No: 95597-2

IN THE SUPREME COURT OF WASHINGTON

(Court of Appeals No. 49174-5-II)

STATE OF WASHINGTON,

Respondent,

v.

BOB LeROY INMAN,

Petitioner.

PETITION FOR DISCRETIONARY REVIEW

TO THE SUPREME COURT OF WASHINGTON

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A. IDENTITY OF PETITIONER

Petitioner Bob LeRoy Inman was the Appellant in the Court of Appeals and Defendant in the Jefferson County Superior Court proceeding from which this appeal was taken.

B. COURT OF APPEALS DECISION

On January 17, 2018, Division II of the Court of Appeals filed an unpublished decision affirming the Defendant's convictions for vehicular assault. A copy of the opinion is attached hereto as Appendix A. A motion to publish the opinion by third party Washington Association of Prosecuting Attorneys was granted by the Court of Appeals on February 6, 2018. A copy of that order is attached hereto as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

1. Whether it was a violation of the Fourth Amendment of the United States Constitution and Art. 1, Sec. 7 of the Washington State Constitution to test the Defendant's blood without a judicial warrant where the Defendant's blood was drawn at the scene of the accident based on exigent circumstances but not tested until eleven days later, long after the exigency had passed?

2. Whether this Court's decision in *State v. Martines*, 184 Wn.2d 83 (2015), holding that an additional warrant to test blood was not required where the blood draw was authorized by a judicial warrant, is limited to those cases where the blood draw was authorized by a judicial warrant in the first instance?

D. STATEMENT OF THE CASE

On Saturday, May 30, 2015, Mr. Inman got into a motorcycle accident on Dosewallips Road, a remote and narrow road just above the small town of Brinnon on Hood Canal. RP 31, SCP Exhibit 1. Someone called 911 from a cell phone at 1712 to report the accident. RP 82-83.

Paramedic Manly and his crew arrived at the scene at about 1729 in an ambulance, with State Trooper Hester close behind. RP 36-37, 49, 68. Before they even got there paramedic Manly requested a helicopter to airlift a possibly injured patient to Harborview Medical Center in Seattle. RP 42-43. The request was made based paramedic Manly's experience, intuition, and preparing for the worst case scenario. RP 43.

Once on scene, Paramedic Manly and Trooper Hester saw a cruiser-style motorcycle in a ditch with front end damage and two people, later identified as Mrs. Vanderhoof and Mr. Inman, lying on the ground on their backs. RP 8-9, 37, 68-69. When Trooper Hester checked on Mrs. Vanderhoof, she complained of a pelvis injury. RP 69. When Trooper

Hester bent down to talk to Mr. Inman, he smelled "some alcohol" on Mr. Inman's breath. RP 69-70.

There was also a large group of motorcyclists at the scene. RP 8. 69. No one in the group actually witnessed the accident as Mr. Inman and Mrs. Vanderhoof were apparently ahead of the group when the accident happened. RP 69. One of the group, a retired firefighter, reported that Mr. Inman had been unconscious and unresponsive for five minutes; however, by the time paramedic Manly arrived Mr. Inman was awake, alert and oriented. RP 38-39.

Given the retired firefighter's report, the abrasions on Mr. Inman's face, damage to his helmet, and his complaints of a headache, paramedic Manly treated him for possible severe head trauma. RP 38-39.

Deputy Przygocki arrived at the accident scene at 1741. RP 86. Shortly after he arrived, the deputy went into the back of the ambulance to contact Mr. Inman and could smell intoxicants. RP 9. Mr. Inman told him that he had been driving his motorcycle and had drank a cocktail. RP 10-11. The deputy did not testify that he observed any other possible signs of intoxication. See RP 5-33.

The deputy ordered the blood draw before the paramedic punctured Mr. Inman's skin to insert an I.V. for medical purposes. RP 41. At the time, the deputy suspected that Mr. Inman had committed the crime of DUI as, at

that point, he was not sure of the injuries sustained by Mrs. Vanderhoof. RP 12. After the blood draw was done, the deputy secured the evidence and "began investigation into the collision." RP 18.

Deputy Przygocki made no attempt to contact a judge to get a telephonic warrant before drawing Mr. Inman's blood. RP 23. The deputy did not think he had adequate cell phone coverage or time to get a warrant because of the ongoing investigation and Mr. Inman's imminent airlift to Harborview Medical Center in Seattle for further medical attention. RP 15-17, 23, 32.

The deputy also made no effort to contact a judge to get authorization to test the blood before sending it to a State lab five days later to be tested for the presence of alcohol. RP 23, 24-25; SCP Ex. 5; CP 45. The blood evidence was sent to the lab on Thursday, June 4, 2015; received there on June 8; and tested on June 10-11 for the presence of both drugs and alcohol pursuant to an internal lab policy. CP 45; SCP Ex. 5, 6; RP 61-62. The deputy acknowledged that there was no judicial order preventing him from testing the blood for the presence of any number of other things, including DNA. RP 25-27.

