime.¹⁸ Indeed, in Montgomery County, we estimate that over half of forfeiture cases between 2012 and 2014 concluded before the end of the underlying criminal case.¹⁹

DISPROPORTIONATE IMPACT

One of the most troubling aspects of civil forfeiture in Montgomery County is how unequally it affects communities of color. Even in Philadelphia County—where the disparate racial impact of policing is well documented²⁰—African-Americans were targeted in civil forfeitures at roughly the same proportion as they were arrested for offenses for which forfeiture is permitted.²¹ In comparison, while African-Americans make up only 9% of Montgomery County's population and 37% of those arrested for forfeitable offenses, our random sample of cases showed that they constituted an estimated 53% of the property owners faced with forfeiture cases between 2012 and 2014.²²

That communities of color disproportionately bear the costs of civil asset forfeiture in Montgomery County underscores the critical need for reform. On the county level, Montgomery County law enforcement should undertake a serious examination of the drivers behind the unequal impact of its forfeiture system. Reforming our state laws to ensure that every forfeiture is tied to a

FIGURE 5: Civil forfeiture disproportionately affects the African-American community in Montgomery County



prior criminal conviction is another important step Pennsylvania could take to help reduce racial bias in forfeiture.²³ This reform would mean that African-Americans could no longer be targeted for forfeiture at even higher rates than they are arrested for crimes for which forfeiture is permitted. Requiring a conviction prior to forfeiture would also ensure that forfeiture was targeted more surgically at drug dealers, saving police resources and sparing legally innocent property owners from unjust deprivations.

And yet prosecutors across Pennsylvania, including Montgomery County DA Ferman, have come out publicly against legislation that would require the government to convict people before forfeiting their property.²⁴ Such opposition calls into question whether civil forfeiture in Montgomery County and across the state is truly about combating drug dealers or whether it has metastasized into little more than a revenue-creation machine.

KEY FINDINGS

- Annual forfeiture revenues are equivalent to 7.3% of the Montgomery County DA’s budget
- Property owners successfully defend their forfeiture case in only 0.3% of cases
- Hundreds of forfeitures occur without property owners even receiving notice of the forfeiture case
- 23% of forfeitures are filed against people who have not been found guilty of a crime
- 26% of forfeitures are filed against drug possessors or purchasers, not convicted drug dealers
- 53% of the property owners facing forfeiture are African-American, whereas African-Americans constitute only 9% of the county population

