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ADVANCE SHEET HEADNOTE
September 12, 2022

2022 CO 40

No. 21SC119, *People v. Raider*—Fourth Amendment and Reasonableness in General—Necessity of and Preference for Warrant, and Exceptions in General—Right to Sample or Conduct Test; Initiating Procedure.

In this case, after being arrested for DUI, the defendant refused a breath or blood test under the Expressed Consent Statute, which prohibits the use of forced specimen collection except in four specific circumstances. As a result, officers applied for and received a search warrant to conduct a blood draw, authorizing them to use reasonable force as necessary. The Colorado Supreme Court thus considers whether the prohibition against forced specimen collection in the Expressed Consent Statute applies to *all* searches of people suspected of DUI or only to *warrantless* searches. The Colorado Supreme Court concluded that the statute only contemplates warrantless searches. Therefore, the Colorado Supreme Court holds that the Expressed Consent Statute's prohibition against forced specimen collection has no bearing on searches executed pursuant to a valid

warrant. Accordingly, the Colorado Supreme Court reversed the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 40

Supreme Court Case No. 21SC119
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 17CA1896

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Charles Raider, Jr.

Judgment Reversed
en banc
September 12, 2022

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CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE GABRIEL dissented.

CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 Colorado's Expressed Consent Statute, section 42-4-1301.1(1)–(2)(a)(I), C.R.S. (2021), provides that "[a]ny person who drives any motor vehicle" on the roads of the state "shall be deemed to have . . . consent[ed] to . . . breath or blood [tests]" and shall "cooperate in the taking and completing of" such tests when "directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of the prohibitions against" driving under the influence ("DUI")-related offenses. But the statute further provides that "[n]o law enforcement officer 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" one of four enumerated crimes: criminally negligent homicide, vehicular homicide, assault in the third degree, or vehicular assault. § 42-4-1301.1(3).

¶2 This case considers whether that prohibition against forced specimen collection applies to *all* searches of people suspected of DUI or only to *warrantless* searches. We conclude that the statute only contemplates warrantless searches. Therefore, we hold that the Expressed Consent Statute's prohibition against forced specimen collection has no bearing on searches executed pursuant to a valid warrant. Hence, we reverse the judgment of the court of appeals.

I. Facts and Procedural History

¶3 A Fort Collins police officer responded to a call about an unauthorized car in a disability parking space. When the officer approached the car, he found Charles Raider sitting in the driver's seat with the keys in the ignition and the engine running. The officer noticed various signs of visible intoxication; Raider had bloodshot eyes and slurred speech, and he smelled of alcohol. Raider denied having consumed any alcohol, and when the officer asked him to perform roadside maneuvers, he declined. The officer then arrested Raider for DUI and, pursuant to the Expressed Consent Statute, gave him the choice of a breath or blood test. Raider initially didn't respond, but ultimately, he refused.

¶4 After learning that Raider had several prior DUI convictions, another officer applied for a search warrant to conduct a blood draw. The officers transported Raider to the hospital, and after about an hour, they received a warrant authorizing them to draw a blood sample for testing and to use reasonable force if necessary. Again, Raider refused to cooperate, so hospital personnel put him in a four-point leather restraint, and several officers held him down while his blood was drawn. Testing revealed that his blood alcohol content was well above the legal limit.

¶5 The prosecution charged Raider with, among other crimes, felony DUI. The trial court denied Raider's pre-trial motion to suppress the results of the blood test,

concluding that the Expressed Consent Statute's prohibition against forced specimen collection does not apply when, as here, a blood draw is authorized by a warrant. At trial, the prosecution presented evidence of Raider's blood-test results and refusal to cooperate with the blood draw. Ultimately, the jury found Raider guilty of felony DUI.

¶6 Raider appealed, and a division of the court of appeals reversed. The division held that under the plain language of subsection (3) of the Expressed Consent Statute, aside from the four enumerated exceptions, "officers may not force a driver suspected of DUI . . . to take a blood test . . . even if [they] obtain a warrant authorizing the test." *People v. Raider*, 2021 COA 1, ¶ 4, 490 P.3d 1079, 1081. The division concluded that the statute's language is "clear and unequivocal" because "[t]he use of the term 'except' followed by four specific exceptions indicates that the *only* circumstances in which officers may force testing . . . are those listed in the statute." *Id.* at ¶ 17, 490 P.3d at 1083 (emphasis added). The division determined that the statute's silence regarding warrants did not create ambiguity, *see Riley v. People*, 104 P.3d 218, 221 (Colo. 2004) ("The presence of one exception is generally construed as excluding other exceptions."), and that the legislature could have expressly included an exception for searches conducted pursuant to a warrant had it wanted. *Raider*, ¶ 18, 490 P.3d at 1083.

