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Denver, CO 80203

Certiorari to the Court of Appeals, 2017CA1896
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COURT USE ONLY</td></tr>
<tr><td>Petitioner:

The People of the State of Colorado,

v.

Respondent:

Charles Raider, Jr.</td></tr>
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2021SC119</td></tr>
<tr><td colspan="2">ANSWER BRIEF</td></tr>
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

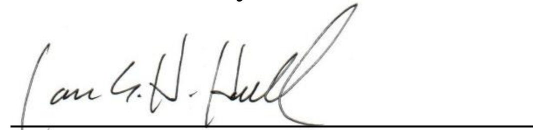
Specifically, the undersigned certifies that:

1. The brief complies with C.A.R. 28(g). It contains 4,998 words.

2. The brief complies with C.A.R. 28(k). It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

The undersigned acknowledges that this brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

Dated: February 22, 2022



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ISSUE ON WHICH THIS COURT GRANTED CERTIORARI REVIEW

Whether the court of appeals erred in interpreting the Expressed Consent Statute to provide DUI suspects with protection from the use of physical restraint in the execution of a valid search warrant or court order.

STATEMENT OF THE CASE [1]

I. Arrest, Forced Blood Draw, and Trial Court Procedural History

On April 22, 2017, Mr. Raider was parked in a handicapped-designated parking space in a parking lot without a handicapped plate or visible placard. CF, p 10. At 7:25 p.m., Officer Lang of the Fort Collins Police Department responded to the parking lot after dispatch aired that a car without a handicap placard was parked in a handicap-designated parking space. CF p 10.

Officer Lang contacted Mr. Raider in the driver's seat of the vehicle. CF p 10. Officer Lang alleged that Mr. Raider had bloodshot, watery eyes, slurred speech, difficulty with divided-attention tasks, and the smell of alcohol was coming from the vehicle. CF p 10.

Officer Lang told Mr. Raider he was under arrest for driving under the influence. CF p 10. Officer Lang read the Colorado Expressed Consent law from a department-issued information card. CF p 10. Mr. Raider's responses were interpreted as refusal to submit to chemical testing. CF p 10. Officer Lang then requested additional officers to respond to the scene, and Officer Koski arrived at 8:09 p.m. TR 12/4/17, pp 217:9 – 218:4.

Officer Lang reviewed Mr. Raider's criminal history and noted prior Driving Under the Influence convictions, charges dating from 1994, 1996, 1997, and 2014.

[1] Additional, relevant facts are included in the "Argument" section below.

CF p 52. Because of Mr. Raider's refusal to submit to chemical testing, Officer Koski applied for a search warrant to authorize a forced blood draw. CF p 51. The application for a search warrant for a forced blood draw listed four offenses, those enumerated in the Expressed Consent Statute, and added felony DUI:

AFFIDAVIT FOR SEARCH WARRANT
Authorization of Blood Draw

Before The Honorable C. Michelle Brinegar
Judge

Affiant, Kenneth Koski, a commissioned police officer for Fort Collins Police Services, being duly sworn, deposes and says that I have probable cause to believe that in or upon the person of;

Name:	Charles Raider
Date of Birth:	11/13/1963
Physical Description:	White/Male/5'9"/180/BRO/BRO
Last Known Address:	1512 Glen Haven Dr. Ft Collins, CO
Driver's License Number:	92-187-9724
Associated Vehicle License #:	578SPQ/CO

There is now evidence believed to be in the defendant's blood stream which would be revealed by a medically supervised blood draw and future laboratory analysis to be alcohol and or drugs. The results would be material evidence in any subsequent prosecution for the criminal offense of:

	C.R.S.	Offense Description	Class
☐	18-3-205(1)(b)	Vehicular Assault	4F
☐	18-3-106(1)(b)	Vehicular Homicide	3F
☐	18-6-401(1)(a)(7)	Child Abuse	____
☒	42-4-1301(1)(A)	DUI Offense (3 or more Prior Convictions)	4F
☐	____________	Other	____

The facts establishing grounds for issuance of a search warrant and showing probable cause to believe that they exist are as follows:

CF p 51.

Mr. Raider was transported by police to the hospital. TR 12/4/17, p 135:23-25. Mr. Raider repeatedly protested the drawing of blood and renewed his refusal

of the chemical testing during the hour that police detained him in the hospital waiting for a signed warrant. TR 12/4/17, p 137. At 9:30 p.m., a Larimer County judge signed a warrant for a forced blood draw. CF p 54.