The blood test conducted revealed a blood alcohol concentration of 0.12 and the absence of any drugs. SCP Ex. 6.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Grounds for Discretionary Review

Petitioner believes that the following provisions of RAP 13.4(b) "Considerations Governing Acceptance of Review," are relevant to the acceptance of review in this matter:

> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

2. Reasons Why Review Should be Granted

Petitioner asks this Court to grant review of the Court of Appeals' decision under provisions (3) and (4), *supra*. This appeal presents a significant question of law under Art. 1, Sec. 7 of the Washington State Constitution and the Fourth Amendment of the United States Constitution. It also presents a critical issue "of substantial public interest that should be determined by the Supreme Court."

In *Missouri v. McNeely*, 569 U.S. 141, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013), the United States Supreme Court held that under most circumstances a judicial warrant is required before the State can draw blood, the only exception being where there exists exigent circumstances requiring that it be drawn immediately.

In rejecting a *per se* rule establishing exigent circumstances in all DUI cases, as urged by the prosecution, the *McNeely* Court held:

> But it does not follow that we should depart from careful case-by-case assessment of exigency and adopt the categorical rule proposed by the State and its *amici*. In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.

133 S.Ct. at 1561. "Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances. 133 S.Ct. at 1563. The Court did not decide whether a warrant is necessary to test the blood long after the exigent circumstance justifying it being drawn on scene without one.[1]

In *State v. Martines*, 184 Wn.2d 83, 355 P.3d 1111 (2015), this Court reversed Division I of the Court of Appeals and held that where, in the first instance, there was a valid judicial search warrant authorizing a blood draw, the State could later test the blood without obtaining a second warrant authorizing testing. This court held that a warrant authorizing the seizure of the blood as evidence of DUI also implicitly authorized its subsequent testing:

> We … further hold that the search warrant authorized testing of Martines' blood sample for intoxicants because it authorized a blood draw to obtain evidence of a DUI.

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[1] *McNeely* involved a blood draw at a medical facility not on the side of the road, which may account for the lack of any discussion about a delay between the blood being drawn and its subsequent testing. See *McNeely*, 133 S.Ct. at 1557, 1564.

Martines, 184 Wn.2d 83, 94.

The *Martines* decision is narrowly written and applies only to situations where a judicial search warrant for seizure of blood was actually obtained in the first instance. This case significantly differs from *Martines* in that a judicial warrant was never obtained. Instead, the seizure was based on exigent circumstances at the time of the blood draw. There can be no claim in this case that there was any exigency preventing the State from obtaining a warrant to test the blood 11 days later.

Although the Court of Appeals' decision in *Martines* was reversed, the underlying reasoning regarding the heightened privacy interest a person has in their blood is sound. The Court of Appeals explained that there is a strong privacy interest protecting the testing of one's blood without a warrant:

> Blood is not like a voice or a face or handwriting or fingerprints or shoes. The personal information contained in blood is hidden and highly sensitive. Testing of a blood sample can reveal not only evidence of intoxication, but also evidence of disease, pregnancy, and genetic family relationships or lack thereof, conditions that the court in *Skinner* referred to as "private medical facts." *Skinner*, 489 U.S. at 617, 109 S.Ct. 1402. Citizens of this state have traditionally held, and should be entitled to hold, this kind of information safe from governmental trespass.

State v. Martines, 182 Wash.App. 519, 530, 331 P.3d 105 (2014), rev'd, 184 Wn.2d 83, 355 P.3d 1111 (2015).

The privacy interest a person has in their blood identified by the Court of Appeals in *Martines* has since been recognized by the United States Supreme Court and by this Court, as well.

In *Birchfield v. North Dakota*, ___ U.S. _____, 136 S.Ct. 2160, 195 L.Ed.2d 560 (2016), the Supreme Court held that a warrantless blood draw cannot be justified as a search incident to arrest for DUI, but breath tests are. Blood draws "'require piercing the skin' and extract a part of the subject's body." *Birchfield*, 136 S.Ct. at 2178 (quoting *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 625, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989)). Blood draws and subsequent testing "is significantly more intrusive than blowing into a tube." *Id.*

> In addition, a blood test, unlike a breath test, places 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 BAC reading. Even if the law enforcement agency is precluded from testing the blood for any purpose other than to measure BAC, the potential remains and may result in anxiety for the person tested.

Birchfield, 136 S.Ct. at 2178.