¶7 We granted certiorari and now reverse.[1]

II. Standards of Review

¶8 Review of a trial court's suppression order presents a mixed question of law and fact. *People v. Munoz-Gutierrez*, 2015 CO 9, ¶ 14, 342 P.3d 439, 443. We defer to the trial court's findings of fact if they are supported by the record, but we assess the legal effect of those facts de novo. *Id.* We also review statutory interpretation de novo. *People v. Smith*, 254 P.3d 1158, 1161 (Colo. 2011).

¶9 When we read a statute, we must first "determine whether the language at issue has a plain and unambiguous meaning." *Burton v. Colo. Access*, 2018 CO 11, ¶ 23, 428 P.3d 208, 212 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). In doing so, we give effect to the express language of the statute and consider it as a whole to give consistent, harmonious, and sensible effect to all its parts. *Garrigan v. Bowen*, 243 P.3d 231, 235 (Colo. 2010); *Davison v. Indus. Claim Appeals Off.*, 84 P.3d 1023, 1029 (Colo. 2004). Additionally, "[s]tatutes should be interpreted, if possible, to harmonize and give meaning to other potentially conflicting statutes." *People in Int. of D.L.E.*, 645 P.2d 271, 274 (Colo. 1982); *see also*

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[1] We granted certiorari on the following issue:

> 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.

People v. James, 497 P.2d 1256, 1257 (Colo. 1972) ("If two acts of the legislature may be construed so that an inconsistency will be avoided, it is our duty to so construe them."). When construing a statute, a court's "primary purpose is to ascertain and effectuate the intent of the General Assembly." *People v. Diaz*, 2015 CO 28, ¶ 12, 347 P.3d 621, 624. So "although we must give effect to the statute's plain and ordinary meaning, the intention of the legislature will prevail over a literal interpretation of the statute that leads to an absurd result." *AviComm, Inc. v. Colo. Pub. Utils. Comm'n*, 955 P.2d 1023, 1031 (Colo. 1998) (citations omitted).

III. Analysis

¶10 We begin with an overview of the relevant Fourth Amendment principles, including the warrant requirement. Next, we explain Colorado's Expressed Consent Statute and its prohibition against forced specimen collection. We then consider whether that prohibition precludes collection pursuant to a warrant. We hold that the Expressed Consent Statute's prohibition against forced specimen collection has no bearing on searches executed pursuant to a valid warrant.

A. The Fourth Amendment

¶11 The United States Constitution and the Colorado Constitution both protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Colo. Const. art. II, § 7. This constitutional principle applies to blood draws because such "an invasion of bodily integrity . . . implicates an individual's 'most

personal and deep-rooted expectations of privacy.'" *People v. Simpson*, 2017 CO 25, ¶ 17, 392 P.3d 1207, 1211 (quoting *Missouri v. McNeely*, 569 U.S. 141, 148 (2013)).

¶12 A search conducted pursuant to a valid search warrant issued by a neutral magistrate generally satisfies the Fourth Amendment's reasonableness requirement. *See United States v. Ventresca*, 380 U.S. 102, 105–06 (1965); *People v. Gall*, 30 P.3d 145, 149 (Colo. 2001). In Colorado, a judge may issue a warrant for "material evidence in a subsequent criminal prosecution." § 16-3-301(2)(e), C.R.S. (2021). The executing officer of "*every* search warrant" is authorized to "use and employ such force as is reasonably necessary in the performance of the duties commanded by the warrant." § 16-3-304(3)(b), C.R.S. (2021) (emphasis added).

¶13 A *warrantless* search, on the other hand, is presumptively unreasonable unless it falls within a recognized exception. *McNeely*, 569 U.S. at 148. One such exception to the warrant requirement is the subject's voluntary consent. *Simpson*, ¶ 19, 392 P.3d at 1211.