After obtaining a copy of the signed warrant, three police officers moved Mr. Raider to the emergency room. TR 12/4/17, p 137:15-16. Two officers held Mr. Raider's arms, one on each arm, while twisting his right arm to expose his vein for the blood draw. TR 12/4/17, p 137, 5-17. Mr. Raider continued to protest the forced blood draw, and officers "decided to place him into four-point hard restraints." TR 12/4/17, p 139:7-14. These restraints were described at trial as "leather restraints the hospital uses on uncooperative patients to keep them secured to the hospital bed." TR 12/4/17, p 139:14-16. While in these restraints, officers again held Mr. Raider, forcing him to expose the veins on his right arm, and a hospital technician extracted a blood sample. TR 12/4/17, p 139:17-22.

The blood sample was subsequently tested, yielding a result of "blood-alcohol content of .188" and "1.9 nanograms per milliliter of Delta 9-THC-hydroxy." TR 12/4/17, p 187:2-3; TR 12/4/17 p 186:24-25.

Mr. Raider was charged with 1) Driving Under the Influence – Fourth or Subsequent Offense[2], 2) Compulsory Insurance[3]; 3) Resisting Arrest[4], and 4)

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[2] C.R.S. § 42-4-1301(1)(a)
[3] C.R.S. § 42-4-1409(2)
[4] C.R.S. § 18-8-103

Obstructing a Peace Officer[5]. CF p 14. Prior to trial, Mr. Raider twice motioned for suppression of the results of the forced blood draw. CF p 47. The district court denied both motions, finding the blood draw "[c]onstitutionally and statutorily permissible because it was performed after a Judge found probable cause in an affidavit and issued a search warrant[,]" CF p 59, and that "the blood draw [was] authorized by the search warrant. The Express Consent statute is inapplicable to this case because the search was performed pursuant to the warrant and not the statute." CF p 137.

Mr. Raider was tried before a jury on charges of Driving Under the Influence – Fourth or Subsequent Offense and Obstruction of a Peace Officer. The jury heard testimony from law enforcement and evidence was submitted surrounding Mr. Raider's forced blood draw and the subsequent test results.

The jury found Mr. Raider guilty as to both charges. TR 12/5/17, p 43:10-16. At a subsequent hearing, the district court found the prosecution proved beyond a reasonable doubt that Mr. Raider was the individual convicted in five prior driving offenses under the influence of alcohol or drugs. CF p 355. Mr. Raider was sentenced to serve a term of six (6) years of incarceration in the Colorado Department of Corrections, Community Corrections. 1/23/18, p 11-12.

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[5] C.R.S. § 18-8-104(1)(a)

II. Court of Appeals Opinion

In a published opinion, announced January 7, 2021, Division II of the Colorado Court of Appeals held "that under the plain language of the Expressed Consent Statute, law enforcement officers may not force a driver suspected of DUI or DWAI to take a blood test except in the four specified circumstances — that is, when the officer has probable cause to believe the driver has committed criminally negligent homicide, vehicular homicide, third degree assault, or vehicular assault — even if the officers obtain a warrant authorizing the test." ⁋ 4. Based on this holding, the division found the test results from Mr. Raider's forced blood draw should have been suppressed by the trial court and the case was remanded with instructions for a new trial. ⁋ 4.

This Court granted certiorari review following the filing of a petition by the government.

SUMMARY OF THE ARGUMENT

The court of appeals division correctly applied principles of statutory construction in finding that a forced blood draw under the circumstances presented in this case was not authorized by plain language of the statute, and the securing of a warrant for a forced blood draw for suspected felony DUI circumvented the Legislature's intent to permit forced blood draws only as to statutorily enumerated offenses.

The language of the statute is clear and unambiguous. The legislature's use of the word "except" preceding the four enumerated offenses in which a forced blood draw is authorized indicates clear boundaries for law enforcement in DUI investigations and logically excludes any other action, including a forced blood draw pursuant to a warrant in a felony DUI investigation. To the extent that the Expressed Consent statute conflicts with the general warrant statute in Title 16, the specific language of Expressed Consent, in the limited context of DUI investigations, controls over general provisions within the statute. As the court of appeals noted, had the Legislature intended to allow law enforcement to secure a warrant for a forced blood draw as a means of collecting additional evidence in a DUI investigation in support of subsequent prosecution, it would have said so. And the Legislature's silence in the Expressed Consent statute does not allow the

government to circumvent the process provided through the Expressed Consent statute and seek a forced blood draw of a DUI suspect through other means.