In *State v. Baird*, 187 Wash.2d 210, 386 P.3d 239 (2016), a plurality of this court held that "[w]hen officers can obtain a warrant in DUI investigations before taking a blood sample 'without significantly undermining the efficacy of the search, the Fourth Amendment mandates

that they do so.'" 187 Wash.2d at 220. However, citing *Birchfield*, the plurality opinion recognized that breath tests fall under the search incident to arrest exception to the warrant requirement. 187 Wash.2d at 222. In a concurring opinion, Justice Gonzalez recognized the heightened privacy interest in blood testing.

> A breath test is much less intrusive than other blood alcohol tests and produces only a limited amount of information. A blood draw, for instance, entails a "physical intrusion beneath [the] skin and into [the] veins to obtain a sample of ... blood." Beyond this puncturing of the skin, a blood test can produce a much wider array of information than a breath test, such as a person's DNA (deoxyribonucleic acid) or the presence of certain diseases. In contrast, a breath test simply captures one's breath and produces a scope of information that is limited solely to a calculation of the alcohol content of the breather's blood.

State v. Baird, 187 Wash.2d at 230 (concurring opinion, internal citations omitted).

Moreover, the Court of Appeals' conclusion in *Martines*, 182 Wash.App. at 530, that a defendant has a privacy interest in the testing of their blood "that it is distinct from the privacy interest and bodily integrity and personal security that are invaded by a physical penetration of the skin" means that the testing of blood "is itself a search" is well grounded in established law.

> [The U.S. Supreme Court has] long recognized that a "compelled intrusion into the body for blood to be

> analyzed for alcohol content" must be deemed a Fourth Amendment search. In light of our society's concern for the security of one's person, it is obvious that this physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society is prepared to recognize as reasonable. The ensuing chemical analysis of the sample to obtain physiological data is further invasion of the tested employee's privacy interests.

Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 616, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989) (internal citations omitted).

In this case, Division II of the Court of Appeals held that a warrantless blood draw based upon exigent circumstances negates the need for any judicial scrutiny of the blood testing process.

> [U]nder the Supreme Court's reasoning in *Martines*, 184 Wn.2d at 93-94, and by analogy, Inman's blood was properly tested without a warrant. Just as the blood in *Martines* was lawfully seized under a search warrant, Inman's blood was lawfully seized under the exigent circumstances exception to the warrant requirement. *See Martines*, 184 Wn.2d at 93-94. Similarly, just as Martines's blood test was impliedly authorized by the search warrant because the purpose of the blood extraction was to test for intoxicants, Inman's blood test was similarly authorized when the blood was obtained under a lawful exercise of the exigent circumstances exception. *See Martines*, 184 Wn.2d at 93-94.

State v. Inman, ___ Wash.App. ___, 49174-5-II, Slip Op. at 12 (2018).

The *Inman* opinion provides no justification for completely dispensing with the need for judicial scrutiny, except to say exigent circumstances is a recognized exception to the warrant requirement. In doing so, though, the

Court of Appeals ignores that the exigency had long passed by the time that the blood was sent to the State lab and the heightened privacy interest in its testing. These factors are part of the "totality of the circumstances" that must be considered in determining whether a warrantless blood test is reasonable. See *McNeely*, 133 S.Ct. at 1563.

Birchfield is instructive not because it resolves the issue presented, but for its recognition of the heightened privacy interest in all that blood tests can now reveal. From that recognition flows the need for judicial scrutiny of law enforcement searches that may "extract information beyond a simple BAC reading." See *Birchfield* at 2178. "A warrant ensures that a search will be 'carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.'" *Martines*, 182 Wash.App. at 531 (quoting *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987)).

The U.S. Supreme Court has held that the contents of a cell phone cannot be searched without a warrant despite it being legally seized during a search incident to arrest. *Riley v. California*, ___ U.S. ____, 134 S.Ct. 2473, 189 L.Ed2d 430 (2014). In the opinion, the Court focused on the privacy interest at stake, both quantitatively (given the massive storage capacity of smart phones) and qualitatively (the type of records accessible), specifically referencing "an individual's private interests or concerns –

perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD." *Riley*, 134 S.Ct. at 2473. The language used to describe the privacy interest in cell phone data is strikingly similar to that used to describe the privacy interest in blood. See *supra*: *Birchfield*, 136 S.Ct. at 2178; *Baird*, 187 Wash.2d at 230 (concurring opinion); and *Martines*, 182 Wash.App at 531.

The fact that the cell phones in *Riley* were taken into police custody without a warrant during a search incident to arrest, as opposed to under exigent circumstances, is a distinction without a difference. Cf *Inman*, Slip Op. p. 13. Preventing the destruction of evidence is a justification common to both the search incident to arrest and exigent circumstances exceptions to the warrant requirement. See *Riley*, 134 S.Ct. at 2484 (search incident to arrest); *McNeely*, 133 S.Ct. at 1559 (exigent circumstances). It makes no sense that one item containing highly personal information (a cell phone) taken into police custody to prevent its destruction cannot be searched without a warrant, while the search of another item of a similar sensitive nature (blood), seized for the same reason, can proceed without need of any warrant whatsoever. The disparate treatment of the items is particularly nonsensical when both searches are conducted well after the item has been taken into police custody.