B. Colorado's Expressed Consent Statute

¶14 Many states, including Colorado, have instituted implied consent laws that help to enforce drunk-driving laws and secure evidence of blood alcohol content. *See McNeely*, 569 U.S. at 160–61. "With the rise of motor vehicle usage in the twentieth century, states found themselves confronting a grave problem: the devastating consequences of drunk drivers on the nation's roadways." *People v.*

Hyde, 2017 CO 24, ¶ 11, 393 P.3d 962, 965. But laws prohibiting drunk driving alone were not enough to curb the problem. *Id.* And providing juries with an accurate account of situations involving suspected drunk drivers proved challenging, as obtaining drunk driving evidence is "time-sensitive by nature because the evidence of the offense metabolizes out of the driver's bloodstream simply by the passage of time." *City of Missoula v. Williams*, 406 P.3d 8, 15 (Mont. 2017). So, before officers gained the ability to obtain warrants electronically, in order to facilitate the collection of evidence necessary for such convictions, "states began to enact implied consent laws designed to encourage drivers to submit to blood-alcohol tests." *See Hyde*, ¶ 11, 393 P.3d at 965–66. In other words, implied consent laws satisfy the Fourth Amendment because, by driving in the state, the driver has consented to a chemical test of their blood or breath, which constitutes an exception to the warrant requirement.

¶15 Colorado's version, the Expressed Consent Statute—section 42-4-1301.1(1)–(2)(a)(I)—"provides that any motorist who drives on the roads of the state has consented to take a blood or breath test when requested to do so by a law enforcement officer with probable cause to suspect the motorist of driving under the influence." *Simpson*, ¶ 1, 392 P.3d at 1209. The statute establishes a process for the collection of a blood or breath sample from a DUI suspect and imposes penalties for a suspect's refusal to cooperate in the process.

¶16 Specifically, the statute states that any person who drives a motor vehicle in the state "shall be deemed to have expressed . . . consent to the provisions of this section." § 42-4-1301.1(1). Accordingly, if a police officer has probable cause to believe that a driver has committed a DUI-related offense, the driver "shall be required to take and complete, and to cooperate in the taking and completing of," a breath or blood test. § 42-4-1301.1(2)(a)(I). But the statute recognizes the reality that some drivers, despite the law, will nevertheless refuse to cooperate, *see* § 42-4-1301.1(2)(a)(II), whether it be verbally refusing or resisting the actual collection of the sample, *see id.*; § 42-4-1301.1(3).

¶17 Where a driver refuses testing, the Expressed Consent Statute prohibits forced specimen collection except for four specific criminal charges—where the police have probable cause to believe that the person has committed criminally negligent homicide, vehicular homicide, assault in the third degree, or vehicular assault:

> No law enforcement officer 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[,] . . . vehicular homicide[,] . . . assault in the third degree[,] . . . or vehicular assault . . . 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). The question here is whether this prohibition applies to *all* searches—including those authorized by a search warrant—or only to *warrantless* searches.

C. The Expressed Consent Statute and Warrant-Based Searches

¶18 The People argue (and the trial court found) that subsection (3) of the Expressed Consent Statute did not apply because Raider's blood draw was a search conducted pursuant to a valid search warrant, not the result of a warrantless search governed by the Expressed Consent Statute. Conversely, the division agreed with Raider and reasoned that the language of the Expressed Consent Statute was "clear and unequivocal," interpreting it as fully exclusionary: "The 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." *Raider*, ¶ 17, 490 P.3d at 1083 (citing *Riley*, 104 P.3d at 221 ("The presence of one exception is generally construed as excluding other exceptions.")).

¶19 To begin our analysis, we consider the statute as a whole to give consistent, harmonious, and sensible effect to all its parts. *See Garrigan*, 243 P.3d at 235. Recall that the Expressed Consent Statute provides that a person who drives in Colorado "shall be deemed to have expressed [their] consent to the provisions of this section," § 42-4-1301.1(1), and it further provides that drivers suspected of

DUI-related offenses are "required to take and complete, and to cooperate in the taking and completing of, any test or tests of [their] breath or blood . . . when so requested and directed by a law enforcement officer," § 42-4-1301.1(2)(a)(I). Subsection (3), the prohibition against forced specimen collection, refers back to the same category of people: "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 . . . ." § 42-4-1301.1(3). Therefore, by its plain language, this prohibition only applies to people who have already impliedly consented to the statute's testing provisions through their act of driving; it says nothing about searches conducted pursuant to a valid warrant—i.e., where no consent is required.

¶20 The Expressed Consent Statute's silence on warrants is notable. Raider seizes upon this silence, arguing that "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 . . . it would have said so." Answer Br. 7; *see also Raider*, ¶ 18, 490 P.3d at 1083 ("If the General Assembly had intended to also except searches conducted pursuant to a warrant, it could have expressly said so.").