The division's analysis is in line with the analyses of appellate courts in other states, those that have found either that the state legislature's decision not to include language permitting law enforcement to obtain a warrant for a forced blood draw meant that such action was not authorized or those courts upholding forced blood draws in states where the legislature chose to provide securing a warrant as an alternative means of securing evidence in DUI investigations.

Thus, the forced blood draw in this case was done in violation of Colorado Expressed Consent statute, and suppression of the test results is an appropriate remedy following remand of this case for a new trial.

ARGUMENT

The court of appeals correctly held that the forced blood draw in this case violated Colorado's Expressed Consent Statute, and the appropriate remedy was suppression of the test results derived from the forced blood draw in this case.

I. Standard of Review

Mr. Raider agrees with the government's position that this issue is preserved and that this Court "review[s] statutory interpretation by lower courts *de novo*." *People v. Smith*, 254 P.3d 1158, 1161 (Colo. 2011); Op. Br. P 6.

II. Applicable Law

a. Colorado's Expressed Consent Statute

§ 42-4-1301.1, C.R.S. 2022, contains Colorado's Expressed Consent Statute. This statute outlines the expressed consent that any person who operates a motor vehicle on the highways of Colorado gives to submit to chemical testing, through a breath or blood test, if contacted by law enforcement and suspected of driving under the influence of alcohol or controlled substances. § 42-4-1301.1(1), (2)(a)(I), C.R.S. 2022. Subsection 3 of this statute details "refusal" and provides:

> Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests shall cooperate with the person authorized to obtain specimens of such person's blood, breath, saliva, or urine, including the signing of any release or consent forms required by any person, hospital, clinic, or association authorized to obtain such specimens. If such person does not cooperate with the person, hospital, clinic, or association authorized to obtain such specimens, including the signing of any release or consent forms, such noncooperation shall be considered a refusal to submit to testing. <u>No law enforcement officer</u>

> shall physically restrain any person for the purpose of obtaining a specimen of such person's blood, breath, saliva, or urine for testing **except** when the officer has probable cause to believe that the person has committed criminally negligent homicide pursuant to section 18-3-105, C.R.S., vehicular homicide pursuant to section 18-3-106 (1)(b), C.R.S., assault in the third degree pursuant to section 18-3-204 , C.R.S., or vehicular assault pursuant to section 18-3-205 (1)(b), C.R.S., and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test.

§ 42-4-1301.1(3), C.R.S. 2022 (emphasis added). Refusal of chemical testing results in penalties to the individual, including evidence of the refusal being admitted into evidence at trial, denial of the right to claim privilege against self-incrimination, and suspension of the individual's driving privilege for one year. C.R.S. § 42-4-1301(6)(d); C.R.S. § 42-2-126(2)(h), 3(c), and (5)(b)(I). In addition, a conviction for a third or subsequent offense is classified as a class 4 felony, with a presumptive sentencing range of 2-6 years in the Colorado Department of Corrections followed by 3 years of mandatory parole. § 42-4-1301(1)(b).

At issue in this case is the underlined portion of subsection (3) above.

b. Statutory Interpretation

Mr. Raider concurs with the principles of statutory construction cited by the government in its Opening Brief. Op. Br, p 12 (section III). In addition, and critical here, is this Court's mandate that "to interpret a statute, this court begins with its plain language." *Frazier v. People*, 90 P.3d 807, 810–11 (Colo. 2004) (citing *People v. Luther,* 58 P.3d 1013, 1015 (Colo.2002)). "If the statute is unambiguous

and does not conflict with other statutory provisions, this court looks no further." *Id.*

"When statutory language conflicts with other provisions, [this Court] may rely on other factors such as legislative history, the consequences of a given construction and the goal of the statutory scheme to determine a statute's meaning." *Id*. at 811 (citing *People v. Cooper,* 27 P.3d 348, 354 (Colo.2001). "[T]he rule of lenity that requires courts to resolve ambiguities in a penal code in favor of a defendant's liberty interests." *Id*. (citing *Faulkner v. Dist. Court,* 826 P.2d 1277, 1278 (Colo.1992)). "However, application of the rule of lenity is a last resort and will not be applied when we are able to discern the intent of the General Assembly." *Id*. (citing *People v. Thoro Products Co.,* 70 P.3d 1188, 1198 (Colo.2003)).