The Court in *Birchfield*, and *Riley* by analogy, recognizes the heightened privacy interest that people have in the information contained in

their blood. It is a legal fiction to justify a warrantless blood test solely on the grounds that exigent circumstances existed at the time it was drawn and ignore the absolute lack of any such exigency – as well as the continued privacy interest in the blood's contents – at the time the blood sample is sent to the State lab for testing.

In *Riley*, the petitioners asserted that the arresting officers could have "seized and secured their cell phones to prevent destruction of evidence while seeking a warrant." *Riley*, 134 S.Ct. at 2486. That is exactly Mr. Inman's position here.

The Court of Appeals erred by holding that "a legal blood draw under exigent circumstances exception allows testing of the blood without a warrant...." *Inman*, Slip Op., p.14. To the extent any exigency existed at the time of the blood draw, it had long passed when the blood was sent to the State lab for testing days later. RP 25; SCP Ex. 5,6. Moreover, although the investigating deputy only suspected alcohol, the sample was tested for the presence of drugs too, pursuant to an internal lab protocol. RP 25. And the deputy testified that he could have tested the blood for the presence of any number of things, including DNA. RP 26.

This Court has interpreted Art. 1, Sec. 7 of the Washington State Constitution more expansively than other state and federal courts have interpreted the Fourth amendment of the United States Constitution. *State v.*

Gunwall, 106 Wn.2d 54, 65 (1986). The warrantless testing of a person's blood certainly implicates Art. 1, Sec 7 rights under the "private affairs" section of the Washington State Constitution, regardless of whether it would also violate the Fourth Amendment of the United States Constitution.

F. CONCLUSION

This Court has never decided of whether a judicial warrant is required for blood testing under the Fourth Amendment of the United States Constitution or Art. I, Sec. 7 of the Washington State Constitution, where the blood was seized without a warrant days earlier.

This issue will recur in the future because, in DUI investigations, blood is routinely drawn based on exigent circumstances, followed by testing at a later date. This is an important issue which implicates constitutional and individual rights. The *Inman* case presents this issue in a very clear and straightforward manner. For the foregoing reasons, this Court is urged to accept review and resolve this very important and recurring issue.

Respectfully Submitted this 8 day of March, 2018.

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

PROOF OF SERVICE

I, Richard Davies, certify that, on this date:

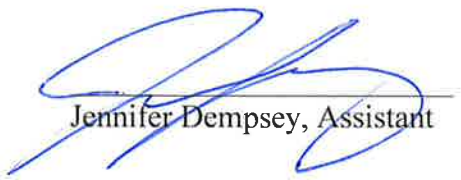
I filed this Petition for Discretionary Review to the Supreme Court of Washington Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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 January 2, 2017.



Jennifer Dempsey, Assistant

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

January 17, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BOB LeROY INMAN, Appellant.	No. 49174-5-II UNPUBLISHED OPINION

JOHANSON, J. — Bob LeRoy Inman appeals from the denial of his suppression motion and the resulting vehicular assault conviction. Inman argues that the trial court erred when it denied his suppression motion because (1) probable cause did not support his driving while under the influence (DUI) arrest, (2) exigent circumstances did not exist, (3) the implied consent statute, former RCW 46.20.308(3) (2013), prohibited the warrantless blood draw, and (4) a warrant to test the blood was required. We affirm.

FACTS

I. BACKGROUND[1]

In May 2015, Inman and Margie Vanderhoof were injured in a motorcycle accident on a rural road. Inman was the driver of the motorcycle and Vanderhoof was his passenger. Captain Tim Manly, the first paramedic on the scene, observed a motorcycle in a ditch and two people lying down in a driveway approximately 20 to 25 feet away. Captain Manly observed that Inman had facial trauma, including bleeding and abrasions on the face, and a deformed helmet. Based on Inman's injuries, Captain Manly believed that the accident was a high-trauma incident.

Captain Manly learned from a bystander that Inman had been unconscious for approximately five minutes after the collision before regaining consciousness. Manly administered emergency treatment to Inman, which included placing Inman in a C-Spine, a device designed to immobilize the spine to prevent paralysis.

While Captain Manly provided Inman with treatment, Sergeant Galin Hester of the Washington State Patrol contacted Vanderhoof, who complained of pelvic pain. Sergeant Hester spoke with Inman and smelled intoxicants on him.