¶21 True, the Expressed Consent Statute is silent as to warrants, but a different statute within the motor vehicle code (which houses the Expressed Consent

Statute) is not. We rely on that statute to help us interpret the one at issue. *See D.L.E.*, 645 P.2d at 274; *James*, 497 P.2d at 1257. Section 42-4-1712, C.R.S. (2021), provides that the "foregoing provisions of this article," including the Expressed Consent Statute, "shall govern all police officers in making arrests *without a warrant* . . . for violations of this article," but that "the procedure prescribed in this article shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense or infraction of like grade." (Emphasis added.) In other words, the motor vehicle code only governs warrantless searches. Searches conducted pursuant to search warrants are addressed in the Code of Criminal Procedure. Section 16-3-301(2)(e) authorizes a warrant to be issued to obtain "material evidence in a subsequent criminal prosecution." And section 16-3-304(3)(b) 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." (Emphasis added.)

¶22 Therefore, the Expressed Consent Statute's silence does not reveal ambiguity. Instead, it simply reflects the limited scope of the statute, which *by its terms* applies to drivers who have impliedly consented (and then in some cases refused to cooperate). While warrants are typically a requirement for a reasonable search under the Fourth Amendment, *Gall*, 30 P.3d at 149, statutory consent

functions as a distinct way to collect blood samples under the consent exception to that requirement, *Hyde*, ¶ 24, 393 P.3d at 968. Conversely, because consent is an exception to the warrant requirement, when police have a warrant, consent is immaterial. Hence, the reason that the Expressed Consent Statute doesn't mention warrants is that warrants are irrelevant to the statutory issue of consent; by definition, a valid warrant functions as an entirely independent constitutional ground for conducting a search.

¶23 The context of the Expressed Consent Statute further illustrates the General Assembly's intentions. When it was enacted in the 1980s, officers did not realistically have the option of pursuing a search warrant in the middle of a DUI investigation because DUI evidence disappears quickly as blood alcohol levels decrease steadily over time. *Williams*, 406 P.3d at 15. It was not until 2007 that warrants could be transferred electronically without a physical signature. *See* Ch. 6, sec. 1, § 16-1-106, 2007 Colo. Sess. Laws 22, 22–23; *see also McNeely*, 569 U.S. at 155 (noting the "technological developments that enable police officers to secure warrants more quickly" and many jurisdictions' adoptions of "other ways to streamline the warrant process, such as by using standard-form warrant applications for drunk-driving investigations"). As a solution, the General Assembly enacted the statute to provide an alternative means to collect evidence relatively quickly without the need for a search warrant. The General Assembly

did not need to discuss search warrants in the Expressed Consent Statute because the statute only pertained to a recognized exception to the Fourth Amendment's warrant requirement: consent.

¶24 The Expressed Consent Statute (including its prohibition against forced specimen collection) thus functions as an exception to the Fourth Amendment's prohibition against warrantless searches.[2] Therefore, it does *not* apply to blood draws performed pursuant to a judicially authorized search warrant for which consent is unnecessary. That is, because consent operates as an *exception* to the Fourth Amendment's warrant requirement, the Expressed Consent Statute necessarily doesn't contemplate searches performed *pursuant to* a warrant. Accordingly, it would be illogical to deem a warrant as an exception to a consent statute when, in fact, consent is an exception to the warrant requirement.

¶25 While some jurisdictions have interpreted their own expressed consent statutes differently, many have concluded as we do today. The Texas Court of Criminal Appeals, for example, held that Texas's expressed consent statute worked separately from valid search warrants. *Beeman v. State*, 86 S.W.3d 613, 615–16 (Tex. Crim. App. 2002); *see also State v. Smith*, 134 S.W.3d 35, 40 (Mo. Ct.

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[2] The division, instead, viewed a search warrant as a possible exception to the Expressed Consent Statute's prohibition against forced specimen collection.

App. 2003) (concluding that prohibition found in implied consent statute on forced blood draws did not extend to searches pursuant to a valid search warrant); *Brown v. State*, 774 N.E.2d 1001, 1003 (Ind. Ct. App. 2002) (similarly concluding that implied consent law does not "preclude[] the use of a search warrant to obtain a blood sample after a request to submit to a chemical test has been refused"); *Metzner v. State*, 462 S.W.3d 650, 656–57 (Ark. 2015) (same); *State v. Minett*, 332 P.3d 235, 238 (Mont. 2014) (same); *State v. Stone*, 728 S.E.2d 155, 168 (W. Va. 2012) (same); *State v. Zielke*, 403 N.W.2d 427, 428 (Wis. 1987) (same); *State v. Evans*, 378 P.3d 413, 420 (Alaska Ct. App. 2016) (same).