Endnotes

1. Montgomery County generated nearly \$1 million in annual income from civil forfeitures under the Pennsylvania Controlled Substances Forfeiture Act, 42 Pa. C.S. §§ 6801-6802, in the last three reported years, including \$1,213,361.55 in FY2012-13. Office of the Pennsylvania Attorney General, *Asset Forfeiture Reports*, FY2010-13 (from ACLU-PA Right-to-Know request). With a population of 799,873 as of 2010, this translates into an annual forfeiture of \$1.21 per capita. United States Census Bureau, *State & County QuickFacts - Montgomery County, Pennsylvania*, <http://quickfacts.census.gov/qfd/states/42/42091.html>.
2. See Attorney General, *Forfeiture Reports*, *supra* note 1; County of Montgomery, *General Fund Budget - 2013*, 13, <http://www.montcopa.org/DocumentCenter/View/3611> (DA's 2013 budget was \$13,935,475); County of Montgomery, *Budget in Brief - Year 2012*, 5, <http://www.montcopa.org/DocumentCenter/View/3614> (DA's 2011 budget was \$13,086,800; 2012 budget was \$12,759,600); 42 Pa. C.S. § 6801(h) (authorizing forfeiture funds for use by district attorney and in community-based drug and crime-fighting programs).
3. AOPC Data on Civil Forfeiture Petitions Filed in Montgomery County from 2012-14, obtained through ACLU-PA Records Request (on file with ACLU-PA).
4. See Scott Kelly, *Guilty Property: How Law Enforcement Takes \$1 Million in Cash from Innocent Philadelphians Every Year — and Gets Away with It*, American Civil Liberties Union of Pennsylvania, 5, June 2015, <http://www.aclupa.org/issues/forfeiture/> (Philadelphia property owners successfully secured an order for the return of their property in 1% of cases).
5. The average number of court dates scheduled in contested forfeitures in Montgomery County between 2012 and 2014 was two—a number which doesn't even capture the cases where a settlement was reached before any formal court hearing was held. Compare *supra* note 3 with Kelly, *Guilty Property*, *supra* note 4, at 6.
6. Compare *supra* note 3 with Kelly, *Guilty Property*, *supra* note 4, at 7 (median value of cash seized in Philadelphia County between 2011 and 2013 was \$192).
7. Compare *supra* note 3 with Kelly, *Guilty Property*, *supra* note 4, at 5.
8. *Commonwealth of Pennsylvania v. Various Seized Currency*, CP-46-MD-0001361-2012 (Ct. Com. Pl. Montgomery County June 12, 2012) (citing *Commonwealth v. Setzer*, 392 A.2d 772 (Pa. Super. Ct. 1978)), obtained from the 38th Judicial District (copies of court record on file with ACLU-PA).
9. *Setzer*, 392 A.2d at 773 n. 4; see also *Commonwealth v. Allen*, 107 A.3d 709, 717-18 (Pa. 2014) (affirming *Setzer*).
10. See, e.g., *Various Seized Currency*, *supra* note 8 (mass forfeiture of \$107,778.87); *Commonwealth of Pennsylvania v. Various Seized Currency*, CP-46-MD-0001659-2012 (Ct. Com. Pl. Montgomery County Aug. 7, 2012), obtained from the 38th Judicial District (mass forfeiture of \$26,494.68); *Commonwealth of Pennsylvania v. Various Seized Currency*, CP-46-MD-0001669-2012 (Ct. Com. Pl. Montgomery County Aug. 14, 2012), obtained from the 38th Judicial District (mass forfeiture of \$11,102); *Commonwealth of Pennsylvania v. Various Weapons*, CP-46-MD-0001983-2012 (Ct. Com. Pl. Montgomery County Oct. 10, 2012), obtained from the 38th Judicial District (mass forfeiture of over 100 weapons). Copies of court records on file with ACLU-PA.
11. See *supra* note 8.
12. Email from Montgomery County District Attorney's Office to American Civil Liberties Union of Pennsylvania, Sept. 28, 2015 (copy on file with ACLU-PA).
13. See *supra* note 8.
14. Radio interview with Risa Vetri Ferman, *Smart Talk: Do civil forfeiture laws need reform?*, WITF, recording available at <http://www.witf.org/smart-talk/2015/06/smart-talk-do-civil-forfeiture-laws-need-reform.php>.
15. Review of Random Sample of 298 Civil Forfeiture Cases from 2012-14, obtained from the 38th Judicial District (summary of records on file with ACLU-PA).
16. *Id.*
17. Montgomery County District Attorney's Office, *Response to ACLU-PA Right-to-Know Request dated 7-27-15*, Aug. 19, 2015 (copy on file with ACLU-PA) (“[T]he Montgomery County District Attorney's Office does not maintain a record of...[t]he disposition of any criminal cases arising from the same arrest or seizure that gave rise to” civil forfeitures from 2011 to the present).
18. See *supra* note 15; *supra* note 3 (The DA's office routinely forfeits sums under \$100 and, in one instance, even forfeited a single dollar—hardly amounts one would associate with drug trafficking.)
19. See *supra* note 15.
20. See, e.g., Plaintiffs' Fifth Report to the Court and Monitor on Stop and Frisk Practices, *Bailey v. City of Philadelphia* (E.D. Pa. 2013) (Civ. No. 10-5952) (detailing racially disparate impact of Philadelphia's stop-and-frisk practices), available at http://www.aclupa.org/download_file/view_inline/2230/198.
21. Kelly, *Guilty Property*, *supra* note 4, at 10.
22. Census, *Montgomery County*, *supra* note 1 (population estimates); *Summary Arrest Report for County: MONTGOMERY*, Pa. Uniform Crime Reporting System, query created at <http://www.paucrs.pa.gov/UCR/Reporting/Query/Summary/QuerySumArrestUI.asp> (arrest statistics); Random Sample, *supra* note 15 (forfeiture statistics).
23. See Pennsylvania Senate Bill 869 and House Bill 508 (proposed legislation to require a criminal conviction before the government can forfeit a person's property).
24. Ferman, *Smart Talk*, *supra* note 14.

Methodology & Credits

The primary data set used for this report was acquired through a records request to the central court administrator for the state, the Administrative Office of Pennsylvania Courts. These records compiled information on every civil forfeiture petition that was filed between 2012 and 2014 in Montgomery County. If a single forfeiture petition was filed against multiple claimants, we generally divided the property equally across the claimants and counted each claimant as a separate case. If we retrieved the court file for a case and it had the breakdown of property among claimants, we used that information instead.

For our sample analysis, we sorted the cases using a standard randomization function, selected over 300 for review, and retrieved the court file for each selected case. We excluded any case where the court file was missing or incomplete. Using information in the forfeiture court files (including the claimant's name and address and the date of seizure), we attempted to locate each claimant's official court summary, which lists the criminal cases against that person and the person's race. We controlled for misspellings and alternate spellings when searching criminal records for an owner's name. Any criminal case with an arrest date within one year of the seizure date listed in the forfeiture file was treated as related for the purposes of our analysis. Where no relevant record was located, the owner was designated as never charged with a related crime.

The confidence interval for both the 76.57% conviction rate and 52.61% African-American rate is approximately $\pm 5\%$ at a confidence level of 95%.

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