Jefferson County Deputy Brandon Przygocki arrived on the scene and observed a motorcycle in a ditch with significant front-end damage. Deputy Przygocki ran the license plate through dispatch and learned the motorcycle was registered to Inman. Deputy Przygocki learned from Sergeant Hester that Inman was in the ambulance and smelled of alcohol. Deputy Przygocki contacted Inman in the ambulance and, smelling alcohol, asked whether Inman had been drinking

[1] The facts are based on unchallenged findings from the suppression hearing and are thus verities on appeal. *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005).

and driving. Inman admitted he had been driving the motorcycle and that he had been drinking before he drove.

Deputy Przygocki was unsure of the extent of Vanderhoof's injuries but believed he at least had probable cause to believe Inman was driving under the influence. Helicopters were coming to medivac Inman and Vanderhoof to the nearest trauma center. Deputy Przygocki knew that preparation of a search warrant affidavit takes 30 minutes and obtaining judicial approval of a warrant takes at least 15 minutes. Deputy Przygocki lacked reliable cell phone coverage in the rural area. Deputy Przygocki conducted a warrantless blood draw after reading a special evidence warning to Inman informing him that he was under arrest and that a blood sample was being seized to determine the concentration of alcohol in his blood.

There is a process by which a search warrant for a blood draw may be obtained telephonically and executed by an officer at the hospital to which Inman was being transported. However, this process is problematic and, in the experience of Officer Hester, had never worked in the past.

II. PROCEDURES

Inman was charged with vehicular assault while under the influence and filed a motion to suppress evidence of the warrantless blood draw. He argued that the implied consent statute authorized a warrantless blood draw but that the implied consent statute was not constitutional, so there was no valid authority for the blood draw. He also argued that the exigent circumstances exception to the warrant requirement did not justify a warrantless blood draw in this case. The State did not respond to the statutory issue, but argued that Inman's blood was lawfully drawn pursuant to the exigent circumstances exception to the warrant requirement.

The trial court heard testimony from six witnesses, who testified consistently with the factual findings summarized above. The trial court orally ruled that exigent circumstances justified the blood draw and later entered written findings of fact and conclusions of law.

Inman filed a reconsideration motion. He argued that there was no probable cause for DUI. He also argued that, even assuming that exigent circumstances justified the warrantless blood draw, a warrant was needed to test the blood. The State disagreed.

The trial court denied Inman's reconsideration motion and entered findings of fact and conclusions of law related to the denial of Inman's reconsideration motion. The trial court concluded that Deputy Przygocki had probable cause to believe Inman had committed a DUI. In addition, the trial court concluded that clear and convincing evidence supported that the warrantless blood draw was justified under the exigent circumstances exception to the warrant requirement. And the trial court concluded that because the blood was lawfully seized under exigent circumstances, no warrant was required to test the blood. After a stipulated facts trial, the trial court found Inman guilty of vehicular assault. Inman appeals.

ANALYSIS

I. SUBSTANTIAL EVIDENCE

Inman assigns error to findings of fact 1, 32, 33, and 35 and states in his issues pertaining to assignments of error that the trial court's findings are not supported by substantial evidence. We do not address this issue.

Appellants must present argument supporting the issues presented for review, citations to legal authority, and references to relevant parts of the record. RAP 10.3(a)(6). We do not consider issues unsupported by arguments and citation to legal authority. *State v. Harris*, 164 Wn. App.

377, 389 n.7, 263 P.3d 1276 (2011) (citing *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986)).

Inman does not mention substantial evidence in his argument section or provide citations to explain why any of the challenged findings are erroneous. By failing to provide argument and supportive citations, Inman has waived his objections to the challenged findings. *Harris*, 164 Wn. App. at 389 n.7. These findings, consequently, are verities on appeal. *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005).[2]

II. Probable Cause To Arrest for DUI

Inman and the State disagree whether the trial court erred when it concluded that Inman's arrest was supported by probable cause. We hold that probable cause supported Inman's arrest.

A. Principles of Law

When reviewing the denial of a suppression motion, we determine whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009).

Under both the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution, an arrest is lawful only when supported by probable cause. *State v. Gillenwater*, 96 Wn. App. 667, 670, 980 P.2d 318 (1999). Probable cause exists when the arresting officer, at the time of the arrest, has knowledge of facts sufficient to cause a reasonable officer to believe that an offense has been committed. *Gillenwater*, 96 Wn. App. at 670. Whether

[2] Alternatively, the trial court's conclusions of law are adequately supported by *unchallenged* findings, as discussed below. As such, we do not address the substantial evidence argument.

probable cause exists depends on the totality of the circumstances. *Gillenwater*, 96 Wn. App. at 670.

A defendant is guilty of DUI if the State proves that the defendant drove a motor vehicle in the State under the influence of intoxicating liquor. Former RCW 46.61.502(1)(c) (2013). Unchallenged findings are verities on appeal. *Gaines*, 154 Wn.2d at 716.