¶26 In sum, the Expressed Consent Statute's prohibition against forced specimen collection applies only to warrantless tests based on implied consent. Accordingly, we hold that the Expressed Consent Statute's prohibition against forced specimen collection has no bearing on searches executed pursuant to a valid warrant.

IV. Conclusion

¶27 For the foregoing reasons, we reverse the judgment of the court of appeals and remand for further proceedings consistent with this opinion.

JUSTICE GABRIEL dissented.

JUSTICE GABRIEL, dissenting.

¶28 Colorado's Expressed Consent Statute, section 42-4-1301.1(3), C.R.S. (2021), provides as follows, in the context of a traffic stop in which a law enforcement officer has probable cause to believe that a person was driving in violation of the prohibitions against driving under the influence ("DUI"), DUI per se, driving while ability impaired ("DWAI"), or Underage Drinking and Driving ("UDD"):

> 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. *No law enforcement officer 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.*

(Emphasis added.)

¶29 In my view, this language could not be more plain or unambiguous: "No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of such person's blood, breath, saliva, or urine for testing"

except in the four circumstances expressly set forth in the statute. *Id.* And as I discuss more fully below, this provision reflects a careful legislative balancing of the needs of law enforcement against the seriousness of the bodily intrusion that occurs in the course of a physically forced specimen draw.

¶30 Today, however, notwithstanding the plain and unambiguous legislative language and the careful balancing of interests that our legislature has adopted, the majority effectively adds to section 42-4-1301.1(3) a fifth exception, namely, one that allows a forced specimen draw if a law enforcement officer obtains a warrant. Maj. op. ¶¶ 2, 10, 26.

¶31 Because I do not believe that it is appropriate for this court to add words to a clear and unambiguous statute or to upset the legislature's weighing of interests, and because the interpretation that the majority adopts today will allow for an end run—in every case—around the legislatively crafted limitations on forced specimen draws, I respectfully dissent.

I. Factual Background

¶32 The material facts of this case are not disputed.

¶33 On the evening in question, a Fort Collins police officer responded to a call regarding an unauthorized car in a handicapped parking space. The officer found defendant Charles Raider, Jr. sitting in the driver's seat with the keys in the ignition and the engine running, and the officer noted that Raider's eyes were

bloodshot and watery, his speech was slurred, and his breath smelled of alcohol. After Raider denied having consumed any alcohol or taken any drugs, the officer asked him to perform roadside maneuvers, but Raider declined to do so. The officer then advised Raider that he was under arrest for DUI, and both the officer and a second officer who had arrived at the scene advised Raider about Colorado's Expressed Consent Statute. Raider ultimately refused to cooperate in providing either a breath or blood test.

¶34 The officers then learned that Raider had several prior DUI convictions. In light of this information, the second officer on scene applied for a search warrant to conduct a forced blood draw. In the meantime, the first officer transported Raider to the hospital.

¶35 About an hour later, the officers received a signed warrant authorizing them to draw a sample of Raider's blood for testing and to use reasonable and necessary force to obtain it. When Raider again refused to cooperate with the blood draw, three police officers moved him to the emergency room, where two officers held his arms, one officer on each arm, while twisting his right arm to expose his veins for the blood draw. Raider continued to protest, however, and the officers decided to place him into four-point hard restraints. While Raider was in these restraints, the officers again held him, forcing him to expose the veins in his right arm, and a hospital technician drew his blood.

¶36 This forced testing revealed that Raider's blood had an alcohol content of .188 and contained the active components of marijuana, and the prosecution subsequently charged Raider with felony DUI (three or more prior convictions) and obstructing a peace officer. Notably, Raider was not charged with either criminally negligent homicide pursuant to section 18-3-105, C.R.S. (2021), vehicular homicide pursuant to section 18-3-106(1)(b), C.R.S. (2021), assault in the third degree pursuant to section 18-3-204, C.R.S. (2021), or vehicular assault pursuant to section 18-3-205(1)(b), C.R.S. (2021).

¶37 The matter proceeded, and after Raider unsuccessfully moved to suppress the evidence from the forced blood draw, he was convicted as charged. Raider then appealed, and the court of appeals division below unanimously reversed his conviction, concluding that the forced blood draw violated the plain language of section 42-4-1301.1(3), thus requiring suppression of the evidence resulting from that draw and reversal of Raider's convictions. *People v. Raider*, 2021 COA 1, ¶ 4, 490 P.3d 1079, 1081. The People petitioned for certiorari, and we granted their petition.