III. The court of appeals correctly applied principles of statutory interpretation to the Expressed Consent statute.

The court of appeals correctly concluded "that the Expressed Consent Statute unambiguously prohibits forced testing of DUI or DWAI suspects in any circumstances other than those listed in the statute … even if officers obtain a warrant, if they lack probable cause to believe a driver suspected of DUI or DWAI has committed one of the four listed offenses (criminally negligent homicide, vehicular homicide, third degree assault, or vehicular assault), they cannot force a blood draw." Op. ¶ 16.

The division concluded that because "[t]he plain language of the statute — which provides that "[n]o law enforcement officer shall physically restrain any person" for the purpose of obtaining a specimen for testing "except" in four specific circumstances — supports this interpretation." § 42-4-1301.1(3), C.R.S. 2021. Further, "[t]he use of the term "except" followed by four specific exceptions indicates that the only circumstances in which officers may force testing of DUI or DWAI suspects are those listed in the statute." Op. ¶ 17 (citing *Cain v. People*, 2014 CO 49, ¶ 13 (interpreting "the General Assembly's inclusion of a single, specific, narrow exception to mean that the General Assembly intended that there be no other exceptions to the rule" generally set forth); *Riley v. People*, 104 P.3d 218, 221 (Colo. 2004) 10 ("The presence of one exception is generally construed as excluding other exceptions.")). Op, ¶ 17.

Here, the Legislature's language is clear and unambiguous. As held by the court of appeals division, the use of the word "except" creates specific exceptions to the prohibition against a warrantless forced blood draw. Further, the Legislature did not provide for the acquisition of a warrant as an alternative means of securing evidence in a DUI investigation.

In addition, the Legislature specifically refers to "involuntary blood tests" and test result admissibility in §42-4-1301(2)(e), stating that "[e]vidence acquired through an involuntary blood test pursuant to section 42-4-1301.1(3) shall be

admissible in any prosecution for DUI, DUI per se, DWAI, or UDD, and in any prosecution for criminally negligent homicide pursuant to section 18-3-105, C.R.S., vehicular homicide pursuant to section 18-3-106(1)(b), C.R.S., assault in the third degree pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to section 18-3-205(1)(b), C.R.S." § 42-4-1301(2)(e), C.R.S. 2021.

The Legislature's repeated reference to involuntary blood tests related to the four statutorily enumerated offenses supports the court of appeals' statutory interpretation. The statute's exceptions act as clear guidance to law enforcement, and they establish boundaries on the power of the government to apply force, and the forced extraction of an individual's blood, in the context of a DUI investigation.

IV. It is the context in which law enforcement contacted Mr. Raider that establishes the applicable law – Colorado's Expressed Consent Statute.

In its Opening Brief, the government argues that "[t]o achieve [the goals of facilitating cooperation in the enforcement of highway safety], the Expressed Consent Statute establishes a process for the warrantless collection of a blood or breath sample from a DUI suspect and imposes penalties for a suspect's refusal to cooperate in the process. Op. Br., pp 8-9. The Expressed Consent Statute outlines the process through law enforcement is to conduct DUI investigations and the collection of biological evidence in support of arrest and subsequent prosecution; it also explicitly outlines the parameters of law enforcement's authority within this

specific context. As previously stated by this Court, "[t]he express consent statute creates mutual "rights and responsibilities" that apply to both drivers and law enforcement officers." *People v. Null*, 233 P.3d 670, 678 (Colo. 2010) (quoting *Turbyne v. People*, 151 P.3d 563, 568 (Colo.2007)).

The government argues that "[w]hen read literally and in isolation from its context, the provision prohibits police from using physical restraint in the collection of *any* biological specimen from *any* person who is not suspected of one of the four enumerated offenses." Op. Br., p 13. But context is significant, and interpretation of a statute within the title, section, and application designated by the Legislature is paramount. See *People v. Diaz*, 2015 CO 28, ¶13 ("Words and phrases within a statute must be read in the context in which they appear, including "the specific context in which [the] language is used, and the broader context of the statute as a whole." (citation omitted)). This provision is not applied beyond the bounds of the Expressed Consent statute and does not render other provisions, e.g., § 16-3-303.8(2), (3)(a), C.R.S. (2022), of Colorado's laws inapplicable. Rather, the Expressed Consent statute dictates law enforcement procedure when investigating DUI offenses. In no context other than suspected DUI investigations are Expressed Consent advisements read by law enforcement, and the government has recognized the explicit and detailed mandate from the Legislature regarding this specific context.