B. PROBABLE CAUSE EXISTED

Inman assigns error to the trial court's conclusion of law that at the time of the warrantless blood draw, Deputy Przygocki had probable cause to believe Inman had committed a DUI.

To have probable cause to arrest Inman for DUI, Deputy Przygocki needed to know facts sufficient to cause a reasonable officer to believe that Inman drove a vehicle in the State under the influence of intoxicating liquor. *Gillenwater*, 96 Wn. App. at 670; former RCW 46.61.502(1)(c) (2013).

Here, the unchallenged findings of fact support the trial court's conclusion that Deputy Przygocki had probable cause to arrest Inman for DUI. When Deputy Przygocki arrived on the scene, he observed a motorcycle in a ditch with significant front-end damage and, after running the license plates, knew the vehicle belonged to Inman. Deputy Przygocki learned from Sergeant Hester that Inman was in the ambulance and smelled of alcohol. Deputy Przygocki then contacted Inman in the ambulance, and Inman admitted he had been driving the motorcycle and that he had been drinking before he drove. Based on these facts, Deputy Przygocki knew that Inman was driving the motorcycle after drinking alcohol when he crashed. This knowledge is sufficient to cause a reasonable officer to believe that Inman was driving a motor vehicle under the influence of alcohol. *Gillenwater*, 96 Wn. App. at 670; former RCW 46.61.502(1)(c).

Inman cites three cases in which courts held that probable cause supported a challenged DUI arrest, but he does not explain how these cases support his argument. Br. of Appellant at 11-12 (citing *Gillenwater*, 96 Wn. App. at 670; *City of College Place v. Staudenmaier*, 110 Wn. App. 841, 43 P.3d 43 (2002); *State v Martines*, 184 Wn.2d 83, 355 P.3d 1111 (2015)).

In *Gillenwater*, probable cause supported the DUI arrest where the defendant and deceased passenger smelled like alcohol, the car contained a cooler full of beer and three open cans, and there was an accident. 96 Wn. App. at 669-71. Here, Inman admitted to drinking alcohol, which is direct evidence of alcohol consumption. And like the defendant in *Gillenwater*, Inman smelled of alcohol and was driving when his vehicle was involved in an accident.

Similarly, in *Staudenmaier*, probable cause supported a DUI arrest where the defendant's breath smelled of alcohol, his eyes were watery and bloodshot, he admitted to drinking beers, and he performed poorly on field sobriety tests. 110 Wn. App at 847. And in *Martines*, law enforcement had probable cause to arrest for DUI when the defendant smelled like alcohol, admitted to drinking one beer, hid empty beer bottles, had bloodshot eyes and a flushed face, and walked in a slow, off-balance manner. 184 Wn.2d at 91-92. Likewise, Inman admitted drinking alcohol, smelled like alcohol, and demonstrated poor physical coordination when he lost control of his motorcycle in an accident involving no other vehicles and no inclement weather.

Contrary to Inman's assertions, these cases actually *support* the conclusion that probable cause supported his DUI arrest. Like the defendants in all three cases, Inman smelled like alcohol at the time of arrest. In addition, like the defendants in *Staudenmaier* and *Martines*, Inman admitted to drinking alcohol shortly before the arrest. And, importantly, like the defendant in *Gillenwater*, Inman was driving when his vehicle was involved in a serious accident. The totality

of the circumstances supports that a reasonable officer could believe that Inman drove under the influence of alcohol. *Gillenwater*, 96 Wn. App. at 670. Accordingly, the trial court did not err when it concluded that probable cause existed to arrest Inman for DUI.

III. EXIGENT CIRCUMSTANCES

The parties disagree whether the trial court erred when it ruled that the exigent circumstances exception to the warrant requirement authorized the warrantless blood draw. We affirm the trial court's conclusion.

A. PRINCIPLES OF LAW

A challenged conclusion of law from a suppression hearing is reviewed de novo. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). Whether exigent circumstances exist to justify a warrantless blood draw is a legal question we review de novo. *City of Seattle v. Pearson*, 192 Wn. App. 802, 811-12, 369 P.3d 194 (2016). The State bears the burden of showing by clear and convincing evidence that exigent circumstances justified a warrantless search. *Pearson*, 192 Wn. App. at 811.

A warrantless search is impermissible under both article I, section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution, unless an exception to the warrant requirement authorizes the search. *Gaines*, 154 Wn.2d at 716. Drawing a person's blood for alcohol testing is a search triggering these constitutional protections. *Pearson*, 192 Wn. App. at 811 (citing *Missouri v. McNeely*, 569 U.S. 141, 148, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013)).