II. Analysis

¶38 I begin by discussing the applicable standard of review and principles of statutory interpretation. I then proceed to explain why I believe the majority's

interpretation of section 42-4-1301.1(3) is inconsistent with the plain and unambiguous language of that provision.

A. Standard of Review and Principles of Statutory Interpretation

¶39 We review issues of statutory interpretation de novo. *McCoy v. People*, 2019 CO 44, ¶ 37, 442 P.3d 379, 389.

¶40 In construing a statute, we seek to ascertain and give effect to the General Assembly's intent. *Id.* To do so, we look first to the statutory language, giving its words and phrases their plain and ordinary meanings. *Id.* We read such words and phrases in context, and we construe them according to the rules of grammar and common usage. *Id.* Additionally, we "endeavor to effectuate the purpose of the legislative scheme." *Id.* at ¶ 38, 442 P.3d at 389. In doing so, we read that scheme as a whole, giving consistent, harmonious, and sensible effect to all of its parts, and we avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results. *Id.* We do not add words to a statute or subtract words from it. *Turbyne v. People*, 151 P.3d 563, 567 (Colo. 2007).

¶41 If the statute is unambiguous, then we apply it as written. *McCoy*, ¶ 38, 442 P.3d at 389. A statute is ambiguous when it is reasonably susceptible of multiple interpretations. *Id.*

B. Section 42-4-1301.1(3)

¶42 Under Colorado's Expressed Consent Statute, sections 42-4-1301.1(1), (2)(a)(I), and (b)(I), anyone who drives a motor vehicle in Colorado is deemed to have consented to take a blood or breath test when requested by a law enforcement officer having probable cause to believe that the driver, due to alcohol, drugs, or both, was driving a motor vehicle in violation of the prohibitions against DUI, DUI per se, DWAI, or UDD. If the driver refuses to take and to complete, or to cooperate with the completing of, such testing, then that refusal is admissible in evidence at trial for DUI or DWAI. § 42-4-1301(6)(d), C.R.S. (2021). In addition, a driver's refusal to submit to such testing will result in the automatic revocation of their driver license for at least one year, and longer for successive violations. § 42-2-126(2)(h), (3)(c)(I), (4)(b)(I), C.R.S. (2021).

¶43 As noted above, however, the Expressed Consent Statute permits a law enforcement officer to physically restrain a person for purposes of conducting a forced specimen draw if the officer has probable cause to believe that the person has committed one of four enumerated offenses, namely, criminally negligent homicide pursuant to section 18-3-105, vehicular homicide pursuant to section 18-3-106(1)(b), assault in the third degree pursuant to section 18-3-204, or vehicular assault pursuant to section 18-3-205(1)(b). § 42-4-1301.1(3). And evidence obtained through such a forced specimen draw is admissible in a prosecution for

any of these four enumerated offenses or for DUI, DUI per se, DWAI, or UDD. § 42-4-1301(6)(e).

¶44 Here, it is undisputed that the officers lacked probable cause to believe that Raider had committed any of the crimes enumerated as exceptions in section 42-4-1301.1(3). The question before us, then, is whether, despite the fact that none of the four statutory exceptions applied, the officers could nonetheless conduct a forced specimen draw by obtaining a warrant. Unlike the majority, I do not believe that they could properly do so.

¶45 As an initial matter, I disagree with the People's suggestion that we cannot apply the plain and unambiguous language of section 42-4-1301.1(3) because that language is allegedly too broad and not limited to the scenario in which a driver is suspected of committing DUI, DUI per se, DWAI, or UDD. Section 42-4-1301.1(3) begins, "Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests . . . ." *Id.* The tests to which that sentence refers are obviously the tests set forth earlier in section 42-4-1301.1, and particularly in section 42-4-1301.1(2). Thus, the prohibition on forced specimen draws refers to forced specimen draws in the context of a traffic stop concerning suspected DUI, DUI per se, DWAI, or UDD, not to forced specimen draws or warrants that may be obtained in other circumstances.

¶46 Turning then to the statutory language itself, I believe that the language is clear and unambiguous: law enforcement officers may not physically restrain a person to conduct a forced specimen draw except when the officer has probable cause to believe that the person has committed one of the four crimes expressly enumerated in the statute. *See* § 42-4-1301.1(3).

¶47 Such a statutory scheme makes perfect sense, and it does not result in drunk drivers receiving a free pass or special rights, as the People suggest. Rather, this statutory scheme reflects an intentional and careful legislative balancing of competing policy interests.