V. The Legislature did not provide obtaining a warrant for a forced blood draw as an alternative method for securing evidence for the government in the Expressed Consent Statute, though it has provided for forced blood draws in other statutes.

Colorado's Legislature has explicitly provided for forcible blood draws in other statutory contexts, as noted by the government in its Opening Brief. Op. Br., p 13 (See Crim. P. 41.1(h)(2) (authorizing court-ordered blood testing as a means of nontestimonial identification); see also § 16-3-303.8(2), (3)(a), C.R.S. (2020) (authorizing court-ordered blood testing for communicable diseases); § 16-23-103(5), C.R.S. (2020) (requiring police to collect a biological sample from a person arrested for a felony); § 18-3-415, C.R.S. (2020) (requiring the collection of a biological sample from persons charged with certain sex offenses). See § 16-3-303.8(2), (3)(a), C.R.S. (2022)).

Specifically, in § 16-3-303.8, the Legislature explicitly outlines the process by which law enforcement shall seek a court order for a forced blood draw if a person is accused of committing enumerated offenses and suspected of having a communicable disease and the person does not admit to having a communicable disease or voluntarily consent to a blood test. § 16-3-303.8, C.R.S. 2022. In this context, the Legislature balanced the rights of the individual and the protection of law enforcement and first responders to create a detailed process by which law enforcement can secure a blood test without a person's consent.

The same is true for the Expressed Consent statute. The Legislature outlined the process law enforcement is to follow in DUI investigations. Without explicit grant from the Legislature permitting an alternative route for a forced blood draw in this context, law enforcement is not permitted to circumvent the process in the Expressed Consent statute by securing a warrant for a forced blood draw.

And regarding other Colorado rules providing for the collection of DNA or biological samples, Crim. P. 41.1 provides that a court may issue a nontestimonial identification order; but this order applies in circumstances where law enforcement or the prosecution seek to establish the identity of a suspect. In the context of a DUI investigation, securing a court order for nontestimonial identification is inapplicable given that law enforcement contact the individual at the time of investigation (or otherwise would not have biological samples to which they could compare a later buccal swab for purposes of a stale DUI investigation). It is inapposite to argue that the Express Consent statute could negate the authority of a court to issue an order in the context of nontestimonial identification under Crim. P. 41.1, as such a circumstance would not occur in the DUI investigation context.

VI. States across the nation have either provided obtaining a warrant as an alternative means to secure evidence by the government in the context of expressed consent statutes or held that the lack of language permitting such action violated state statutes.

As noted in the parties' briefing below and the court of appeals' opinion, "several other states have included provisions in their expressed or implied consent

statutes explicitly excepting or authorizing searches conducted pursuant to a warrant." Op., ¶ 19.

a. Arizona

Arizona's Expressed Consent statute provides: "If a person . . . refuses to submit to the test designated by the law enforcement agency . . . [t]he test shall not be given, except as provided [by statute] or pursuant to a search warrant." Ariz. Rev. Stat. Ann. § 28-1321(D)(1) (2020)

b. Washington

Washington's Expressed Consent statute explicitly states: "Nothing in [the statute] precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant[.]" Wash. Rev. Code Ann. § 46.20.308(4) (West 2020).

c. Wyoming

Wyoming's Expressed Consent statute states: "If a person under arrest refuses upon the request of a peace officer to submit to a chemical test[…,] none shall be given except in cases where serious bodily injury or death has resulted or upon issuance of a search warrant." Wyo. Stat. Ann. § 31-6-102(d) (West 2020).

d. Iowa

In *State v. Hitchens*, the Supreme Court of Iowa upheld the district court's ruling excluding the results of a blood test taken after the defendant, charged with

involuntary manslaughter, refused the officer's request for a test. *State v. Hitchens*, 294 N.W.2d 686, 689 (Iowa 1980). The *Hitchens* court specifically stated that a warrant was not permissible to circumvent the implied consent statute "as the legislature hadn't included any "qualifying language" to that effect." *Hitchens*, 294 N.W.2d at 688.