A warrantless search is allowed if exigent circumstances exist. *Pearson*, 192 Wn. App. at 811 (citing *State v. Terrovona*, 105 Wn.2d 632, 644, 716 P.2d 295 (1986)). The exigent

circumstances exception to the warrant requirement applies where "the delay necessary to obtain a warrant is not practical because the delay would permit the destruction of evidence." *State v. Baird*, 187 Wn.2d 210, 218, 386 P.3d 239 (2016) (plurality opinion); *see McNeely*, 569 U.S. at 164.

The natural dissipation of an intoxicating substance in a suspect's blood may be a factor in determining whether exigent circumstances justify a warrantless blood search, but courts determine exigency under the totality of the circumstances on a case-by-case basis. *Baird*, 187 Wn.2d at 220 (citing *McNeely*, 569 U.S. at 150). The State bears the burden of demonstrating that exigent circumstances justified a warrantless search. *Baird*, 187 Wn.2d at 218.

B. EXIGENT CIRCUMSTANCES EXISTED

The trial court concluded that Inman's blood was lawfully drawn under the exigent circumstances exception to the warrant requirement. This conclusion is supported by the unchallenged findings of fact. Inman and Vanderhoof were both injured from a motorcycle accident that resulted in significant front-end damage to the motorcycle, which was found in a ditch. Both Inman and Vanderhoof received emergency medical services, and Inman was receiving treatment for possible spine injuries. At the time of the blood draw, helicopters were coming to medivac Inman and Vanderhoof to the nearest trauma center. It would have taken at least 45 minutes to prepare and obtain judicial approval for a search warrant. Deputy Przygocki lacked reliable cell phone coverage in the rural area, so obtaining a telephonic warrant may have been a challenge.

Under the circumstances, obtaining a warrant was not practical. *Baird*, 187 Wn.2d at 218. In addition to the natural dissipation of alcohol in the blood, which was one factor contributing to

exigent circumstances, Inman's continued medical treatment could have impacted the efficacy of the blood sample. *See Baird*, 187 Wn.2d at 220. With Inman's imminent transfer to the trauma center, the opportunity to draw Inman's blood may have passed by the time law enforcement obtained a warrant. And the rural location of the accident combined with the lack of reliable cellular phone coverage increased the impracticality of obtaining a warrant for the blood draw.

Inman relies on *Pearson*, but this authority is distinguishable. In *Pearson*, Division One of this court held that exigent circumstances did not exist where the defendant hit a pedestrian and showed signs of intoxication such as poor performance on a field sobriety test. 192 Wn. App. at 807-08, 816-17. The investigating officer personally transported her to the hospital and hours later decided to order a warrantless blood draw. *Pearson*, 192 Wn. App. at 808-09. The court held that it was practical to obtain a warrant under the circumstances such that the exigent circumstances exception did not authorize the blood draw. *Pearson*, 192 Wn. App. at 816-17.

Here, Inman's injuries were more severe than Pearson's, necessitating helicopter transport to the trauma center and requiring Inman to be immobilized on a C-Spine to prevent paralysis. Given the seriousness of the accident, Deputy Przygocki had limited time to interact with Inman and, unlike the officer in *Pearson*, did not personally accompany the defendant to the hospital. As such, unlike the officer in *Pearson* who failed to obtain a warrant during the multiple hours in which he had an opportunity to do so, Deputy Przygocki did not have enough time to obtain a warrant before Inman's transport. In addition, the officer in *Pearson* testified that a telephonic warrant could have been obtained under the circumstances. 192 Wn. App. at 809. In stark contrast, Inman's arresting officer had no reliable means of obtaining a warrant within the time constraints.

Thus, here, obtaining a warrant was not practical and would have permitted the destruction of evidence. *Baird*, 187 Wn.2d at 218.

Exigent circumstances supported the warrantless blood draw in this case. *Baird*, 187 Wn.2d at 218. Thus, the trial court did not err in concluding that exigent circumstances existed.

IV. Implied Consent Statute Is Irrelevant

Inman appears to argue that the blood draw violated the implied consent statute, former RCW 46.20.308(3).

Any motor vehicle operator is deemed to have given consent for warrantless breath or blood alcohol testing if certain conditions are present. Former RCW 46.20.308 (2013).[3]

However, the implied consent statute applies to blood alcohol tests conducted under *only* the implied consent statute and has no effect on blood tests conducted pursuant to other authority. *See City of Seattle v. St. John*, 166 Wn.2d 941, 946-47, 215 P.3d 194 (2009).

Here, the trial court properly held that the blood draw and subsequent testing were authorized under the exigent circumstances exception to the search warrant requirement, and it did not address the implied consent statute. As such, its requirements are not relevant here.