¶48 On the one hand, the statutory scheme protects the public from drunk drivers by allowing law enforcement officers to obtain evidence to prosecute such offenders. *Eggleston v. Dep't of Revenue*, 895 P.2d 1169, 1171 (Colo. App. 1995); *see also Turbyne*, 151 P.3d at 569 (noting that one objective of the Expressed Consent Statute is to allow law enforcement officers to obtain scientific evidence of the amount of alcohol in a driver's bloodstream in order to curb drunk driving by facilitating the prosecution of such driving offenses); § 42-2-126(1)(a) (noting that one purpose of the driver license revocation provisions is "[t]o provide safety for all persons using the highways of this state by quickly revoking the driver's license of . . . any person who has refused to submit to an analysis as required by section 42-4-1301.1").

¶49 On the other hand, the statutory scheme recognizes that "blood draws are 'significant bodily intrusions'" because they (1) "require piercing the skin," (2) "extract a part of the subject's body," and (3) "place[] in the hands of law enforcement authorities a sample that can be preserved and from which it is possible to extract information beyond a simple [blood alcohol concentration] reading." *Birchfield v. North Dakota*, 579 U.S. 438, 463–64 (2016) (quoting *Skinner v. Ry. Lab. Execs. Ass'n*, 489 U.S. 602, 625 (1989)). This statutory scheme further recognizes that limiting forced specimen draws from suspected drunk drivers minimizes potentially violent, physical confrontations between law enforcement officers and such drivers. *See State v. Hitchens*, 294 N.W.2d 686, 688 (Iowa 1980); *State v. DiStefano*, 764 A.2d 1156, 1163 (R.I. 2000).

¶50 The legislature here has recognized that certain offenses are so serious and so threaten public safety that they warrant the significant bodily intrusion that a forced specimen draw entails. For less serious offenses, however, the legislature has proscribed such forced bodily intrusions, choosing, instead, to penalize non-cooperating drunk driving suspects by automatically revoking their driver licenses and by providing that their refusals to cooperate will be admissible at trial, which creates obvious adverse inferences on which the fact-finder may rely.

¶51 In my view, this balancing of policy interests was the legislature's call to make, and because the statute could not be more clear and unambiguous, our

work should end there, and we should affirm the division's decision below. *See Birchfield*, 579 U.S. at 475 (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," 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"); *Hitchens*, 294 N.W.2d at 688 (explaining that Iowa's implied consent statute "recognizes a driver's 'right' to refuse testing" but that it "extracts a penalty for exercising the right" in an effort to "motivate[] drivers to take the test . . . without resorting to physical compulsion").

¶52 The majority, however, has chosen, instead, to effectively add to section 42-4-1301.1(3) an exception that the statute does not provide. But as noted above, we may not add language to a statute. *Turbyne*, 151 P.3d at 567. Nor may we recalibrate a balancing of interests that the legislature has carefully crafted. *See Burnett v. State Dep't of Nat. Res.*, 2015 CO 19, ¶ 13, 346 P.3d 1005, 1008 ("The balance between . . . two competing interests 'is for the legislature alone to reach.'") (quoting *Medina v. State*, 35 P.3d 443, 453 (Colo. 2001)).

¶53 This is especially true here because the legislature obviously knew how to add a court order exception, had it wished to do so. *See, e.g.*, § 16-3-303.8(2), (3)(a), C.R.S. (2021) (providing, in a statute governing the blood testing of assault

suspects to check for communicable diseases, one subsection allowing law enforcement officers to ask a suspect to voluntarily consent to testing and another subsection allowing officers to seek, and a court to enter, an order requiring testing under certain circumstances if the suspect refuses to consent).

¶54 Indeed, many other state legislatures have included warrant exceptions in their own expressed or implied consent statutes. *See, e.g.*, Ariz. Rev. Stat. Ann. § 28-1321(D)(1) (2021) ("If a person under arrest 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."); Wash. Rev. Code. Ann. § 46.20.308(4) (West 2021) ("Nothing in [the statute] precludes a law enforcement officer from obtaining a person's blood to test for alcohol, cannabis, or any drug, pursuant to a search warrant . . . ."); Wyo. Stat. Ann. § 31-6-102(d) (West 2021) ("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."). I perceive no material difference between a statute that says, "The test shall not be given," and our statute, which says, "No law enforcement officer shall physically restrain any person" for the purpose of a forced specimen draw. § 42-4-1301.1(3).

¶55 In support of its contrary interpretation, the majority asserts that section 42-4-1301.1(3) only applies to warrantless searches, and thus, the Expressed

Consent Statute's prohibition against forced specimen draws has no bearing on searches executed pursuant to a valid warrant. Maj. op. ¶¶ 2, 10, 26. For a number of reasons, I disagree.