e. Vermont

Similarly, in Vermont, the Vermont Supreme Court held that Vermont's implied consent did not authorize law enforcement to secure a blood draw through a warrant as an alternative to the circumstances outlined in the statute. *State v. Beyor*, 641 A.2d 344, 345 (Vt. 1993).

f. Rhode Island

In *State v. DiStefano*, the Supreme Court of Rhode Island held "that in cases in which a motorist has refused consent, [police] are precluded from obtaining a search warrant to seize blood for alcohol or drug testing." *State v. DiStefano*, 764 A.2d 1156, 1166 (R.I. 2000). The *DiStafano* court concluded that Rhode Island's statutory framework provided "consent [as] a condition precedent to admissibility." *Id*. Thus, any changes to "this mandate must emanate from the General Assembly." *Id*.

Further, appellate courts have upheld forcible blood draws after refusal in Alaska, Arizona, Iowa, Florida, Indiana, Michigan, and Texas, as those states have

statutes specifically authorizing the forcible seizure of blood in DUI cases. In Alaska, Arizona, and Iowa, "statutes were specifically revised in response to judicial decisions barring the forcible seizure of blood." *DiStafano*, 764 A.2d at 1166-67 (citing *Pena v. State*, 684 P.2d 864 (AK 1984); *Collins v. Superior Court*, 761 P.2d 1049 (AZ 1988); *State v. Hitchens*, 294 N.W.2d 686 (Iowa 1980)).

Thus, "several states' implied consent statutes strike this balance like Colorado's statute does — by allowing forced tests in limited circumstances but otherwise relying on the threat of penalties to persuade drivers to cooperate with testing. See, e.g., *Birchfield v. North Dakota*, 579 U.S. at ___, 136 S. Ct. at 2184 (noting that "it is possible to extract a blood sample from a subject who forcibly resists" but that "many States reasonably prefer not to take this step," and citing as an example North Dakota, which "generally opposes this practice because of the risk of dangerous altercations between police officers and arrestees in rural areas where the arresting officer may not have backup" and thus allows forced testing only where an accident results in death or serious injury) (citations omitted); *Hitchens*, 294 N.W.2d at 688.

As noted by the court of appeals, "several of those states whose implied consent laws expressly address warrants limit warrant-based testing to specific, enumerated circumstances. See, e.g., Iowa Code Ann. § 321J.10(1) (West 2020) (only if a traffic accident has resulted in death or personal injury reasonably likely

to cause death); Ky. Rev. Stat. Ann. § 189A.105(2)(b) (West 2020) (only if a person is killed or suffers physical injury as a result of the incident); N.M. Stat. Ann. § 66-8-111(A) (West 2020) (only with probable cause to believe the driver caused death or great bodily injury to another or committed a felony while under the influence of alcohol or drugs); R.I. Gen. Laws 15 Ann. § 31-27-2.9(a) (West 2020) (only with probable cause to believe the driver committed one of four listed offenses); Vt. Stat. Ann. tit. 23, § 1202(d)(6)(B), (f) (West 2020) (only if an accident results in death or serious bodily injury to another)." Op, ¶¶ 25-26.

VII. The warrant in this case circumvented the Legislature's clear statutory language regarding permissible actions by law enforcement in investigating a DUI.

While § 16-3-304(3) authorizes "authorizes the issuance of a warrant to search for and seize anything that "would be material evidence in a subsequent criminal prosecution[]" and provides that "every search warrant authorizes the officer executing the same" to "use and employ such force as is reasonably necessary in the performance of the duties commanded by the warrant[,]" this constitutes general guidance regarding the issuance of warrants and evidence seizure. § 16-3-304(3)(b), C.R.S. (2020).

If different statutory provisions are contrary, the specific provision controls over the general provision. *Beren v. Beren*, 2015 CO 29, ¶ 11, 349 P.3d 233, 239

(citing *Telluride Resort & Spa, L.P. v. Colo. Dep't of Revenue,* 40 P.3d 1260, 1265 (Colo.2002); § 2–4–205).

Further, title 16 contains a limiting clause. This clause provides that "[n]othing in this part 3 shall be construed to require the issuance of a search warrant in cases in which such warrant is not required by law. This statute does not modify any statute inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made." § 16-3-307, C.R.S. 2022.