V. No Warrant Necessary To Test Blood

Inman asserts that, even if exigent circumstances authorized the warrantless blood draw, the trial court erred when it concluded that no warrant was required to test Inman's blood legally seized under exigent circumstances. The State argues that no search warrant is required to test blood that law enforcement obtains under exigent circumstances. We agree with the State.

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[3] In 2015, RCW 46.20.308 was revised effective September 26, 2015. We consider the statutory language that was in effect at the time of Inman's arrest.

A. PRINCIPLES OF LAW

We review de novo the trial court's legal conclusion that because Inman's blood was lawfully seized under exigent circumstances, no warrant was required to test the blood for intoxicants. *Pearson*, 192 Wn. App. at 811-12.

"[A] warrant authorizing extraction of a blood sample necessarily authorizes testing of that sample for evidence of the suspected crime." *Martines*, 184 Wn.2d at 94. The purpose of a warrant authorizing a blood draw is to identify intoxication evidence, and such evidence is only accessible through blood testing. *Martines*, 184 Wn.2d at 93. A warrant authorizing extraction of blood in a DUI case thus impliedly authorizes testing the blood. *Martines*, 184 Wn.2d at 93-94.

B. NO WARRANT REQUIRED

Inman relies on three cases to argue that a warrant was required to test Inman's blood, but none of his cited cases are applicable. First, Inman discusses the reasoning in *State v. Martines*, 182 Wn. App. 519, 331 P.3d 105 (2014), *rev'd*, 184 Wn.2d 83. Inman acknowledges that the Court of Appeals was reversed.

But under the Supreme Court's reasoning in *Martines,* 184 Wn.2d at 93-94, and by analogy, Inman's blood was properly tested without a warrant. Just as the blood in *Martines* was lawfully seized under a search warrant, Inman's blood was lawfully seized under the exigent circumstances exception to the warrant requirement. *See Martines*, 184 Wn.2d at 93-94. Similarly, just as Martines's blood test was impliedly authorized by the search warrant because the purpose of the blood extraction was to test for intoxicants, Inman's blood test was similarly authorized when the blood was obtained under a lawful exercise of the exigent circumstances exception. *See Martines*, 184 Wn.2d at 93-94.

Second, Inman relies on *Birchfield v. North Dakota*, __ U.S. __, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016). In *Birchfield*, the United States Supreme Court held that a warrantless blood draw cannot be justified under the search incident to arrest exception to the warrant requirement. 136 S. Ct. at 2178. The Court held that a blood test is "significantly more intrusive" than a breathalyzer test and that blood tests raise special privacy concerns. *Birchfield*, 136 S. Ct. at 2178. As the State asserts, *Birchfield* does not apply here. *Birchfield* holds that it is *unlawful* to seize blood incident to arrest. It fails to address whether blood, *lawfully* seized under exigent circumstances, can be tested without a warrant.

Third, Inman argues that *Riley v. California*, __ U.S. __, 134 S. Ct. 2473, 2494, 189 L. Ed. 2d 430 (2014), requires law enforcement to obtain a warrant to search blood lawfully obtained under exigent circumstances. In *Riley*, the United States Supreme Court held that when law enforcement obtains a person's cellular phone during a search incident to arrest, law enforcement needs a warrant to search the phone. 134 S. Ct. at 2481, 2495. But the Court explicitly limited this holding to cell phones seized during *searches incident to arrest* and stated that warrantless searches of cellular phones could still occur lawfully under exigent circumstances. *Riley*, 134 S. Ct. at 2494. Because *Riley* applies to only searches incident to arrest, it is inapplicable here.

We hold that the trial court did not err when it concluded that Inman's blood could be tested without a warrant.

VI. CONCLUSION

The trial court did not err in denying Inman's suppression motion. First, there was probable cause to arrest Inman for DUI. Second, exigent circumstances existed to authorize a warrantless blood draw. Third, the implied consent statute does not bar a warrantless search under exigent

circumstances. Finally, a legal blood draw under the exigent circumstances exception allows testing of the blood without a warrant when there is probable cause to arrest for DUI.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.
JOHANSON, J.

We concur:

Maxa, A.C.J.
MAXA, A.C.J.

Sutton, J.
SUTTON, J.

APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

February 6, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BOB LeROY INMAN, Appellant.	No. 49174-5-II ORDER GRANTING MOTION TO PUBLISH

WHEREAS, third party Washington Association of Prosecuting Attorneys has moved to publish the opinion filed on January 17, 2018, it is now

ORDERED, that the final paragraph, reading "A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered." is deleted. It is further

ORDERED, that the opinion will be published.

FOR THE COURT
PANEL: Jj. Johanson, Maxa, Sutton

Johanson, J.

JOHANSON, J.

LAW OFFICE OF RICHARD L. DAVIES

March 08, 2018 - 3:41 PM

Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v. Bob L. Inman, Appellant
Superior Court Case Number:	15-1-00102-2

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