¶56 First, as noted above, the majority's interpretation is inconsistent with the plain and unambiguous statutory language and effectively adds words to the statute's text, which we may not do. *See Turbyne*, 151 P.3d at 567. Specifically, the majority states that the prohibition on forced specimen draws refers back to persons who have already impliedly consented. Maj. op. ¶ 19. But that is not what the statute says. The second sentence of section 42-4-1301.1(3) repeatedly refers to "such person." The third sentence, which prohibits forced specimen draws except in four enumerated circumstances, is different. It begins, "No law enforcement officer shall physically restrain *any person . . . .*" *Id.* (emphasis added). In my view, the difference in language is significant. "Such person" unmistakably refers back to the person who impliedly consented. "Any person" does not, and in stating that it does, the majority effectively adds a warrant exception to section 42-4-1301.1(3). If our legislature wishes to add such an exception to the statute, then it is, of course, free to do so. But it has not done so as of yet.

¶57 Second, and related to my first point, the exception that the majority effectively adopts swallows the rule and allows an end run—in every case—around the legislatively enumerated limits on forced specimen draws. As

everyone appears to acknowledge, obtaining a warrant today is a relatively easy and expeditious process. *See* Maj. op. ¶ 23. Accordingly, whenever a law enforcement officer has probable cause to believe that a driver has driven in violation of the prohibitions against DUI, DUI per se, DWAI, or UDD, the officer can get a warrant and easily circumvent the limitations otherwise set forth in section 42-4-1301.1(3), rendering those limitations all but meaningless.

¶58 And nothing in the majority's opinion limits law enforcement officers' discretion as to when they may opt to obtain a warrant to allow a forced specimen draw, thus paving the way for arbitrary and discriminatory enforcement.

¶59 In this regard, I am not persuaded by the fact that the City of Fort Collins apparently has a policy allowing officers to obtain a warrant for a forced blood draw when a person is accused of having committed felony DUI. A city policy like this does not have the force of law and can be altered at any time and for any reason. Moreover, if the city wishes to allow forced blood draws in felony DUI cases (because such cases are perceived to be as serious as criminally negligent homicide, vehicular homicide, assault in the third degree, and vehicular assault, for which forced blood draws are statutorily permitted), then the proper procedure is for the city to request that the legislature amend the statute to add felony DUI to the list of offenses for which forced specimen draws are allowed. It

is not appropriate for either the city to adopt such an exception on its own or for this court to add that exception by judicial fiat.

¶60 Third, no one appears to dispute that our legislature has the authority to prohibit search warrants for forced specimen draws if the legislature determines that the circumstances do not justify so substantial a bodily intrusion and that other penalties for non-cooperation are more appropriate.

¶61 Fourth, although the majority cites to out-of-state cases supporting its position, maj. op. ¶ 25, other out-of-state authority supports mine. *See, e.g.*, *Hitchens*, 294 N.W.2d at 687–88 (concluding that Iowa's implied consent statute, which provides that if a person under arrest refuses to submit to chemical testing, then no test shall be given, precludes the taking of a blood sample pursuant to a warrant, and collecting cases supporting that view); *State v. Beyor*, 641 A.2d 344, 345 (Vt. 1993) (concluding that Vermont's implied consent statute, which provides that if a person refuses to submit to a test, then it shall not be given, precludes the taking of blood through a nontestimonial identification order and requires the state to rely instead on the imposition of sanctions to persuade drunk drivers to submit).

¶62 Finally, the statutory history of section 42-4-1301.1(3) supports my position. Specifically, at a time when law enforcement officers could have obtained warrants for forced specimen draws, our legislature adopted a statute that

provides, in plain and unambiguous language, "No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of such person's blood, breath, saliva, or urine for testing" except in four expressly enumerated circumstances. § 42-4-1301.1(3). In my view, the only conclusion to be drawn from this is that the legislature, in fact, meant to limit forced specimen draws to the four enumerated scenarios and to preclude circumventing those limits by obtaining a warrant.

III. Conclusion

¶63 Under the plain and unambiguous language of section 42-4-1301.1(3), law enforcement officers may not obtain a forced specimen draw from a suspected drunk driver except in four enumerated circumstances that are indisputably not present here. Accordingly, I would apply the unambiguous statutory language and conclude that the trial court erred in admitting evidence of the tests performed pursuant to the forced blood draw. I would thus affirm the decision of the division below, reverse Raider's convictions, and require a new trial.

¶64 I therefore respectfully dissent.