The government argues that the court of appeals' "interpretation of subsection (3) of the Expressed Consent Statute conflicts with [§ 16-3-304(3)] in that it precludes police from using physical restraint in the execution of a search warrant for a blood sample from a DUI suspect even though section 16-3-304(3) expressly authorizes the use of reasonable force in the execution of a search warrant without any exception for DUI suspects." Op. Br., p 19. In consideration of the statute and applicable law above, it is precisely because of the context of DUI investigation and the specific mandate of the Legislature in such a circumstance that the court of appeals was correct in its interpretation. The Legislature specifically outlined a process for law enforcement in the context of DUI investigations, and it is for the Legislature to make any amendment to this this context-specific statute.

VIII. Should application of statutory interpretation principles lead to protections for DUI suspects beyond suspects in other contexts, any statutory amendment is within the purview of the Legislature and not this Court.

Balancing "competing interests is a task for the General Assembly, not for the courts." See *Burnett v. State Dep't of Nat. Res.*, 2015 CO 19, ¶ 13 ("The balance between . . . two competing interests 'is for the legislature alone to reach.'" (quoting *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001)); see also 1A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 20:22 (7th ed. 2007 ("When a statute announces a general rule and makes no exception to that rule, a court is ordinarily not authorized to create an exception or add a qualifying provision not intended by the lawmakers."). Should this Court interpret the Expressed Consent statute to protect DUI suspects differently than those subject to court orders as outlined in other statutes or a rule of criminal procedure, it is for the Legislature to amend the statute to avoid an unintended result. Based on the Legislature's clear language in the statute at present, this Court's role is to give effect to the Legislature's mandate and limitations on the authority of law enforcement in DUI investigations; principles of statutory interpretation support Mr. Raider's position that interlineating exceptions or alternative methods of securing evidence for subsequent prosecution it beyond this Court's role in on certiorari review.

IX. Suppression of the test results from the unauthorized forced blood draw is an appropriate remedy for the government's statutory violation in this case.

"[I]n the context of the Expressed Consent Statute, [this Court] has held that "suppression of evidence may be appropriate" as a sanction "to remedy improper police conduct." *Turbyne*, 151 P.3d at 570. This Court has also "upheld the suppression of evidence due to violation of the statute, even where there was no alleged constitutional violation." See *Null*, 233 P.3d at 681-82; see also *Turbyne*, 151 P.3d at 572.

This Court has also warned that "law enforcement may not violate a defendant's statutory rights with impunity." *Null*, 233 P.3d at 682. Here, if violation of the statute's prohibition on forced blood draws "is to have any consequence, the results of an illegal forced test must be excluded from evidence. Indeed, the statute provides for admission into evidence of results from forced testing conducted pursuant to the four listed exceptions, § 42-4-1301(6)(e), suggesting that results from forced testing are inadmissible in other circumstances." Op. ¶ 36.

CONCLUSION

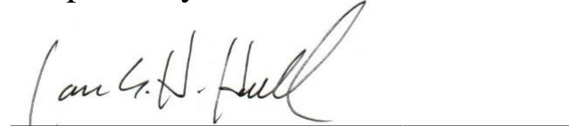
With necessary deference to the Legislature's consideration of the competing concerns regarding public safety and individual bodily integrity, and applying principles of statutory construction, the court of appeals correctly held

that Colorado's Express Consent statute permits a forced blood draw only if there is probable cause to believe a suspect has committed one of four statutorily enumerated offenses. Should a suspect under investigation for DUI refuse chemical testing, Colorado's Expressed Consent statute does not permit law enforcement to circumvent the Legislature's explicit language by applying for a warrant authorizing a forced blood draw as additional evidence for a subsequent prosecution.

Given law enforcement's circumvention of Colorado's Expressed Consent statute by acting outside of the parameters of the statute through the application for a warrant for a forced blood draw, suppression of the test results from Mr. Raider's blood draw is the appropriate remedy in this case. Mr. Raider moves this Court for an order affirming the decision of the court of appeals, remanding this case for a new trial, and instructing the trial court to suppress the test results in any subsequent prosecution.

Dated: February 22, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that on February 22, 2022, she did serve the foregoing ANSWER BRIEF via Colorado Courts E-filing to all counsel of record.