

No: 49174-5  
Jefferson County Superior Court No: 15-1-00102-2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

BOB L. INMAN,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Superior Court Judge

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REPLY BRIEF OF APPELLANT

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**ARGUMENT**

**WHERE A WARRANTLESS BLOOD DRAW IS JUSTIFIED BY EXIGENT CIRCUMSTANCES, THE FOURTH AMENDMENT REQUIRES LAW ENFORCEMENT TO GET A WARRANT BEFORE ANALYZING THE BLOOD SO THAT A PERSON'S PRIVATE MEDICAL FACTS ARE PROTECTED.**

This Court should reject the State's assertion that a warrantless blood draw based on exigent circumstances also necessarily authorizes the subsequent testing of the blood sample without a warrant. The U.S. Supreme Court has recognized that after a blood draw "the ensuing chemical analysis of the sample to obtain physiological data is further

invasion of the tested [subject's] privacy interests" that is protected by the Fourth Amendment. *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 617, 109 S.Ct. 1402, 103 L.Ed.2d (1989) (internal citations omitted).

Assuming, *arguendo*, that the warrantless blood draw in this case was justified by exigent circumstances, it is an absolute fiction that the exigency still existed days later when the sample was tested.

The State's attempts to distinguish *Riley v. California*, 573 U.S. \_\_\_, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014), are unpersuasive. Because *Riley* just "addresses digital information," as the State argues, does not distinguish it from the present case.<sup>1</sup> Like the binary code that underlies the information on cell phones, modern blood test results are also expressed in digital form. Moreover, both can provide a large quantity and variety of personal information.

*Riley* describes a cell phone as, "a cache of sensitive personal information" carried constantly by its owner. 134 S.Ct. at 2490. The same description applies to blood. Before the digital age, a person did not have to worry that his blood might be searched to reveal an ever-increasing variety of "private medical facts." See *Skinner*, 489 U.S. at 617. Like cell phone searches, blood tests can now disclose a lot of private information.

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<sup>1</sup> Brief of Respondent, p. 17.

While blood evidence has always existed, the scope of possible searches has increased substantially since *Skinner* was decided, posing heightened privacy concerns.

The State next tries to distinguish *Riley* from the present case because *Riley* involves cell phones found on subjects searched incident to arrest, rather than based on exigent circumstances.<sup>2</sup> It is a distinction without a difference. How law enforcement came into possession of the item they wish to search, whether a cell phone or blood sample, is immaterial.

In the present case, the blood sample was sent to the WSP Toxicology Laboratory five days after it was drawn from Mr. Inman. See Brief of Appellant, p. 8. The exigent circumstances had long passed once the blood was drawn and the sample sealed. As was mentioned in Appellant's opening brief, federal and state cases such as *Skinner v. Railway Labor Executives' Ass'n* and *Robinson v. City of Seattle* reason that, "the collection and subsequent analysis of biological evidence from a person is not a single search, but rather are two separate invasions of privacy." (Brief of Appellant, p. 20). The circumstances of the second invasion of privacy – that is, the analysis of the blood sample by the Tox Lab – were not exigent.

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<sup>2</sup> Brief of Respondent, p. 17.

Finally, the State argues that the most significant difference between *Riley* and the present case is that, “*Riley* involved the search of two cell phones where essentially, everything was ‘fair game.’ That is, any information contained on the phones had the potential to be viewed.”<sup>3</sup>

This distinction is not supported by the facts because private medical facts were searched for in the present case.

The State argues that it did not seek to run all possible tests on the blood. Nevertheless, the State tested the blood for both alcohol and drugs, when there was only reason to believe that Mr. Inman had consumed alcohol (a “Gallagher”). See Brief of Appellant, pp. 8-9. The testing for drugs went beyond the deputy’s suspicions and lab request.

Even basic DUI blood tests can reveal private medical facts. In explaining the privacy interest implicated in searching cell phones, *Riley* specifically references “an individual’s private interests or concerns – perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD.” 134 S.Ct. at 2490. A blood test may reveal a person’s prescription medications, raising the same privacy concerns as a search of a phone that reveals its owner’s research on health symptoms.

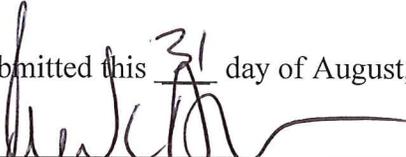
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<sup>3</sup> Brief of Respondent, p. 17.

## CONCLUSION

For the foregoing reasons, as well as those set forth in the opening Brief of Appellant, the decision of the trial court denying Mr. Inman's motion to suppress the blood draw and its subsequent testing should be reversed.

Respectfully Submitted this 31 day of August, 2017.

  
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RICHARD L. DAVIES, WSBA No. 18502  
Attorney for Appellant

## PROOF OF SERVICE

I, Jennifer Dempsey, certify that, on this date:

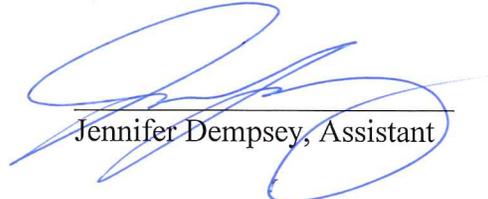
I filed the Reply Brief of Appellant electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the same through the Court's filing portal to: Michael Haas, Prosecuting Attorney, mhaas@co.jefferson.wa.us

I put a copy of appellant's brief in the mail to Appellant Bob Inman at 2709 Sunset Drive SE, Lacey, WA 98503.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on August 31, 2017.

  
\_\_\_\_\_  
Jennifer Dempsey, Assistant

**LAW OFFICE OF RICHARD L. DAVIES**

**August 31, 2017 - 4:45 PM**

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